

**SUBJECT:** Raising the legal age to 21 for cigarettes, e-cigarettes, and tobacco

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 8 ayes — S. Thompson, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Wray, Allison, Coleman

**SENATE VOTE:** On final passage, April 9 — 20-11 (Birdwell, Buckingham, Creighton, Fallon, Hall, Hancock, Hughes, Nichols, Paxton, Schwertner, Whitmire)

**WITNESSES:** *On House companion bill, HB 749:*  
For — Stephen Ross, Texans Standing Tall; Doug Curran, Texas Medical Association; Suzi Kennon, Texas PTA; Brian Hayden; Kellen Kruk; *(Registered, but did not testify:* Eric Donaldson, Altria Group; Aaron Gregg, Alzheimer's Association; Marina Hench, American Cancer Society Cancer Action Network; Juliana Kerker, American College of Obstetricians and Gynecologists-Texas; Shelby Massey, American Heart Association; Gregg Knaupe, American Lung Association; Anthony Haley, Baylor Scott and White Health; April Beggs, Blue Cross Blue Shield of Texas; Claudia Rodas, Campaign for Tobacco-Free Kids; Kelly Barnes, Central Health; Christina Hoppe, Children's Hospital Association of Texas; Amber Hausenfluck, CHRISTUS Health; Christine Wright, City of San Antonio; Jesse Ozuna, DHR Health; Meghan Weller, HCA Healthcare; Betsy Madru, Houston Methodist; Mark Bordas, JUUL Labs; Lindsay Lanagan, Legacy Community Health; Christine Yanas, Methodist Healthcare Ministries of South Texas; Ryan Ambrose, MHHS; Will Francis, National Association of Social Workers-Texas Chapter; Jessica Schleifer, Teaching Hospitals of Texas; Tom Banning, Texas Academy of Family Physicians; Craig Holzhauser, Texas Association of City and County Health Officials; Jaime Capelo, Texas Chapter American College of Cardiology; Rosie Valadez-McStay, Texas Children's Hospital; Carrie Kroll, Texas Hospital Association; Andrew Cates, Texas Nurses

Association; Jill Sutton, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Stephanie Chiarello, Texas Pharmacy Association; Maram Museitif, Texas Public Health Association; Rita Littlefield, Texas Renal Coalition; Kevin Stewart, Texas School Nurses Organization; Joel Romo, The Cooper Institute; Andrew Smith, University Health System)

Against — Steven Belcher; John Boniface; Brookes Boniface; Charlotte Owen; Jessica Quick; Kathleen Russell; (*Registered, but did not testify*: Robert Peeler, Cigar Association of America; Kevin Haynie, Craving Vapor Industries; Billy Phenix, SI Group; James Hubbard, T.S.V.L.; Ron Hinkle, Turning Point Brands, Inc; Brandy Marquez, Vapor Technology Association; Robbie Claus; Betty Hubbard; Joseph Longhurst; Jacqueline Stringer)

On — Schell Hammel, SFATA; Ernest Hawk, The University of Texas MD Anderson Cancer Center; (*Registered, but did not testify*: Coy Rosenbaum, Comptroller of Public Accounts; Manda Hall, Department of State Health Services)

DIGEST:

SB 21 would raise the minimum age requirement in applicable Texas law to 21 years old from 18 years old for buying, attempting to buy, possessing, consuming, or accepting cigarettes, e-cigarettes, or tobacco products. The bill would create an exception to prosecution that the person to whom the cigarette, e-cigarette, or tobacco product was sold was at least 18 years old, was on active duty in the United States military forces or state military forces, and presented a valid military identification card upon purchase.

The bill also would prohibit a person from selling, giving, or causing to be sold or given a cigarette, e-cigarette, or tobacco product to someone under 30 years old, rather than 27 years old, unless the purchaser presented an apparently valid proof of identification. The bill would make conforming changes related to shipping, delivery, and certain other laws related to an age requirement for cigarettes, e-cigarettes, or tobacco products. The offenses that currently apply to underage smoking also would apply to

those younger than 21.

**Exceptions.** The bill would not apply to a person who was born on or before August 31, 2001, or to a person who was on active duty in the U.S. military forces or state military forces. The bill would require statute-mandated signage related to cigarettes, e-cigarettes, or tobacco products to reflect the increased age requirement, and a temporary provision would require that signs specify the exception for those born on or before August 31, 2001.

**Other prohibitions.** The bill would prohibit the distribution, acceptance, or redemption of a free sample of a cigarette, e-cigarette, or tobacco product or a coupon or other item that the recipient could use to receive a free or sample cigarette, e-cigarette, or tobacco product. The bill would prohibit the distribution to, or acceptance or redemption of coupons for these products by people younger than 21.

The bill would not apply to a product that was approved by the U.S. Food and Drug Administration (FDA) for treatment of a nicotine or smoking addiction and was labeled with a "Drug Facts" panel in accordance with FDA regulations. The bill also would remove the requirement that shipped cigarettes and e-cigarettes carry a warning stating, "Texas law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."

If a facility or business was open to people younger than 21 years old, that facility or business could not offer cigarettes, e-cigarettes or tobacco products for sale in a manner that allowed a customer direct access and could not install or maintain a vending machine with these products.

**Offense and expunction.** SB 21 would make it an offense for a person younger than 21 years old to possess, purchase, consume, or accept a cigarette, e-cigarette, or tobacco product or to make a false representation of their age to obtain a tobacco product, punishable by a maximum fine of \$100. On conviction of an individual, the court would have to give notice that the individual could apply to have the individual's conviction

expunged on or after the individual's 21st birthday. It would be an exception to the offense that the individual younger than 21 years old:

- possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer, if possession or receipt of those products was required in the performance of the employee's duties;
- was participating in an inspection or test of compliance with the law; and
- was at least 18 years old, was on active U.S. or state military duty, and presented a valid military identification card upon purchase.

The bill would remove a justice or municipal court's authority to order the suspension or denial of a driver's license or permit in connection with e-cigarette and tobacco use by minors.

**Other provisions.** The bill also would change the age to 21 from 18 for a class C misdemeanor (maximum fine of \$500) related to sale of cigarettes, e-cigarettes or tobacco products.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

SB 21 would improve public health and help prevent tobacco-related deaths by limiting access to cigarettes, tobacco products, and e-cigarettes for adolescents and those under 21 years old. Tobacco use is the leading cause of preventable death in the United States. Thousands of Texans who began smoking before turning 21 could die prematurely if current trends continue.

The bill would limit the public health, Medicaid, and economic costs of tobacco use in Texas. The goal is not to regulate choices of citizens but to widen the age gap for availability of tobacco products. Almost all tobacco users begin before age 21, and adolescents are vulnerable to marketing for such products. Peers between the ages of 18 and 21 are likely to introduce younger children to their first tobacco product.

SB 21 would create exceptions from its prohibitions for active duty military members. The bill also would establish a process for certain convicted individuals to apply to have their conviction expunged.

E-cigarettes should not be excluded from the bill because they are tobacco delivery devices and contain nicotine, which is highly addictive. E-cigarettes have not been around long enough to have robust studies on the link between their use and premature death, but the risks of nicotine and tobacco are known.

Lost tax revenue related to reduced tobacco sales would be offset by decreased health care costs in the state as well as reduced Texas Medicaid costs. Many Medicaid patients have expensive health care costs for tobacco-related illnesses.

**OPPONENTS  
SAY:**

Individuals who are 18 years old are adults and should be able to make their own decisions regarding use of cigarettes, e-cigarettes, and tobacco products.

E-cigarettes are not as dangerous as cigarettes and should not be included in this bill. In some cases, doctors may recommend that a patient use an e-cigarette as an alternative to a more potentially harmful tobacco product. The bill also could prohibit adults younger than 21 from working in vaping shops, and those who already work there could lose their jobs.

SB 21 could lead to criminal records for people whose only crime was using tobacco. The bill also would cost the state millions of dollars in the form of lost tax revenue from tobacco-related sales without making up that difference elsewhere.

**NOTES:**

According to the Legislative Budget Board, the bill would have an estimated negative impact of \$5.1 million to general revenue related funds through fiscal 2020-21. The bill also would result in a revenue loss to the Property Tax Relief Fund of \$3.4 million for fiscal 2020-21. 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.

