

## **BILL ANALYSIS**

C.S.H.B. 1908  
By: Zerwas  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note a recent report that indicates that raising the minimum legal age at which a person may access tobacco will improve health and reduce healthcare expenditures. C.S.H.B. 1908 seeks to raise that minimum 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. 1908 amends the Health and Safety Code to exempt a product that has been approved by the U.S. Food and Drug Administration (FDA) for use in the treatment of nicotine or smoking addiction and that is required to be labeled with a "Drug Facts" panel in accordance with FDA regulations from the applicability of statutory provisions relating to the distribution of cigarettes, e-cigarettes, and tobacco products. The bill raises from younger than 18 years of age to younger than 21 years of age the age of a person to whom the sale of cigarettes, e-cigarettes, or tobacco products constitutes an offense and the age an actor must be to commit the offense of possession, purchase, consumption, or receipt of such a product. The bill defines "minor" as a person under 21 years of age for purposes of statutory provisions relating to the distribution of cigarettes, e-cigarettes, and tobacco products and relating to e-cigarette and tobacco use by minors. The bill raises from younger than 27 years of age to younger than 30 years of age the age of a person to whom the sale of a cigarette, e-cigarette, or tobacco product is prohibited unless the person 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 not being open to persons younger than 21 years of age at any time.

C.S.H.B. 1908 removes the condition that the recipient of a free sample of a cigarette, e-cigarette, or tobacco product or a coupon or other item that the recipient may use to receive such a free product or sample be younger than 18 years of age to trigger the prohibition against, and the offense involving, the distribution of such a free sample or coupon and raises from younger than 18 years of age to younger than 21 years of age the age of a person to whom the distribution of a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product is prohibited and constitutes an offense. The bill specifies the manner in which a person is prohibited from redeeming a coupon for a cigarette, e-cigarette, or

tobacco product. The bill removes the exception to the application of the offense of possession, purchase, consumption, or receipt of a cigarette, e-cigarette, or tobacco product for a minor who possessed the product in the presence of an adult parent, a guardian, or a spouse of the individual. 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. 1908 applies to an offense committed on or after the bill's effective date. The bill's provisions do not apply to a person who was born on or before August 31, 1999. The bill adds temporary provisions, set to expire September 1, 2020, 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, 1999.

C.S.H.B. 1908 repeals Sections 161.083(a-1) and 161.455, Health and Safety Code.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1908 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 161.081, Health and Safety Code, is amended.	SECTION 1. Same as introduced version.
<b>No equivalent provision.</b>	SECTION 2. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0815 to read as follows: <u>Sec. 161.0815. NONAPPLICABILITY. This subchapter does not apply to a product that:</u> <u>(1) has been approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction;</u> <u>and</u> <u>(2) is required to be labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.</u>
SECTION 2. The heading to Section 161.082, Health and Safety Code, is amended.	SECTION 3. Same as introduced version.
SECTION 3. Sections 161.082(a) and (e), Health and Safety Code, are amended.	SECTION 4. Same as introduced version.
SECTION 4. The heading to Section 161.083, Health and Safety Code, is amended.	SECTION 5. Same as introduced version.

SECTION 5. Sections 161.083(a), (b), and (c), Health and Safety Code, are amended.

SECTION 6. Section 161.084(b), Health and Safety Code, is amended to read as follows:

(b) The sign must include the statement:  
PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

SECTION 7. Sections 161.085(a) and (b), Health and Safety Code, are amended.

SECTION 8. Section 161.086(b), Health and Safety Code, is amended.

SECTION 9. Section 161.087, Health and Safety Code, is amended.

SECTION 10. Sections 161.088(b) and (d), Health and Safety Code, are amended.

SECTION 11. Section 161.251, Health and Safety Code, is amended.

SECTION 6. Same as introduced version.

SECTION 7. Section 161.084, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) The sign must include the statement:  
PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

(b-1) Immediately following the statement described by Subsection (b), the sign described by that subsection must include the statement:

THE PROHIBITIONS DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO WAS BORN ON OR BEFORE AUGUST 31, 1999.

(b-2) This subsection and Subsection (b-1) expire September 1, 2020.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 12. Sections 161.252(a), (b), and (c), Health and Safety Code, are amended.

SECTION 13. Sections 161.452(b) and (c), Health and Safety Code, are amended.

SECTION 14. Sections 161.453(a) and (c), Health and Safety Code, are amended.

SECTION 15. Sections 161.083(a-1) and 161.455, Health and Safety Code, are repealed.

SECTION 16. (a) The changes in law made by this Act to Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 17. This Act takes effect September 1, 2017.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. (a) The changes in law made by this Act to Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Subchapters H, N, and R, Chapter 161, Health and Safety Code, do not apply to a person who was born on or before August 31, 1999.

SECTION 18. Same as introduced version.