

BILL ANALYSIS

C.S.H.B. 1234
By: Menendez
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Aerosol paint is a substance frequently used to deface public and private property by those who "tag" or paint graffiti on surfaces. Currently, there is no way to match a buyer of aerosol paint when investigating a graffiti incident or another prohibited acts involving aerosol paint. Furthermore, there is no penalty for allowing minors access to aerosol spray paint.

C.S.H.B. 1234 prohibits a person from making a delivery sale of graffiti materials to an individual who is younger than 21 years of age. The bill makes it a misdemeanor to violate its provisions and makes it a Class B misdemeanor if it is shown that the defendant has previously been convicted of an offense relating to the bill's provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1234 amends the Business & Commerce Code to prohibit a person from making a delivery sale of graffiti materials to an individual who is younger than 21 years of age. The bill defines "graffiti materials" as aerosol paint, an indelible marker, or an etching or engraving device. The bill defines "delivery sale" to mean a sale of graffiti materials to a consumer in Texas in which the purchaser submits the order for the sale by telephone or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another online service, or in which the graffiti materials are delivered by use of the mails or another delivery service. The bill establishes that a sale of graffiti materials is a delivery sale regardless of whether the seller is located in or outside Texas, and establishes that a sale of graffiti materials not for personal use to a person who is a wholesale dealer or a retail dealer is not a delivery sale. The bill establishes requirements relating to age verification, disclosure, shipping, and registration and reporting, and requires a person taking a delivery sale to comply with them. The bill also requires a person taking a delivery sale to comply with each state law that generally applies to sales of graffiti materials that occur entirely within the state, including a law imposing a tax.

C.S.H.B. 1234, with respect to age verification, prohibits a person from mailing or shipping graffiti materials in connection with a delivery sale order unless, before mailing or shipping the graffiti materials, the person accepting the delivery sale order obtains from the prospective customer a certification that includes reliable confirmation that the purchaser is at least 21 years of age, and obtains a statement signed by the prospective purchaser in writing and under penalty of law certifying the prospective purchaser's address and date of birth and confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that delivery sales of graffiti materials to an individual younger than the age of 21 are illegal under state law, and that the purchase of graffiti materials by an individual under that age is illegal under state law. The bill prohibits a person from mailing or shipping graffiti materials

in connection with a delivery sale order unless additionally, before mailing or shipping the graffiti materials, the person accepting the delivery sale order makes a good faith effort to verify the information contained in the certification against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser, sends the prospective purchaser by e-mail or other means a notice that complies with the bill's disclosure requirements, and, for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check. The bill authorizes a person taking a delivery sale order to request that a prospective purchaser provide the purchaser's e-mail address.

C.S.H.B. 1234, with respect to disclosure, requires the disclosure notice sent to a prospective purchaser to include a prominent and clearly legible statement that delivery sales of graffiti materials to individuals who are younger than 21 years of age are illegal under state law and that delivery sales of graffiti materials are restricted to those individuals who provide verifiable proof of age.

C.S.H.B. 1234, with respect to shipping, requires a person who mails or ships graffiti materials in connection with a delivery sale order to include as part of the shipping documents a clear and conspicuous statement: "GRAFFITI MATERIALS: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 21 YEARS OF AGE". The bill also requires such a person to use a method of mailing or shipping that obligates the delivery service to require the purchaser placing the delivery sale order, or an adult who is at least 21 years of age and who resides at the purchaser's address, to sign to accept delivery of the shipping container, and the person signing to accept delivery of the shipping container to provide proof, in the form of a government-issued identification bearing a photograph that the person is the addressee or an adult who is at least 21 years of age and who resides at the purchaser's address, and is at least 21 years of age if the person appears to be younger than 27 years of age. The bill requires a person taking a delivery sale order who delivers the graffiti materials without using a third-party delivery service to comply with the requirements prescribed by the bill's provisions that apply to a delivery service.

C.S.H.B. 1234, with respect to registration and reporting, prohibits a person from making a delivery sale or shipping graffiti materials in connection with a delivery sale unless the person first files with the comptroller of public accounts a statement that includes the person's name and trade name, the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address. The bill requires each person who has made a delivery sale or shipped or delivered graffiti materials in connection with a delivery sale during the previous month, not later than the 10th day of each month, to file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made, the brand or brands of graffiti materials that were sold, and the quantity of graffiti materials that were sold.

C.S.H.B. 1234 makes it a misdemeanor offense punishable by a fine not to exceed \$1,000 to violate a provision of the bill for which a criminal penalty is not otherwise provided, unless it is shown on trial that the defendant previously has been convicted of the offense, in which case the offense is a Class B misdemeanor. The bill makes it a felony of the third degree to knowingly violate a provision of the bill or to knowingly submit a certification in another person's name.

C.S.H.B. 1234 establishes that graffiti materials sold, or that a person attempted to sell in a delivery sale that does not comply with the bill's provisions, are forfeited to the state and are required to be destroyed. The bill establishes that a fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud the state, fails to comply with the bill's provisions, is forfeited to the state.

C.S.H.B. 1234 authorizes the attorney general or the attorney general's designee to bring an action in a court of Texas to prevent or restrain a violation of the bill's provisions by any person or by a person controlling such a person.

C.S.H.B. 1234 defines "delivery service," "shipping container," and "shipping documents."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1234 omits provisions added in the original to the Local Government Code authorizing a municipality or a county for an unincorporated area to require a person who sells aerosol paint to require proof of identification from the buyer, to record the sale in a log and maintain the log, to require a surcharge on the sale of aerosol paint to be used for graffiti abatement.

C.S.H.B. 1234 adds provisions not in the original to the Business & Commerce Code prohibiting a person from making a delivery sale of graffiti materials to an individual who is younger than 21 years of age, defining terms associated with such delivery. The substitute adds requirements not in the original relating to age verification, disclosure, shipping, and registration and reporting. The substitute adds provisions not in the original making it an offense to violate the prohibition or one of the requirements specified in the substitute and omits provisions added in the original to the Penal Code establishing an offense if aerosol paint sold to a person was used by a minor to engage in graffiti and the person failed to take steps to prevent access to the paint by a minor or left the paint in a place to which the person knew or should have known that the minor would gain access. The substitute differs from the original by adding provisions relating to the forfeiture and destruction of graffiti materials fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud the state, acts illegally. The substitute adds a provision not in the original authorizing the attorney general to bring an action in a court of Texas to prevent or restrain a violation of the substitute's provisions by any person or by a person controlling such a person.