

CHAPTER 753

H.B. No. 173

AN ACT

relating to the offenses of abuse, sale, or delivery of certain volatile chemicals, to the offenses of abuse or delivery of certain glues and aerosol paints, to the offense of use or possession with intent to use inhalant paraphernalia, to inhalant abuse information, and to conduct indicating a need for supervision related to the abuse of those substances.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 4(a) and (e), Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (d) of this section, a person commits an offense if the person intentionally, [~~or~~] knowingly, or *recklessly* sells or delivers a substance containing a volatile chemical to a person under 18 [17] years of age and the substance is subject to special labeling requirements concerning precautions against inhalation established pursuant to the Federal Hazardous Substances Act, 15 U.S.C. 1261, et seq., as that law existed on January 1, 1985, and to the federal regulations promulgated pursuant to that Act (16 CFR 1500.14) and in effect on that date.

(e) An offense under this section is a Class B [C] misdemeanor.

SECTION 2. Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. INHALANT PARAPHERNALIA. (a) In this section, "inhalant paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in inhaling, ingesting, or otherwise introducing into the human body a substance containing a volatile chemical, and the term includes:

(1) a can, tube, or other container that was used as the original receptacle for a volatile chemical by the manufacturer or packager of the substance; or

(2) a can, tube, balloon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension a substance containing a volatile chemical.

(b) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, apply, use, or otherwise introduce into the human body a substance containing a volatile chemical in violation of Section 3 of this Act.

(c) An offense under this section is a Class B misdemeanor.

SECTION 3. Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.13. ADDITIVES REQUIRED FOR ABUSABLE GLUE AND AEROSOL PAINT. (a) A person commits an offense if he knowingly and intentionally manufactures, delivers, or possesses with intent to manufacture or deliver abusable glue or aerosol paint which does not contain additive material in accordance with rules promulgated by the commissioner.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under Subsection (a) of this section that the abusable glue or aerosol paint is packaged in bulk quantity containers each holding two gallons or more and is intended for ultimate use only by industrial or commercial enterprises.

(d) The commissioner shall promulgate rules approving and designating additive materials to be included in abusable glue and aerosol paint and prescribing the proportions of such materials to be placed in such abusable glue or aerosol paint; provided that the rules promulgated under this subsection shall be designed to safely and effectively discourage intentional abuse by inhalation of abusable glue or aerosol paint at the lowest practicable cost to the manufacturers and distributors of such abusable glue or aerosol paint.

(e) In this section, "glue" means an adhesive substance intended to be used to join two surfaces. "Aerosol paint" means aerosolized paint products, including clear or pigmented lacquers and finishes. "Abusable glue or aerosol paint" means glue or aerosol paint which is:

(1) packaged in a container holding a pint or less by volume or less than two pounds by weight; and

(2) labeled in accordance with the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Sections 1261 to 1274), and under regulations adopted under that Act (16 C.F.R. Part 1500 (1984)), as those regulations may be amended from time to time.

(f) A person commits an offense if he knowingly, ~~or~~ intentionally, or recklessly [:

~~(1)~~ delivers abusable glue or aerosol paint to a person who is under 18 ~~[17]~~ years of age~~]; or~~

~~(2) displays abusable glue or aerosol paint in a business establishment in a manner that makes the abusable glue or aerosol paint accessible to patrons of the business without assistance of personnel of the business].~~

(g) An offense under Subsection (f) of this section is a felony of the third degree except as provided by Subsection (h) or (i) of this section.

(h) An offense under Subsection (f) of this section is a Class B misdemeanor if it is shown on the trial of the offense that at the time of the delivery the person or his employer had a valid glue and paint sales permit for the location of the sale under Article 4476-15d, Revised Statutes.

(i) An offense under Subsection (f) of this section is a Class A misdemeanor if it is shown on the trial of the offense that at the time of the delivery the person or his employer:

(1) did not have a valid glue and paint sales permit but did have a valid sales tax permit for the location of the sale; and

(2) had not been previously convicted under this section for an offense committed after January 1, 1988 ~~[Class B misdemeanor]~~.

(j) [(4)] It is a defense to prosecution under Subsection (f) of this section that the abusable glue or aerosol paint which is delivered or displayed contains additive material which effectively discourages intentional abuse by inhalation or which is in compliance with rules promulgated by the commissioner pursuant to Subsection (d) of this section.

(k) [(4)] It is an affirmative defense to prosecution under [Subdivision (1) of] Subsection (f) of this section that the person making the delivery is an adult having supervisory responsibility over the person under 18 [17] years of age and:

(1) the adult permits the use of the abusable glue or aerosol paint only under his direct supervision and in his presence and only for its intended purpose; and

(2) the adult removes the substance from the person under 18 [17] years of age on completion of that use.

(l) [(4)] It is an affirmative defense to prosecution under Subsection (f) of this section that the person to whom the abusable glue or aerosol paint was delivered presented to the defendant an apparently valid Texas driver's license or an identification card, issued by the Department of Public Safety and containing a physical description consistent with the person's appearance, that purported to establish that the person was an individual 18 [17] years of age or older.

(m) [(4)] A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable glue or aerosol paint with intent to inhale, ingest, apply, or use the glue or paint in a manner designed to affect the actor's central nervous system, to create or induce a condition of intoxication, euphoria, hallucination, or elation, or to change, distort, or disturb the actor's eyesight, thinking process, balance, or coordination and in a manner contrary to directions for use, cautions, or warnings appearing on a label of a container of abusable glue or aerosol paint.

(n) [(4)] An offense under Subsection (m) [(4)] of this section is a Class B misdemeanor.

(o) *A business establishment that sells abusable glue or aerosol paint at retail shall display a conspicuous sign in both English and Spanish which states the following:*

It is unlawful for a person to sell or deliver abusable glue or aerosol paint to a person under 18 years of age. Except in limited situations, such an offense is a 3rd degree felony.

It is also unlawful for a person to abuse glue or aerosol paint by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use glue or aerosol paint in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

(p) *A person commits an offense if the person sells abusable glue or aerosol paint in a business establishment and the person does not display a sign as required by Subsection (o) of this section. An offense under this subsection is a Class C misdemeanor.*

(q) *In this section, "inhalant paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable glue or aerosol paint in violation of Subsection (m) of this section, and the term includes:*

(1) *a can, tube, or other container used as the original receptacle for an abusable glue or aerosol paint; or*

(2) *a can, tube, balloon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension an abusable glue or aerosol paint, or vapors of the glue or paint.*

(r) *A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable glue or aerosol paint in violation of Subsection (m) of this section.*

(s) *An offense under Subsection (r) of this section is a Class B misdemeanor.*

SECTION 4. Title 71, Revised Statutes, is amended by adding Article 4476-15d to read as follows:

Art. 4476-15d. REGULATION OF SALE OF ABUSABLE GLUE AND AEROSOL PAINT

Sec. 1. DEFINITIONS. In this article:

(1) "Abusable glue" and "aerosol paint" have the meanings given those terms by Section 4.13(e), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(2) "Department" means the Texas Department of Health.

(3) "Glue and paint sales permit" means a permit issued under this article to sell at retail abusable glue or aerosol paint.

(4) "Permittee" means a person who has a valid glue and paint sales permit.

(5) "Seller" means any retail seller of abusable glue and aerosol paint.

Sec. 2. GLUE AND PAINT SALES PERMIT: ISSUANCE AND RENEWAL. (a) The department shall by rule develop procedures to allow eligible sellers to apply for and receive a glue and paint sales permit on an annual basis and to receive reasonable notification of permit expiration and renewal requirements by the department. The department shall:

(1) issue, deny, approve, or renew a glue and paint sales permit to an applicant or permittee; and

(2) adopt and revise rules as necessary to administer this article.

(b) To be eligible to be issued a glue and paint sales permit or to be issued a renewal of a glue and paint sales permit, an applicant or permittee must:

(1) have a valid sales tax permit issued to the applicant;

(2) complete and return to the department an application as required by the department; and

(3) pay an application fee to the department of \$25 for each location at which abusable glue and aerosol paint may be sold by the applicant on obtaining a glue and paint permit.

(c) The department shall issue or deny the permit to the applicant or permittee and notify the applicant or permittee of the action of the department within 60 days after the date on which the department receives the application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit or a permit renewal issued under this article is valid for one year from the date that the permit or renewal is issued. A permit is valid only to the extent that the permittee has not been convicted more than one time in the preceding year of an offense that is committed at the location for which the permit or renewal is issued and that is committed under Section 4(a), Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes), or under Section 4.13(a), (f), (m), or (r), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(e) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(f) A permittee must have the permit or a copy of the permit available for inspection by the public at the place where the permittee sells abusable glue and aerosol paint.

(g) The department shall prepare an annual roster of permittees and shall make the roster available to other state agencies and the general public on request, upon payment of a reasonable fee set by the department to cover the actual cost of reproducing the roster.

Sec. 3. FAILURE TO ISSUE OR RENEW PERMIT. Proceedings for failure to issue or renew, or for appeals from those proceedings are governed by the contested

case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of a proceeding is subject to the substantial evidence rule.

Sec. 4. OFFENSES. (a) A person may not sell abusable glue or aerosol paint at retail unless the person or his employer has a valid glue and paint sales permit for the location of the sale at the time of the sale.

(b) A person commits an offense if the person sells abusable glue or aerosol paint at retail to a purchaser who is 18 years of age or older and the person or his employer does not have a valid glue and paint sales permit for the location of the sale at the time of sale.

(c) An offense under Subsection (b) of this section is a Class B misdemeanor.

Sec. 5. REVENUE, RECEIPTS, AND DISBURSEMENTS. The department shall receive and account for all funds received under this article and forward the funds as they are received to the comptroller of public accounts. The comptroller of public accounts shall deposit these funds in the general revenue fund to be used for the purposes of covering the costs of administering this article and to finance education projects concerning the hazards of abusable glue and aerosol paint and prevention of inhalant abuse. The department shall enter into a memorandum of understanding with the Texas Commission on Alcohol and Drug Abuse for the implementation of such education and prevention programs.

SECTION 5. Not later than October 1, 1987, the speaker of the house of representatives shall appoint three persons and the lieutenant governor shall appoint three persons who have experience in dealing with the problem of inhalant abuse or the manufacture or marketing of aerosol paint, abusable glue, or volatile chemicals to serve on a Special Inhalant Abuse Committee. Members of the committee shall serve two-year terms and shall serve without compensation. The committee shall meet not less than four times annually to monitor and evaluate the effect of this Act in curbing the problem of inhalant abuse. The committee shall report its findings and make recommendations based on its findings to the 71st Legislature not later than February 15, 1989.

SECTION 6. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 1988.

(b) A seller required by Article 4476-15d, Revised Statutes, as added by this Act, to have a glue and paint sales permit is not required to have the permit until January 1, 1988, or the 90th day after the date that the department adopts procedures to implement Article 4476-15d, Revised Statutes, as added by this Act, whichever is later. Sections 4.13(g), (h), and (i), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), as amended and added by this Act, are not effective until the date on which a seller is required to have a permit under this subsection.

(c) The Texas Department of Health shall develop the procedures necessary to implement Article 4476-15d, Revised Statutes, as added by this Act, not later than October 1, 1987.

SECTION 7. (a) The changes made by Sections 1-3 of this Act apply to conduct engaged in or an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed or conduct is engaged in before the effective date of this Act if any element of the offense or the conduct occurs before the effective date.

(b) Conduct engaged in or an offense committed before the effective date of this Act is covered by the law in effect when the conduct was engaged in or the offense was committed, and the former law is continued in effect for this purpose.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 25, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 173 on June 1, 1987, by the following

vote: revenue dedication: Yeas 143, Nays 2, 1 present, not voting; remainder of the bill: non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Jan. 1, 1988.