

BILL ANALYSIS

C.S.H.B. 749
By: Zerwas
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that a recent report indicates raising the minimum age at which a person may legally access tobacco products would result in fewer smokers after three years, improve health, and reduce health care expenditures. C.S.H.B. 749 seeks to raise that minimum legal age to access tobacco products and to impose a civil penalty for the possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products by persons under 21 years of age.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 749 amends the Health and Safety Code to exempt a product that is approved by the U.S. Food and Drug Administration (FDA) for use in the treatment of nicotine or smoking addiction and labeled with a "Drug Facts" panel in accordance with FDA regulations from the applicability of provisions relating to the distribution of cigarettes, e-cigarettes, and tobacco products. The bill defines "minor" as a person under 21 years of age for purposes of provisions relating to the distribution of cigarettes, e-cigarettes, and tobacco products and relating to e-cigarette and tobacco use by minors.

C.S.H.B. 749 raises from younger than 18 years of age to younger than 21 years of age the age of a person to whom the sale or giving of cigarettes, e-cigarettes, or tobacco products constitutes an offense and repeals provisions relating to the offense of possession, purchase, consumption, or receipt of such a product by an individual who is younger than 18 years of age.

C.S.H.B. 749 subjects an individual younger than 21 years of age to a civil penalty not to exceed \$250 if the individual possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product or falsely represents that the individual is 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive such a product. The bill establishes that such an individual is not subject to the civil penalty if the individual is in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee, or if the individual is participating in a certain inspection or test of compliance. The bill authorizes the county or municipality in which the violation occurs to sue to collect a civil penalty and to retain the penalty. The bill authorizes the county or municipality to also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable witness and deposition fees incurred by the county or

municipality in the civil action.

C.S.H.B. 749 revises the provision regarding the e-cigarette and tobacco awareness program to reflect the bill's civil penalty provisions and the repeal of the offense of possession, purchase, consumption, or receipt of such a product by an individual who is younger than 18 years of age.

C.S.H.B. 749 raises from younger than 27 years of age to younger than 30 years of age the age of a person to whom the sale or giving of a cigarette, e-cigarette, or tobacco product is prohibited unless the person to whom such a product is sold or given presents an apparently valid proof of identification. The bill conditions the eligibility of a premises to be exempt from the prohibition against permitting a customer direct access to cigarettes, e-cigarettes, or tobacco products or installing or maintaining a vending machine containing such products on the premises or applicable part of a facility or business not being open to persons younger than 21 years of age at any time.

C.S.H.B. 749 revises a provision prohibiting the distribution of free cigarettes, e-cigarettes, or tobacco products or a coupon or other item for a free sample of such products to a person younger than 18 years of age to prohibit such distribution to any person regardless of age of the recipient. The bill revises a provision prohibiting the distribution of coupons or other items to receive discounted cigarettes, e-cigarettes, or tobacco products to a person younger than 18 years of age to prohibit such distribution to a person younger than 21 years of age. The bill updates provisions relating to the prohibition on accepting or redeeming coupons or other items providing for free or discounted products, as applicable. The bill repeals a provision that establishes certain shipping requirements for mailing or shipping cigarettes or e-cigarettes in connection with a delivery sale order.

C.S.H.B. 749 does not apply to a person who was born on or before August 31, 2001. The bill adds temporary provisions set to expire September 1, 2022, to require the warning sign that each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine is required to post to include a specified statement relating to the inapplicability of certain prohibitions to a person who was born on or before August 31, 2001.

C.S.H.B. 749 repeals the following provisions of the Health and Safety Code:

- Section 161.083(a-1)
- Section 161.252
- Section 161.254
- Section 161.255
- Section 161.256
- Section 161.257
- Section 161.455

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 749 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision raising from younger than 18 years of age to younger

than 21 years the age that an actor must be to commit the offense of possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products but does the following:

- repeals provisions creating the offense and provisions related to such an offense; and
- sets out provisions providing for a civil penalty for the possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products by an individual younger than 21 years of age.

The substitute includes a revision to the e-cigarette and tobacco awareness program provisions to reflect the bill's civil penalty provisions and repeal of the offense.