

BILL ANALYSIS

Senate Research Center
84R1924 SCL-D

S.B. 97
By: Hinojosa
Health & Human Services
2/9/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Electronic cigarettes, also known as e-cigarettes or vape pens, are battery-powered vaporizers that turn nicotine, flavor, and other chemicals into an aerosol that is then inhaled by the user. The liquid that is vaporized in e-cigarettes comes in hundreds of flavors. Some of these flavors, such as bubble gum and milk chocolate, are likely attractive to younger persons.

As the popularity of these products continues to grow among adolescents, so do concerns regarding their potentially harmful effects. However, because these products are relatively new to the market, a comprehensive assessment of their health impact, especially their long-term consequences, has yet to be developed.

Though some research suggests e-cigarettes are less harmful than conventional cigarettes, they are not risk free because they contain nicotine, a highly addictive drug. E-cigarettes may serve as a point of entry into the use of nicotine, though whether youth who use e-cigarettes later go on to smoke conventional tobacco cigarettes has yet to be determined.

However, their effects on youth could still be substantial. Adolescence is a critical juncture in the development of nicotine addiction, and nicotine in any form—smokeless, combustible, or electronic—can have adverse effects on adolescent brain development.

In 2014, more teens used e-cigarettes than traditional tobacco cigarettes or any other tobacco product, and the Centers for Disease Control and Prevention found that e-cigarette use doubled among students at high schools and middle schools across the country, growing from 3.3 percent in 2011 to 6.8 percent in 2012.

E-cigarettes are currently unregulated at the federal level and in Texas, and the United States Food and Drug Administration has yet to finalize regulations that would ban the sale of these devices to anyone under 18 years of age. As of October 2014, 41 states and one territory prohibit sales of electronic cigarettes or vaping/alternative tobacco products to minors.

These products' lack of regulation, together with their influence on adolescents and the concern they present to the public health community, reinforce the need for legislation at the state level.

S.B. 97 defines e-cigarettes and adds e-cigarettes to existing cigarette and tobacco product provisions in Chapter 161, Health and Safety Code, as well as Section 48.01 of the Penal Code. Key provisions of S.B. 97:

- Prohibit the sale of e-cigarettes to any person younger than 18 years of age;
- Prohibit anyone younger than 18 years of age from possessing, purchasing, consuming, or accepting an e-cigarette;
- Prohibit e-cigarette sales in a manner that permits a customer direct access to the e-cigarette as well as the installation of a vending machine containing e-cigarettes;
- Allow local regulation of the sale, distribution, or use of e-cigarettes if the regulation, ordinance, or requirement is compatible with and equal to or more stringent than the requirements set forth in S.B. 97; and

- Create an offense for smoking an e-cigarette in a public primary or secondary school, elevator, enclosed theater, library, museum, hospital, transit system bus, intrastate bus, plane or train (except in designated areas).

As proposed, S.B. 97 amends current law relating to regulation of the sale, distribution, possession, use, and advertising of vapor products, authorizes a fee, and creates offenses.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter H, Chapter 161, Health and Safety Code, to read as follows:

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS

SECTION 2. Amends Section 161.081, Health and Safety Code, by amending Subdivisions (3) and (4) to redefine “retail sale” and “retailer” and adding Subdivision (5-a) to define “vapor product.”

SECTION 3. Amends the heading to Section 161.082(a), Health and Safety Code, to read as follows:

Sec. 161.082. SALE OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

SECTION 4. Amends Sections 161.082 (a), (b), and (d), Health and Safety Code, to include vapor products in the provisions set forth under those subsections regarding an offense and a defense to prosecution.

SECTION 5. Amends Section 161.0825(e), Health and Safety Code, to include vapor products in the provisions of that subsection regarding an affirmative defense to prosecution.

SECTION 6. Amends the heading to Section 161.083, Health and Safety Code, to read as follows:

Sec. 161.083. SALE OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

SECTION 7. Amends Section 161.083, Health and Safety Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Prohibits a person from selling, giving, or causing to be sold or given a vapor product to someone who is younger than 27 years of age unless the person to whom the vapor product was sold or given presents an apparently valid proof of identification.

(b) Changes a reference to Subsection (a) (relating to federal regulations regarding the sale of cigarettes or tobacco products), to Subsections (a) and (a-1).

(c) Changes a reference to Subsection (a) to Subsections (a) and (a-1).

SECTION 8. Amends Sections 161.084(a), (b), and (d), Health and Safety Code, to include vapor products in the provisions set forth under those subsections regarding a posted statement about the sale of certain products.

SECTION 9. Amends Sections 161.085(a) and (b), Health and Safety Code, to include vapor products in the provisions set forth under those subsections.

SECTION 10. Amends Section 161.086(a), Health and Safety Code, to include vapor products in the provision set forth under that subsection.

SECTION 11. Amends the heading to Section 161.087, Health and Safety Code, to read as follows:

Sec. 161.087. DISTRIBUTION OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS.

SECTION 12. Amends Sections 161.087(a) and (b), Health and Safety Code, as follows:

(a) Includes vapor products among the items a person is prohibited from distributing to persons younger than 18 years of age.

(b) Prohibits a person, including a permit holder, except as provided by Subsection (c) (relating to providing that certain prohibitions under this section do not apply to a transaction between permit holders unless the transaction is a retail sale), from accepting, redeeming, or offering to accept or redeem, a coupon or other item that the recipient may use to receive a free or discounted cigarette, vapor product, or tobacco product or a sample cigarette, vapor product, or tobacco product if the recipient is younger than 18 years of age. Includes vapor products among items subject to certain restrictions.

SECTION 13. Amends Sections 161.088(b) and (d), Health and Safety Code, to include vapor products in the provisions set forth under those subsections regarding reducing the extent to which certain products are made available to persons younger than 18 years of age.

SECTION 14. Amends Section 161.089, Health and Safety Code, as follows:

Sec. 161.089. PREEMPTION OF LOCAL LAW. Includes vapor products among the items this subchapter does not preempt local regulation of when certain requirements are met.

SECTION 15. Amends Section 161.0901, Health and Safety Code, as follows:

Sec. 161.0901. New heading: DEPARTMENT REPORT. (a) Requires the Texas Department of Health (TDH), rather than the Office of Smoking and Health of TDH, to report to the governor, lieutenant governor, and speaker of the house of representatives on the status of smoking and the use of vapor products, tobacco, and tobacco products in this state, not later than January 5th of each odd-numbered year. Makes a nonsubstantive change.

(b) Includes certain information about vapor products among the information required to be included in the report, and makes conforming changes.

SECTION 16. Amends the heading to Subchapter K, Chapter 161, Health and Safety Code, to read as follows:

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, VAPOR PRODUCT, OR TOBACCO PRODUCT ADVERTISING; FEE

SECTION 17. Amends Section 161.121, Health and Safety Code, by adding Subdivision (6) to define "vapor product."

SECTION 18. Amends Sections 161.122(a) and (b), Health and Safety Code, to include vapor products in the provisions set forth under those subsections regarding advertisements for certain products.

SECTION 19. Amends Section 161.123(a), Health and Safety Code, to include vapor products in the provisions set forth regarding advertising certain products.

SECTION 20. Amends Section 161.124(b), Health and Safety Code, to include vapor products in the provisions set forth under that subsection regarding the use of money in the tobacco education and enforcement education fund.

SECTION 21. Amends the heading to Subchapter N, Chapter 161, Health and Safety Code, to read as follows:

SUBCHAPTER N. VAPOR PRODUCT AND TOBACCO USE BY MINORS

SECTION 22. Amends Section 161.251, Health and Safety Code, by adding Subdivision (3) to define "vapor product."

SECTION 23. Amends the heading to Section 161.252, Health and Safety Code, to read as follows:

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS BY MINORS PROHIBITED.

SECTION 24. Amends Sections 161.252(a) and (b), Health and Safety Code, to include vapor products in the provisions set forth under those subsections regarding the purchase, possession, consumption, or receipt of certain products by minors.

SECTION 25. Amends the heading to Section 161.253, Health and Safety Code, to read as follows:

Sec. 161.253. VAPOR PRODUCT AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE.

SECTION 26. Amends Sections 161.253(a), (b), (c), (d), and (e), Health and Safety Code, as follows:

(a) Requires the court, on conviction of an individual for an offense under Section 161.252, to suspend execution of sentence and require the defendant to attend a vapor product and tobacco awareness program approved by the commissioner of public health (commissioner). Authorizes the court to require the parent or guardian of the defendant to attend the vapor product and tobacco awareness program with the defendant.

(b) Authorizes a vapor product and tobacco awareness program be taught in languages other than English, on request.

(c) Requires the court, if the defendant resides in a rural area of this state or another area of this state in which access to a vapor product and tobacco awareness program is not readily available, to require the defendant to perform eight to 12 hours of vapor- and tobacco-related community service instead of attending the vapor product and tobacco awareness program.

(d) Provides that the vapor product and tobacco awareness program and the vapor- and tobacco-related community service are remedial and are not for punishment.

(e) Requires the defendant, not later than the 90th day after the date of a conviction under Section 161.252, to present to the court, in the manner required by the court, evidence of

satisfactory completion of the vapor product and tobacco awareness program or the vapor- and tobacco-related community service.

SECTION 27. Amends Section 161.255(a), Health and Safety Code, to authorize an individual convicted of an offense under Section 161.252 to apply to the court to have the conviction expunged. Requires the court, if the court finds that the individual satisfactorily completed the vapor product and tobacco awareness program or vapor- and tobacco-related community service order by the court, to order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and prohibits the conviction from being shown or made known for any purpose.

SECTION 28. Amends Section 161.256, Health and Safety Code, as follows:

Sec. 161.256. JURISDICTION OF COURTS. Authorizes a justice court or municipal court to exercise jurisdiction over any matter in which a court under this subchapter may impose a requirement that a defendant attend a vapor product and tobacco awareness program or perform vapor- and tobacco-related community service, or order the suspension or denial of a driver's license or permit.

SECTION 29. Amends the heading to Subchapter O, Chapter 161, Health and Safety Code, to read as follows:

SUBCHAPTER O. PREVENTION OF TOBACCO AND VAPOR PRODUCT USE BY MINORS

SECTION 30. Amends the heading to Section 161.301, Health and Safety Code, to read as follows:

Sec. 161.301. TOBACCO AND VAPOR PRODUCT USE PUBLIC AWARENESS CAMPAIGN.

SECTION 31. Amends Section 161.301(a), Health and Safety Code, to require the commissioner to develop and implement a public awareness campaign designed to reduce the use by minors in this state of tobacco and of vapor products as defined by Section 161.081, rather than reduce tobacco use by minors in this state, and authorize the campaign to use advertisements or similar media to provide education information about tobacco and vapor product use.

SECTION 32. Amends Section 161.302(a), Health and Safety Code, to make a conforming change.

SECTION 33. Amends the heading to Subchapter R, Chapter 161, Health and Safety Code, to read as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND VAPOR PRODUCTS

SECTION 34. Amends Section 161.451, Health and Safety Code, by amending Subdivisions (1) and (3) to redefine "delivery sale" and "shipping container" and adding Subdivision (5) to define "vapor product."

SECTION 35. Amends Section 161.452, Health and Safety Code, as follows:

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) Prohibits a person from making a delivery sale of cigarettes or vapor products to an individual who is under the age prescribed by Section 161.082.

(b) Requires a person taking a delivery sale order to comply with:

(1)-(4) Makes no change to these subdivisions;

(5) the tax collection requirements prescribed by Section 161.457, if applicable; and

(6) each law of this state that generally applies to sales of cigarettes or vapor products that occur entirely within this state, if applicable, including a law imposing a tax or prescribing a permitting or tax-stamping requirement.

SECTION 36. Amends Section 161.453(a), Health and Safety Code, to include vapor products in the provisions set forth under that subsection regarding the mailing or shipping of certain products.

SECTION 37. Amends Section 161.454, Health and Safety Code, as follows:

Sec. 161.454. **DISCLOSURE REQUIREMENTS.** Includes vapor products in the language of the notice required to be sent to a prospective purchaser.

SECTION 38. Amends Section 161.455, Health and Safety Code, to include vapor products in the provisions set forth under Subsections (a) and (b) regarding mailing or shipping certain products.

SECTION 39. Amends Section 161.456, Health and Safety Code, as follows:

Sec. 161.456. **REGISTRATION AND REPORTING REQUIREMENTS.** (a) and (b) Includes vapor products in the provisions set forth under these subsections regarding reporting requirements.

(c) Provides that, with respect to cigarettes, a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

SECTION 40. Amends Section 161.461(a), Health and Safety Code, to include vapor products in the provisions set forth under that subsection regarding the forfeiture and destruction of certain products.

SECTION 41. Amends Section 48.01, Penal Code, by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1), as follows:

(a) Defines “vapor product” in this section.

(a-1) Provides that a person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates a vapor product in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place. Deletes existing text referring to definitions under Section 541.201 (Vehicles), Transportation Code.

(c) Changes a reference to Subsection (a) of Section 48.01 to Subsection (a-1).

(d) Provides that it is an exception to the application of Subsection (a-1) if the person is in possession of a burning tobacco product, smokes tobacco, or operates the vapor product exclusively within an area designated for smoking tobacco or inhaling from a vapor product or as a participant in an authorized theatrical performance. Makes a conforming change.

(e) Requires that an area designated for smoking tobacco or inhaling from a vapor product on a transit system bus or intrastate plan or train also include the area occupied by the operator of the transit system bus, plane, or train.

Makes nonsubstantive changes.

SECTION 42. Makes application of Sections 161.082(a) and 161.252(a), Health and Safety Code, as amended by this Act, and Section 48.01, Penal Code, as amended by this Act, prospective to October 1, 2015.

SECTION 43. (a) Requires the comptroller of public accounts of the State of Texas to develop the sign described by Section 161.084, Health and Safety Code, as amended by this Act, and to make the sign available to the public not later than September 15, 2015.

(b) Effective date, this section: September 1, 2015.

SECTION 44. Effective date, except as otherwise provided by this Act: October 1, 2015.