

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 16, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **SB21** by Huffman (Relating to the distribution, possession, purchase, consumption, and receipt of cigarettes, e-cigarettes, and tobacco products.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB21, As Passed 2nd House: a negative impact of (\$5,116,109) through the biennium ending August 31, 2021. There could also be an impact to court cost collections, however this cannot be determined because the number of fines that would be assessed under the new provisions is unknown.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of (\$3,370,000) for the 2020-21 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$1,957,638)
2021	(\$3,158,471)
2022	(\$3,771,191)
2023	(\$4,354,823)
2024	(\$3,828,956)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Savings/(Cost) from GR Match For Medicaid 758	Probable Savings/(Cost) from Federal Funds 555	Probable Revenue Gain/(Loss) from Property Tax Relief Fund 304
2020	(\$2,054,000)	\$96,362	\$148,648	(\$1,220,000)
2021	(\$3,379,000)	\$220,529	\$343,339	(\$2,150,000)
2022	(\$4,190,000)	\$418,809	\$652,041	(\$2,530,000)
2023	(\$4,985,000)	\$630,177	\$981,117	(\$3,150,000)
2024	(\$4,735,000)	\$906,044	\$1,410,612	(\$2,800,000)

Fiscal Year	Probable Revenue Gain/(Loss) from Cities	Probable Revenue Gain/(Loss) from Transit Authorities	Probable Revenue Gain/(Loss) from Counties & Special Districts
2020	(\$100,000)	(\$40,000)	(\$20,000)
2021	(\$180,000)	(\$60,000)	(\$40,000)
2022	(\$220,000)	(\$80,000)	(\$40,000)
2023	(\$280,000)	(\$90,000)	(\$60,000)
2024	(\$260,000)	(\$90,000)	(\$50,000)

Fiscal Analysis

The bill would amend Subchapter H of Chapter 161 of the Health and Safety Code, regarding public health provisions, to increase the legal age for the sale, distribution, possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products from age 18 to age 21. The bill would exempt from the new age requirement an individual aged 18 and over with a valid United States or state military identification card. Individuals aged 18 and over on the effective date of the bill would be exempt from the new age requirement. The bill would remove the provision allowing minors to have tobacco products in the presence of parents, guardians, or a spouse. The bill would require valid proof of identification for persons younger than 30 years of age, rather than 27 years of age as under current law. The bill would exclude certain products approved by the U.S. Food and Drug Administration for the treatment of nicotine or smoking addiction from the provisions of Subchapter H.

The bill would make conforming changes elsewhere in Chapter 161.

The bill would amend Health and Safety Code Section 161.252 to reduce the penalty for underage possession, purchase, consumption, or receipt of a cigarette, e-cigarette, or tobacco product from a fine up to \$250 to a fine up to \$100. The amended section would also require the court to give notice to a convicted individual that they may apply to have their conviction expunged on or after their 21st birthday.

The bill would repeal Health and Safety Code Sections 161.083(a-1), regarding the providing of e-cigarettes to a person younger than 27 years of age, 161.254, regarding driver license suspension or denial, and 161.455, regarding cigarette and e-cigarette shipping requirements.

The bill would take effect September 1, 2019.

Methodology

The fiscal impact on Texas tobacco tax revenue was based on the 2020-21 Biennial Revenue Estimate. The reduction in the use of cigarettes, snuff, cigars, and other tobacco products by some Texans under the age of 21 would lead to reduced revenue deposits to the General Revenue Fund 0001 and the Property Tax Relief Fund 0304. Revenue to the General Revenue Fund would decrease by \$2,054,000 in fiscal year 2020, \$3,379,000 in fiscal year 2021, \$4,190,000 in fiscal year 2022, \$4,985,000 in fiscal year 2023, and \$4,735,000 in fiscal year 2024. Revenue to the Property Tax Relief Fund would decrease by \$1,220,000 in fiscal year 2020, \$2,150,000 in fiscal year 2021, \$2,530,000 in fiscal year 2022, \$3,150,000 in fiscal year 2023, and \$2,800,000 in fiscal year 2024.

The reduction in the use of all products for which the age requirement is raised would lead to reduced sales tax revenue to Fund 0001, cities, transit authorities, counties, and special districts. Revenue for cities would decrease by \$100,000 in fiscal year 2020, \$180,000 in fiscal year 2021, \$220,000 in fiscal year 2022, \$280,000 in fiscal year 2023, and \$260,000 in fiscal year 2024. Revenue to transit authorities would decrease by \$40,000 in fiscal year 2020, \$60,000 in fiscal year 2021, \$80,000 in fiscal year 2022, and \$90,000 in fiscal years 2023 and 2024. Revenue for counties and special districts would decrease by \$20,000 in fiscal year 2020, \$40,000 in fiscal years 2021 and 2022, \$60,000 in fiscal year 2023, and \$50,000 in fiscal year 2024.

Revenue implications from the exemption of individuals that present a valid United States or state military identification card that are at least 18 years of age cannot be determined at this time.

With a reduction in the use of tobacco products, there would be a savings to the state resulting from reduced health care costs. The estimates on savings were based on the Medicaid Cost Savings Due to Raising the Minimum Legal Age for Purchasing Tobacco Products in Texas report produced by the Health and Human Services Commission (HHSC), as required by Rider 54 of HHSC's bill pattern, 2018-19 General Appropriations Act. The report showed an increase in the minimum legal age of tobacco purchases may lead to a decrease in adverse birth outcomes (primarily preterm and/or low birthweight births) for persons served by the Medicaid program, which may result in cost savings. The estimated savings to General Revenue Match for Medicaid No. 758 would be \$96,362 in fiscal year 2020, \$220,529 in fiscal year 2021, \$418,809 in fiscal year 2022, \$630,177 in fiscal year 2023, and \$906,044 in fiscal year 2024. The savings to Federal Funds would be \$148,648 in fiscal year 2020, \$343,339 in fiscal year 2021, \$652,041 in fiscal year 2022, \$981,117 in fiscal year 2023, and \$1,410,612 in fiscal year 2024. Savings may be overstated because the report did not consider the impact of exempting individuals aged 18 and over on the effective date of the bill from the new minimum legal age; however, the reduction to savings would be expected to be minimal. Additional significant long-term savings to Medicaid would be anticipated beyond fiscal year 2024 due to reductions in chronic diseases attributable to smoking.

Based on information provided by the Office of Court Administration (OCA) and the Comptroller of Public Accounts, the bill would have an indeterminate revenue impact for court cost collections. Under the provisions of the bill there would be an anticipated court cost revenue decrease due to reducing the maximum fine for underage possession from \$250 to \$100 that would be offset by increasing the age threshold for assessing a fine for possession from 18 to 21, thus increasing the total number of potential fines; however, the number of new fines that would be assessed under the provisions of the bill is unknown.

Local Government Impact

There would be a corresponding amount of sales tax revenue loss from local taxing jurisdictions. Those revenue losses are displayed in the above tables.

Selling, giving, or causing to be sold or given a cigarette, e-cigarette, or tobacco product to someone under the minimum legal age is a Class C misdemeanor. A Class C misdemeanor is punishable by a fine of not more than \$500. In addition to the fine, punishment can include up to 180 days of deferred disposition. Costs associated with enforcement and prosecution could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal impact.

According to OCA, the bill would likely result in additional cases filed, but the increase in caseload could be absorbed with existing local court resources. In addition, any additional fees collected as a result of the increase in population subject to the new minimum legal age would likely be offset by the reduction in the fine from \$250 to \$100.

Source Agencies: 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 212 Office of Court Administration, Texas Judicial Council, 537 State Health Services, Department of

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