

**SUBJECT:** Offense for minor's possession of aerosol paint; seller's responsibilities

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 5 ayes — Place, Greenberg, Nixon, Pickett, Solis  
0 nays  
4 absent — Talton, Farrar, Hudson, Pitts

**WITNESSES:** For — Robert N. Hills, National Council to Prevent Delinquency; Dan T. Worthey; Samith (Sam) Hill; Sharon Hull, Southwest Hardware and Farm Implement Association  
Against — None

**BACKGROUND:** Under section 485.033 of the Health and Safety Code it is an offense for a business to sell abusable aerosol paint to a person under 18 years old. Section 485.018, in the same chapter on abusable paints, prevents a city or county from requiring businesses to keep their aerosol paints inaccessible without employee assistance.

**DIGEST:** CSHB 2115 would create an offense for a person under 18 years old to knowingly or intentionally possess aerosol paint. The offense would be a Class C misdemeanor with a maximum penalty of a \$500 fine. It would be an affirmative defense to prosecution that the person possessed the paint under the direct supervision of an adult.

A business selling aerosol paints would have to display the paints in the line of sight of the cashier, in a place that requires the assistance of a store employee to reach, or in an electronically protected or monitored store. Violations of these requirements would incur a civil penalty of \$100 for the first violation and \$200 for each subsequent violation. For the third violation, a court could issue an injunction preventing the business from selling aerosol paints for up to two years. Violating the injunction would subject the business to a penalty of \$100 for each day of the violation. A court could issue an injunction preventing sale of aerosol paint if the

business did not pay the penalty. Collected penalties would be deposited in the general revenue fund.

This bill would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

CSHB 2115 would prevent graffiti damage by providing a deterrent against a minor's purchase of aerosol paint and by requiring businesses to safeguard their aerosol paint. Graffiti clean-up costs in Texas run into the millions each year. Nationally, it is estimated that graffiti clean-up costs nearly one billion dollars annually. While the original law preventing a minor from purchasing aerosol paint was intended to protect youths from inhalant substance abuse, it is now being effectively used to prevent minors from purchasing aerosol paint for graffiti purposes. However, more deterrence is needed.

Creating the offense of possession of aerosol paint by a minor would give law enforcement authorities another tool to combat graffiti. Because it is very difficult to catch a person in the act of spray painting graffiti, it is important to deter it. Currently, a police officer might come upon a juvenile hanging around a popular graffiti spot with a knapsack and suspect that it was filled with paint but could not do anything about it. This bill would allow that officer to charge the minor with possession of aerosol paint. It is far better for the state to deprive vandals of their tools than to pour money into clean-up costs.

Additionally, current law states that a business that sells abusable aerosol paint to a person under 18 commits an offense, but nothing prevents or deters minors from going from store to store until a store sells them the aerosol paint. Although the law directed toward retailers of the paint is effective, CSHB 2115 would appropriately direct an offense against the real offender, the minor.

The bill would also create statewide standards requiring businesses to monitor their aerosol paint. The bill would create reasonable penalties for violations but ultimately could deprive a business of its right to sell aerosol paints if it could not control them. This regulation is reasonable in light of the heavy damage caused by graffiti. Deterrence is especially important for the few stores that feel that if they sell 1,000 aerosol paint cans and lose 50

by theft, the profit margin is still high enough not to try to monitor the paint.

This law would create a uniform law that would not unduly burden the stores. Instead of locking up the cans, a store could keep them right next to the cashier or could electronically protect them. San Diego, Boston, Oakland and Miami have recently enacted similar requirements for aerosol paint retailers.

**OPPONENTS  
SAY:**

CSHB 2115 would create more cost for stores already competing in a tight market. Many stores are set up to be highly automated and to try to monitor paint cans would be unduly burdensome. Excessive regulation is not the answer to the graffiti problem but would only hinder law-abiding businesses.

**NOTES:**

The original version of HB 2115 would have allowed a city or county to enact an ordinance that required businesses to keep their aerosol paint inaccessible without assistance. The committee substitute would require businesses to follow guidelines, and if they did not, be assessed penalties.