

By: Naishtat

H.B. No. 47

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the increases in the tax on cigarettes and to the
3 allocation of that increase to health and human services programs;
4 making appropriations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. CIGARETTE TAX

7 SECTION 1.01. Section 154.021(b), Tax Code, is amended to
8 read as follows:

9 (b) The tax rates are:

10 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
11 weighing three pounds or less per thousand; and

12 (2) the rate provided by Subdivision (1) plus \$2.10
13 per thousand on cigarettes weighing more than three pounds per
14 thousand.

15 SECTION 1.02. Section 154.603, Tax Code, is amended to read
16 as follows:

17 Sec. 154.603. DISPOSITION OF REVENUE. (a) After the
18 deductions for the purposes provided by Section 154.602 [~~of this~~
19 ~~code~~], the revenue remaining of the first \$2 of tax received per
20 1,000 cigarettes for cigarettes weighing three pounds or less per
21 thousand and the first \$4.10 per 1,000 cigarettes of the tax
22 received for cigarettes weighing more than three pounds per
23 thousand is allocated:

24 (1) 18.75 percent to the foundation school fund; and

1 (2) 81.25 percent to the general revenue fund.

2 (b) The revenue remaining after the deductions for the
3 purposes provided by Section 154.602 [~~of this code~~] and allocation
4 under Subsection (a) of the next \$27.50 of tax received per 1,000
5 cigarettes for cigarettes weighing three pounds or less per
6 thousand and the next \$27.50 per 1,000 cigarettes of the tax
7 received for cigarettes weighing more than three pounds per
8 thousand [~~this section~~] is allocated to the general revenue fund.

9 (c) The revenue remaining after the deductions for the
10 purposes provided by Section 154.602 and allocation under
11 Subsections (a) and (b) shall be deposited as follows:

12 (1) the next \$2.50 of tax received per 1,000
13 cigarettes weighing three pounds or less per thousand and the next
14 \$2.50 per 1,000 cigarettes of the tax received for cigarettes
15 weighing more than three pounds per thousand shall be allocated to
16 the tobacco cessation account established under Section 161.303,
17 Health and Safety Code; and

18 (2) the remaining revenue shall be allocated to the
19 general revenue fund to be appropriated only for health and human
20 services.

21 (d) Notwithstanding Subsection (c), for the fiscal biennium
22 that began September 1, 2003, the revenue remaining after the
23 deductions for the purposes provided by Section 154.602 and
24 allocation under Subsections (a) and (b) shall be deposited as
25 follows:

26 (1) the next \$2.50 of tax received per 1,000
27 cigarettes weighing three pounds or less per thousand and the next

1 \$2.50 per 1,000 cigarettes of the tax received for cigarettes
2 weighing more than three pounds per thousand shall be allocated to
3 the credit of the tobacco cessation account established under
4 Section 161.303, Health and Safety Code; and

5 (2) the remaining revenue shall be allocated to the
6 general revenue fund and may be appropriated only for:

7 (A) the child health care plan program under
8 Chapter 62, Health and Safety Code;

9 (B) the medical assistance program under Chapter
10 32, Human Resources Code;

11 (C) the in-home and family support program under
12 Chapter 535, Health and Safety Code;

13 (D) the children with special health care needs
14 program under Chapter 35, Health and Safety Code;

15 (E) community care programs;

16 (F) community mental health services;

17 (G) community care waiver programs; and

18 (H) HIV & STD education and services.

19 (e) Subsection (d) and this subsection expire September 1,
20 2005.

21 ARTICLE 2. RESTORATION OF STATE CHILD HEALTH PLAN

22 SECTION 2.01. Subchapter A, Chapter 62, Health and Safety
23 Code, is amended by adding Section 62.0025 to read as follows:

24 Sec. 62.0025. NET FAMILY INCOME. In this chapter, net
25 family income means the amount of income established for a family
26 after reduction for offsets for expenses such as child care and
27 work-related expenses. Offsets for expenses shall be computed

1 using the same standards applicable to the child health plan in the
2 state fiscal year beginning September 1, 2002.

3 SECTION 2.02. Section 62.101(b), Health and Safety Code, is
4 amended to read as follows:

5 (b) The commission shall establish income eligibility
6 levels consistent with Title XXI, Social Security Act (42 U.S.C.
7 Section 1397aa et seq.), as amended, and any other applicable law or
8 regulations, and subject to the availability of appropriated money,
9 so that a child who is younger than 19 years of age and whose net
10 [~~gross~~] family income is at or below 200 percent of the federal
11 poverty level is eligible for health benefits coverage under the
12 program. [~~In addition, the commission may establish eligibility~~
13 ~~standards regarding the amount and types of allowable assets for a~~
14 ~~family whose gross family income is above 150 percent of the federal~~
15 ~~poverty level.~~]

16 SECTION 2.03. Section 62.151, Health and Safety Code, is
17 amended by adding Subsection (g) to read as follows:

18 (g) The covered benefits provided under the child health
19 plan must include vision benefits and dental benefits that, at
20 minimum, are equivalent to the vision and dental benefits provided
21 under the state employees group benefits program provided by
22 Chapter 1551, Insurance Code.

23 SECTION 2.04. Section 62.153(b), Health and Safety Code, is
24 amended to read as follows:

25 (b) Cost-sharing [~~Subject to Subsection (d), cost-sharing~~]
26 provisions adopted under this section shall ensure that families
27 with higher levels of income are required to pay progressively

1 higher percentages of the cost of the plan.

2 SECTION 2.05. The section heading of Section 62.154, Health
3 and Safety Code, is amended to read as follows:

4 Sec. 62.154. [~~WAITING PERIOD,~~] CROWD OUT.

5 SECTION 2.06. Sections 62.154(a) and (d), Health and Safety
6 Code, are amended to read as follows:

7 (a) To the extent permitted under Title XXI of the Social
8 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
9 other applicable law or regulations, the child health plan must
10 include a waiting period and [~~. The child health plan~~] may include
11 copayments and other provisions intended to discourage:

12 (1) employers and other persons from electing to
13 discontinue offering coverage for children under employee or other
14 group health benefit plans; and

15 (2) individuals with access to adequate health benefit
16 plan coverage, other than coverage under the child health plan,
17 from electing not to obtain or to discontinue that coverage for a
18 child.

19 (d) The waiting period required by Subsection (a) must:

20 (1) extend for a period of 90 days after the last date
21 on which the applicant was covered under a health benefits plan; and

22 (2) apply to a child who was covered by a health
23 benefits plan at any time during the 90 days before the date of
24 application for coverage under the child health plan[+]

25 [~~(1) the first day of the month in which the applicant~~
26 ~~is enrolled under the child health plan, if the date of enrollment~~
27 ~~is on or before the 15th day of the month, or~~

1 ~~[(2) the first day of the month after which the~~
2 ~~applicant is enrolled under the child health plan, if the date of~~
3 ~~enrollment is after the 15th day of the month].~~

4 SECTION 2.07. The following laws are repealed:

5 (1) Section 62.002(4), Health and Safety Code; and

6 (2) Section 62.153(d), Health and Safety Code.

7 SECTION 2.08. If before implementing any provision of this
8 article a state agency determines that a waiver or authorization
9 from a federal agency is necessary for implementation of that
10 provision, the agency affected by the provision shall request the
11 waiver or authorization and may delay implementing that provision
12 until the waiver or authorization is granted.

13 ARTICLE 3. RESTORATION OF CERTAIN MEDICAL ASSISTANCE BENEFITS

14 SECTION 3.01. Section 31.0032(d), Human Resources Code, is
15 amended to read as follows:

16 (d) This section does not prohibit the Texas Workforce
17 Commission, the Health and Human Services Commission, or any health
18 and human services agency, as defined by Section 531.001,
19 Government Code, from providing medical assistance, child care, or
20 any other related social or support services for an individual who
21 is eligible for financial assistance but to whom that assistance is
22 not paid because of the individual's failure to cooperate.

23 SECTION 3.02. Section 32.024(i), Human Resources Code, as
24 amended by Chapters 198 and 1251, Acts of the 78th Legislature,
25 Regular Session, 2003, is reenacted and amended to read as follows:

26 (i) The department in its adoption of rules shall establish
27 a medically needy program that serves pregnant women, children, and

1 caretakers who have high medical expenses [~~, subject to availability~~
2 ~~of appropriated funds~~].

3 SECTION 3.03. Section 32.024(w), Human Resources Code, is
4 amended to read as follows:

5 (w) The department shall set a personal needs allowance of
6 not less than \$60 [~~\$45~~] a month for a resident of a convalescent or
7 nursing home or related institution licensed under Chapter 242,
8 Health and Safety Code, personal care facility, ICF-MR facility, or
9 other similar long-term care facility who receives medical
10 assistance. The department may send the personal needs allowance
11 directly to a resident who receives Supplemental Security Income
12 (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not
13 apply to a resident who is participating in a medical assistance
14 waiver program administered by the department.

15 SECTION 3.04. Section 32.027, Human Resources Code, is
16 amended by adding Subsection (1) to read as follows:

17 (1) The department shall assure that a recipient of medical
18 assistance under this chapter may select a licensed podiatrist to
19 perform any foot health care service or procedure covered under the
20 medical assistance program if the podiatrist is authorized by law
21 to perform the service or procedure. This subsection shall be
22 liberally construed.

23 SECTION 3.05. The following laws are repealed:

- 24 (1) Section 32.027(b), Human Resources Code; and
25 (2) Section 31.0032(c), Human Resources Code.

26 ARTICLE 4. TOBACCO CESSATION

27 SECTION 4.01. Subchapter O, Chapter 161, Health and Safety

1 Code, is amended by adding Section 161.303 to read as follows:

2 Sec. 161.303. TOBACCO CESSATION ACCOUNT. The tobacco
3 cessation account is an account in the general revenue fund
4 composed of amounts allocated to the account under Section 154.603,
5 Tax Code, other money transferred to the fund at the direction of
6 the legislature, and gifts and grants contributed to the fund.
7 Money in the fund may be appropriated only to the department for
8 programs to reduce the use of cigarettes and tobacco products in
9 this state, including:

- 10 (1) smoking cessation programs;
11 (2) enforcement of Subchapters H, K, and N, or other
12 laws relating to distribution of cigarettes or tobacco products to
13 minors or use of cigarettes or tobacco products by minors;
14 (3) public awareness programs relating to use of
15 cigarettes and tobacco products, including general educational
16 programs and programs directed toward youth; and
17 (4) specific programs for communities traditionally
18 targeted, by advertising and other means, by companies that sell
19 cigarettes or tobacco products.

20 SECTION 4.02. The heading of Subchapter O, Chapter 161,
21 Health and Safety Code, is amended to read as follows:

22 SUBCHAPTER O. CERTAIN TOBACCO-RELATED PROGRAMS [~~PREVENTION OF~~
23 ~~TOBACCO USE BY MINORS~~]

24 ARTICLE 5. APPROPRIATION

25 SECTION 5.01. In addition to other amounts appropriated to
26 the Health and Human Services Commission for all or part of the
27 state fiscal biennium beginning September 1, 2003, the amount of

1 \$130 million is appropriated out of the children's health insurance
2 program account in the general revenue fund for the state fiscal
3 biennium beginning September 1, 2003, to the Health and Human
4 Services Commission to restore benefits under and eligibility for
5 the state child health program to the levels provided during the
6 fiscal year beginning September 1, 2002, consistent with the
7 changes in law made by Article 2 of this Act.

8 SECTION 5.02. In addition to other amounts appropriated to
9 the Texas Department of Health for all or part of the state fiscal
10 biennium beginning September 1, 2003, the total amount of money
11 deposited to the credit of the tobacco cessation account under
12 Section 161.303, Health and Safety Code, as added by this Act, is
13 appropriated out of that account for the state fiscal biennium
14 beginning September 1, 2003, to the Texas Department of Health for
15 the purposes specified in that section.

16 SECTION 5.03. In addition to other amounts appropriated to
17 the Texas Department of Human Services for all or part of the state
18 fiscal biennium beginning September 1, 2003, the following amounts
19 are appropriated out of the general revenue fund to the Texas
20 Department of Human Services for the state fiscal biennium
21 beginning September 1, 2003:

22 (1) \$123 million to restore the number of clients and
23 hours assumed in the community care programs to fiscal year 2003
24 levels;

25 (2) \$32 million to restore the number of slots for
26 Community Care Waiver Programs to fiscal year 2003 levels; and

27 (3) \$8.1 million to restore the personal needs

1 allowance to not less than \$60 a month for a resident of a
2 convalescent or nursing home, personal care facility, ICF-MR
3 facility, or other similar long-term care facility who receives
4 such an allowance under the state Medicaid program.

5 SECTION 5.04. In addition to other amounts appropriated to
6 the Health and Human Services Commission for all or part of the
7 state fiscal biennium beginning September 1, 2003, the following
8 amounts are appropriated out of the general revenue fund to the
9 Health and Human Services Commission for the state fiscal biennium
10 beginning September 1, 2003:

11 (1) \$124 million to reimburse Medicaid providers for
12 the fiscal year beginning September 1, 2004, at the partially
13 restored rate at which, under the applicable budget execution order
14 adopted by the governor and Legislative Budget Board acting under
15 Chapter 317, Government Code, and Section 11.28, Article IX,
16 Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003
17 (the General Appropriations Act), as amended by Chapters 8 and 10,
18 Acts of the 78th Legislature, 3rd Called Session, 2003, the
19 providers are reimbursed under the state Medicaid program during
20 the fiscal year beginning September 1, 2003;

21 (2) \$28.6 million to restore the Medically Needy
22 Program to assist approximately 10,000 Texans each month in paying
23 health care expenses;

24 (3) \$27.4 million to restore Medicaid coverage for
25 approximately 8,300 pregnant women on an average monthly basis;

26 (4) \$27.1 million to restore the following optional
27 benefits for adult Medicaid recipients to fiscal year 2003 levels:

1 mental health benefits and benefits for eyeglasses, hearing aids,
2 and podiatric care; and

3 (5) \$17.5 million to restore Medicaid benefits for
4 adult recipients of Temporary Assistance for Needy Families.

5 SECTION 5.05. In addition to other amounts appropriated to
6 the Texas Department of Mental Health and Mental Retardation for
7 all or part of the state fiscal biennium beginning September 1,
8 2003, the following amounts are appropriated out of the general
9 revenue fund to the Texas Department of Mental Health and Mental
10 Retardation for the state fiscal biennium beginning September 1,
11 2003:

12 (1) \$36.6 million for community mental health
13 services; and

14 (2) \$17.3 million to restore In-Home and Family
15 Support Program services to assist more than 2,946 Texans in living
16 independently.

17 SECTION 5.06. In addition to other amounts appropriated to
18 the Texas Department of Health for all or part of the state fiscal
19 biennium beginning September 1, 2003, the following amounts are
20 appropriated out of the general revenue fund to the Texas
21 Department of Health for the state fiscal biennium beginning
22 September 1, 2003:

23 (1) \$14.9 million to restore HIV & STD Education and
24 Services to the levels provided during the fiscal year beginning
25 September 1, 2002; and

26 (2) \$6.6 million to provide services to additional
27 chronically ill and disabled children who are eligible and on the

1 waiting list for the Children with Special Health Care Needs
2 Program.

3 SECTION 5.07. Rider 37 following the appropriations to the
4 Texas Department of Human Services on page II-77, Chapter 1330,
5 Acts of the 78th Legislature, Regular Session, 2003 (the General
6 Appropriations Act), is amended to read as follows:

7 37. Community Care Waiver Slots. It is the intent of the
8 Legislature that the Department of Human Services will not expand
9 the base number of appropriated waiver slots through Rider 28
10 transfers. Clients utilizing Rider 28 shall remain funded
11 separately through transfers from the Nursing Facility strategy,
12 and those slots shall not count against the total appropriated
13 community care slots. Rider 28 funding through the nursing
14 facility strategy shall be maintained for those clients as long as
15 the individual client remains in the transferred slot. When a Rider
16 28 client leaves a waiver program, any remaining funding for the
17 biennium shall remain in the nursing facility strategy.

18 ~~[If the department determines available revenue within community~~
19 ~~care strategies requires a reduction in the base number of slots for~~
20 ~~waiver programs, the department shall utilize attrition to meet~~
21 ~~appropriated levels.]~~

22 ARTICLE 6. EFFECTIVE DATE

23 SECTION 6.01. This Act takes effect on the first day of the
24 first month immediately following the first day on which this Act
25 may take effect as provided by Section 39, Article III, Texas
26 Constitution.