

By: Hinojosa, et al.

S.B. No. 97

A BILL TO BE ENTITLED

AN ACT

relating to regulation of the sale, distribution, possession, use,
and advertising of e-cigarettes; creating offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter H, Chapter 161, Health
and Safety Code, is amended to read as follows:

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO
PRODUCTS

SECTION 2. Section 161.081, Health and Safety Code, is
amended by adding Subdivision (1-a) and amending Subdivisions (3)
and (4) to read as follows:

(1-a) "E-cigarette" means an electronic cigarette or
any other device that simulates smoking by using a mechanical
heating element, battery, or electronic circuit to deliver nicotine
or other substances to the individual inhaling from the device. The
term does not include a prescription medical device unrelated to
the cessation of smoking. The term includes:

(A) a device described by this subdivision
regardless of whether the device is manufactured, distributed, or
sold as an e-cigarette, e-cigar, or e-pipe or under another product
name or description; and

(B) a component, part, or accessory of the
device, regardless of whether the component, part, or accessory is
sold separately from the device.

1 (3) "Retail sale" means a transfer of possession from
2 a retailer to a consumer in connection with a purchase, sale, or
3 exchange for value of cigarettes, e-cigarettes, or tobacco
4 products.

5 (4) "Retailer" means a person who engages in the
6 practice of selling cigarettes, e-cigarettes, or tobacco products
7 to consumers and includes the owner of a coin-operated cigarette,
8 e-cigarette, or tobacco product vending machine. The term includes
9 a retailer as that term is defined [~~has the meaning assigned~~] by
10 Section 154.001 or 155.001, Tax Code, as applicable.

11 SECTION 3. The heading to Section 161.082, Health and
12 Safety Code, is amended to read as follows:

13 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
14 PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF
15 OF AGE REQUIRED.

16 SECTION 4. Sections 161.082(a), (b), and (d), Health and
17 Safety Code, are amended to read as follows:

18 (a) A person commits an offense if the person, with criminal
19 negligence:

20 (1) sells, gives, or causes to be sold or given a
21 cigarette, e-cigarette, or tobacco product to someone who is
22 younger than 18 years of age; or

23 (2) sells, gives, or causes to be sold or given a
24 cigarette, e-cigarette, or tobacco product to another person who
25 intends to deliver it to someone who is younger than 18 years of
26 age.

27 (b) If an offense under this section occurs in connection

1 with a sale by an employee of the owner of a store in which
2 cigarettes, e-cigarettes, or tobacco products are sold at retail,
3 the employee is criminally responsible for the offense and is
4 subject to prosecution.

5 (d) It is a defense to prosecution under Subsection (a)(1)
6 that the person to whom the cigarette, e-cigarette, or tobacco
7 product was sold or given presented to the defendant apparently
8 valid proof of identification.

9 SECTION 5. Section 161.0825(e), Health and Safety Code, is
10 amended to read as follows:

11 (e) It is an affirmative defense to prosecution under
12 Section 161.082 that:

13 (1) a transaction scan device identified a license or
14 certificate as valid and the defendant accessed the information and
15 relied on the results in good faith; or

16 (2) if the defendant is the owner of a store in which
17 cigarettes, e-cigarettes, or tobacco products are sold at retail,
18 the offense under Section 161.082 occurs in connection with a sale
19 by an employee of the owner, and the owner had provided the employee
20 with:

21 (A) a transaction scan device in working
22 condition; and

23 (B) adequate training in the use of the
24 transaction scan device.

25 SECTION 6. The heading to Section 161.083, Health and
26 Safety Code, is amended to read as follows:

27 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO

1 PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

2 SECTION 7. Section 161.083, Health and Safety Code, is
3 amended by adding Subsection (a-1) and amending Subsections (b) and
4 (c) to read as follows:

5 (a-1) A person may not sell, give, or cause to be sold or
6 given an e-cigarette to someone who is younger than 27 years of age
7 unless the person to whom the e-cigarette was sold or given presents
8 an apparently valid proof of identification.

9 (b) A retailer shall adequately supervise and train the
10 retailer's agents and employees to prevent a violation of
11 Subsections [~~Subsection~~] (a) and (a-1).

12 (c) A proof of identification described by Section
13 161.082(e) satisfies the requirements of Subsections [~~Subsection~~]
14 (a) and (a-1).

15 SECTION 8. Sections 161.084(a), (b), and (d), Health and
16 Safety Code, are amended to read as follows:

17 (a) Each person who sells cigarettes, e-cigarettes, or
18 tobacco products at retail or by vending machine shall post a sign
19 in a location that is conspicuous to all employees and customers and
20 that is close to the place at which the cigarettes, e-cigarettes, or
21 tobacco products may be purchased.

22 (b) The sign must include the statement:

23 PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO
24 PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE
25 OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR UNDER 18
26 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C
27 MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.

1 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY
2 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
3 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
4 PREMATURE OR WITH LOW BIRTH WEIGHT.

5 (d) The comptroller on request shall provide the sign
6 without charge to any person who sells cigarettes, e-cigarettes, or
7 tobacco products. The comptroller may provide the sign without
8 charge to distributors of cigarettes, e-cigarettes, or tobacco
9 products or wholesale dealers of cigarettes, e-cigarettes, or
10 tobacco products in this state for distribution to persons who sell
11 cigarettes, e-cigarettes, or tobacco products. A distributor or
12 wholesale dealer may not charge for distributing a sign under this
13 subsection.

14 SECTION 9. Sections [161.085](#)(a) and (b), Health and Safety
15 Code, are amended to read as follows:

16 (a) Each retailer shall notify each individual employed by
17 that retailer who is to be engaged in retail sales of cigarettes,
18 e-cigarettes, or tobacco products that state law:

19 (1) prohibits the sale or distribution of cigarettes,
20 e-cigarettes, or tobacco products to any person who is younger than
21 18 years of age as provided by Section [161.082](#) and that a violation
22 of that section is a Class C misdemeanor; and

23 (2) requires each person who sells cigarettes,
24 e-cigarettes, or tobacco products at retail or by vending machine
25 to post a warning notice as provided by Section [161.084](#), requires
26 each employee to ensure that the appropriate sign is always
27 properly displayed while that employee is exercising the employee's

1 duties, and provides that a violation of Section 161.084 is a Class
2 C misdemeanor.

3 (b) The notice required by Subsection (a) must be provided
4 within 72 hours of the date an individual begins to engage in retail
5 sales of e-cigarettes or tobacco products. The individual shall
6 signify that the individual has received the notice required by
7 Subsection (a) by signing a form stating that the law has been fully
8 explained, that the individual understands the law, and that the
9 individual, as a condition of employment, agrees to comply with the
10 law.

11 SECTION 10. Section 161.086(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) Except as provided by Subsection (b), a retailer or
14 other person may not:

15 (1) offer cigarettes, e-cigarettes, or tobacco
16 products for sale in a manner that permits a customer direct access
17 to the cigarettes, e-cigarettes, or tobacco products; or

18 (2) install or maintain a vending machine containing
19 cigarettes, e-cigarettes, or tobacco products.

20 SECTION 11. The heading to Section 161.087, Health and
21 Safety Code, is amended to read as follows:

22 Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR
23 TOBACCO PRODUCTS.

24 SECTION 12. Sections 161.087(a) and (b), Health and Safety
25 Code, are amended to read as follows:

26 (a) A person may not distribute to persons younger than 18
27 years of age:

1 (1) a free sample of a cigarette, e-cigarette, or
2 tobacco product; or

3 (2) a coupon or other item that the recipient may use
4 to receive a free or discounted cigarette, e-cigarette, or tobacco
5 product or a sample cigarette, e-cigarette, or tobacco product.

6 (b) Except as provided by Subsection (c), a person,
7 including a permit holder, may not accept or redeem, offer to accept
8 or redeem, or hire a person to accept or redeem a coupon or other
9 item that the recipient may use to receive a free or discounted
10 cigarette, e-cigarette, or tobacco product or a sample cigarette,
11 e-cigarette, or tobacco product if the recipient is younger than 18
12 years of age. A coupon or other item that such a recipient may use
13 to receive a free or discounted cigarette, e-cigarette, or tobacco
14 product or a sample cigarette, e-cigarette, or tobacco product may
15 not be redeemable through mail or courier delivery.

16 SECTION 13. Sections 161.088(b) and (d), Health and Safety
17 Code, are amended to read as follows:

18 (b) The comptroller may make block grants to counties and
19 municipalities to be used by local law enforcement agencies to
20 enforce this subchapter in a manner that can reasonably be expected
21 to reduce the extent to which cigarettes, e-cigarettes, and tobacco
22 products are sold or distributed to persons who are younger than 18
23 years of age. At least annually, random unannounced inspections
24 shall be conducted at various locations where cigarettes,
25 e-cigarettes, and tobacco products are sold or distributed to
26 ensure compliance with this subchapter. The comptroller shall
27 rely, to the fullest extent possible, on local law enforcement

1 agencies to enforce this subchapter.

2 (d) The use of a person younger than 18 years of age to act
3 as a minor decoy to test compliance with this subchapter shall be
4 conducted in a fashion that promotes fairness. A person may be
5 enlisted by the comptroller or a local law enforcement agency to act
6 as a minor decoy only if the following requirements are met:

7 (1) written parental consent is obtained for the use
8 of a person younger than 18 years of age to act as a minor decoy to
9 test compliance with this subchapter;

10 (2) at the time of the inspection, the minor decoy is
11 younger than 17 years of age;

12 (3) the minor decoy has an appearance that would cause
13 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco
14 products to request identification and proof of age;

15 (4) the minor decoy carries either the minor's own
16 identification showing the minor's correct date of birth or carries
17 no identification, and a minor decoy who carries identification
18 presents it on request to any seller of cigarettes, e-cigarettes,
19 or tobacco products; and

20 (5) the minor decoy answers truthfully any questions
21 about the minor's age.

22 SECTION 14. Section 161.089, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter
25 does not preempt a local regulation of the sale, distribution, or
26 use of cigarettes, e-cigarettes, or tobacco products or affect the
27 authority of a political subdivision to adopt or enforce an

1 ordinance or requirement relating to the sale, distribution, or use
2 of cigarettes, e-cigarettes, or tobacco products if the regulation,
3 ordinance, or requirement:

4 (1) is compatible with and equal to or more stringent
5 than a requirement prescribed by this subchapter; or

6 (2) relates to an issue that is not specifically
7 addressed by this subchapter or Chapter 154 or 155, Tax Code.

8 SECTION 15. Section 161.0901, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 161.0901. DEPARTMENT REPORT [~~OF OFFICE OF SMOKING AND~~
11 ~~HEALTH~~]. (a) Not later than January 5th of each odd-numbered year
12 the [~~Office of Smoking and Health of the~~] department shall report to
13 the governor, lieutenant governor, and [~~the~~] speaker of the house
14 of representatives on the status of smoking and the use of
15 e-cigarettes, tobacco, and tobacco products in this state.

16 (b) The report must include, at a minimum:

17 (1) a baseline of statistics and analysis regarding
18 retail compliance with this subchapter, Subchapter K, and Chapters
19 154 and 155, Tax Code;

20 (2) a baseline of statistics and analysis regarding
21 illegal e-cigarette and tobacco sales, including:

22 (A) sales to minors;

23 (B) enforcement actions concerning minors; and

24 (C) sources of citations;

25 (3) e-cigarette and tobacco controls and initiatives
26 by the [~~Office of Smoking and Health of the~~] department, or any
27 other state agency, including an evaluation of the effectiveness of

1 the controls and initiatives;

2 (4) the future goals and plans of the [~~Office of~~
3 ~~Smoking and Health of the~~] department to decrease the use of
4 e-cigarettes, tobacco, and tobacco products;

5 (5) the educational programs of the [~~Office of Smoking~~
6 ~~and Health of the~~] department and the effectiveness of those
7 programs; and

8 (6) the incidence of use of e-cigarettes, tobacco, and
9 tobacco products by regions in this state, including use of
10 cigarettes, e-cigarettes, and tobacco products by ethnicity.

11 SECTION 16. The heading to Subchapter K, Chapter 161,
12 Health and Safety Code, is amended to read as follows:

13 SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, E-CIGARETTE, OR
14 TOBACCO PRODUCT ADVERTISING; FEE

15 SECTION 17. Section 161.121, Health and Safety Code, is
16 amended by adding Subdivision (2-a) to read as follows:

17 (2-a) "E-cigarette" has the meaning assigned by
18 Section 161.081.

19 SECTION 18. Sections 161.122(a) and (b), Health and Safety
20 Code, are amended to read as follows:

21 (a) Except as provided by this section, a sign containing an
22 advertisement for cigarettes, e-cigarettes, or tobacco products
23 may not be located closer than 1,000 feet to a church or school.

24 (b) The measurement of the distance between the sign
25 containing an advertisement for cigarettes, e-cigarettes, or
26 tobacco products and an institution listed in Subsection (a) is
27 from the nearest property line of the institution to a point on a

1 street or highway closest to the sign, along street lines and in
2 direct lines across intersections.

3 SECTION 19. The heading to Subchapter N, Chapter 161,
4 Health and Safety Code, is amended to read as follows:

5 SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

6 SECTION 20. Section 161.251, Health and Safety Code, is
7 amended by adding Subdivision (1-a) to read as follows:

8 (1-a) "E-cigarette" has the meaning assigned by
9 Section 161.081.

10 SECTION 21. The heading to Section 161.252, Health and
11 Safety Code, is amended to read as follows:

12 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
13 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS
14 PROHIBITED.

15 SECTION 22. Sections 161.252(a) and (b), Health and Safety
16 Code, are amended to read as follows:

17 (a) An individual who is younger than 18 years of age
18 commits an offense if the individual:

19 (1) possesses, purchases, consumes, or accepts a
20 cigarette, e-cigarette, or tobacco product; or

21 (2) falsely represents himself or herself to be 18
22 years of age or older by displaying proof of age that is false,
23 fraudulent, or not actually proof of the individual's own age in
24 order to obtain possession of, purchase, or receive a cigarette,
25 e-cigarette, or tobacco product.

26 (b) It is an exception to the application of this section
27 that the individual younger than 18 years of age possessed the

1 cigarette, e-cigarette, or tobacco product in the presence of:

2 (1) an adult parent, a guardian, or a spouse of the
3 individual; or

4 (2) an employer of the individual, if possession or
5 receipt of the e-cigarette or tobacco product is required in the
6 performance of the employee's duties as an employee.

7 SECTION 23. The heading to Section 161.253, Health and
8 Safety Code, is amended to read as follows:

9 Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM;
10 COMMUNITY SERVICE.

11 SECTION 24. Sections 161.253(a), (b), (c), (d), and (e),
12 Health and Safety Code, are amended to read as follows:

13 (a) On conviction of an individual for an offense under
14 Section 161.252, the court shall suspend execution of sentence and
15 shall require the defendant to attend an e-cigarette and [~~a~~]
16 tobacco awareness program approved by the commissioner. The court
17 may require the parent or guardian of the defendant to attend the
18 e-cigarette and tobacco awareness program with the defendant.

19 (b) On request, an e-cigarette and [~~a~~] tobacco awareness
20 program may be taught in languages other than English.

21 (c) If the defendant resides in a rural area of this state or
22 another area of this state in which access to an e-cigarette and [~~a~~]
23 tobacco awareness program is not readily available, the court shall
24 require the defendant to perform eight to 12 hours of e-cigarette-
25 and tobacco-related community service instead of attending the
26 e-cigarette and tobacco awareness program.

27 (d) The e-cigarette and tobacco awareness program and the

1 e-cigarette- and tobacco-related community service are remedial
2 and are not punishment.

3 (e) Not later than the 90th day after the date of a
4 conviction under Section 161.252, the defendant shall present to
5 the court, in the manner required by the court, evidence of
6 satisfactory completion of the e-cigarette and tobacco awareness
7 program or the e-cigarette- and tobacco-related community service.

8 SECTION 25. Section 161.255(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) An individual convicted of an offense under Section
11 161.252 may apply to the court to have the conviction expunged. If
12 the court finds that the individual satisfactorily completed the
13 e-cigarette and tobacco awareness program or e-cigarette- and
14 tobacco-related community service ordered by the court, the court
15 shall order the conviction and any complaint, verdict, sentence, or
16 other document relating to the offense to be expunged from the
17 individual's record and the conviction may not be shown or made
18 known for any purpose.

19 SECTION 26. Section 161.256, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 161.256. JURISDICTION OF COURTS. A justice court or
22 municipal court may exercise jurisdiction over any matter in which
23 a court under this subchapter may:

24 (1) impose a requirement that a defendant attend an
25 e-cigarette and [a] tobacco awareness program or perform
26 e-cigarette- and tobacco-related community service; or

27 (2) order the suspension or denial of a driver's

1 license or permit.

2 SECTION 27. The heading to Subchapter O, Chapter 161,
3 Health and Safety Code, is amended to read as follows:

4 SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

5 SECTION 28. The heading to Section 161.301, Health and
6 Safety Code, is amended to read as follows:

7 Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS
8 CAMPAIGN.

9 SECTION 29. Section 161.301(a), Health and Safety Code, is
10 amended to read as follows:

11 (a) The commissioner shall develop and implement a public
12 awareness campaign designed to reduce the [~~tobacco~~] use by minors
13 in this state of tobacco and e-cigarettes as defined by Section
14 161.081. The campaign may use advertisements or similar media to
15 provide educational information about tobacco and e-cigarette use.

16 SECTION 30. Section 161.302(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) The entity administering Section 161.301 shall also
19 develop and implement a grant program to support youth groups that
20 include as a part of the group's program components related to
21 reduction of [~~tobacco~~] use by the group's members of tobacco and
22 e-cigarettes as defined by Section 161.081.

23 SECTION 31. The heading to Subchapter R, Chapter 161,
24 Health and Safety Code, is amended to read as follows:

25 SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

26 SECTION 32. Section 161.451, Health and Safety Code, is
27 amended by amending Subdivisions (1) and (3) and adding Subdivision

1 (2-a) to read as follows:

2 (1) "Delivery sale" means a sale of cigarettes or
3 e-cigarettes to a consumer in this state in which the purchaser
4 submits the order for the sale by means of a telephonic or other
5 method of voice transmission, by using the mails or any other
6 delivery service, or through the Internet or another on-line
7 service, or the cigarettes or e-cigarettes are delivered by use of
8 the mails or another delivery service. A sale of cigarettes or
9 e-cigarettes is a delivery sale regardless of whether the seller is
10 located within or without this state. A sale of cigarettes or
11 e-cigarettes not for personal consumption to a person who is a
12 wholesale dealer or a retail dealer is not a delivery sale.

13 (2-a) "E-cigarette" has the meaning assigned by
14 Section 161.081.

15 (3) "Shipping container" means a container in which
16 cigarettes or e-cigarettes are shipped in connection with a
17 delivery sale.

18 SECTION 33. Section 161.452, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A
21 person may not make a delivery sale of cigarettes or e-cigarettes to
22 an individual who is under the age prescribed by Section 161.082.

23 (b) A person taking a delivery sale order shall comply with:

24 (1) the age verification requirements prescribed by
25 Section 161.453;

26 (2) the disclosure requirements prescribed by Section
27 161.454;

1 (3) the shipping requirements prescribed by Section
2 [161.455](#);

3 (4) the registration and reporting requirements
4 prescribed by Section [161.456](#), if applicable;

5 (5) the tax collection requirements prescribed by
6 Section [161.457](#), if applicable; and

7 (6) each law of this state that generally applies to
8 sales of cigarettes or e-cigarettes that occur entirely within this
9 state, if applicable, including a law:

10 (A) imposing a tax; or

11 (B) prescribing a permitting or tax-stamping
12 requirement.

13 SECTION 34. Section [161.453](#)(a), Health and Safety Code, is
14 amended to read as follows:

15 (a) A person may not mail or ship cigarettes or e-cigarettes
16 in connection with a delivery sale order unless before mailing or
17 shipping the cigarettes or e-cigarettes the person accepting the
18 delivery sale order first:

19 (1) obtains from the prospective customer a
20 certification that includes:

21 (A) reliable confirmation that the purchaser is
22 at least 18 years of age; and

23 (B) a statement signed by the prospective
24 purchaser in writing and under penalty of law:

25 (i) certifying the prospective purchaser's
26 address and date of birth;

27 (ii) confirming that the prospective

1 purchaser understands that signing another person's name to the
2 certification is illegal, that sales of cigarettes or e-cigarettes
3 to an individual under the age prescribed by Section 161.082 are
4 illegal under state law, and that the purchase of cigarettes or
5 e-cigarettes by an individual under that age is illegal under state
6 law; and

7 (iii) confirming that the prospective
8 purchaser wants to receive mailings from an e-cigarette or [a]
9 tobacco company;

10 (2) makes a good faith effort to verify the
11 information contained in the certification provided by the
12 prospective purchaser under Subdivision (1) against a commercially
13 available database or obtains a photocopy or other image of a
14 government-issued identification bearing a photograph of the
15 prospective purchaser and stating the date of birth or age of the
16 prospective purchaser;

17 (3) sends to the prospective purchaser, by e-mail or
18 other means, a notice that complies with Section 161.454; and

19 (4) for an order made over the Internet or as a result
20 of an advertisement, receives payment for the delivery sale from
21 the prospective purchaser by a credit or debit card that has been
22 issued in the purchaser's name or by check.

23 SECTION 35. Section 161.454, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required
26 by Section 161.453(a)(3) must include a prominent and clearly
27 legible statement that:

1 (1) cigarette and e-cigarette sales to individuals who
2 are below the age prescribed by Section 161.082 are illegal under
3 state law;

4 (2) sales of cigarettes and e-cigarettes are
5 restricted to those individuals who provide verifiable proof of age
6 in accordance with Section 161.453; and

7 (3) cigarette sales are taxable under Chapter 154, Tax
8 Code, and an explanation of how that tax has been or is to be paid
9 with respect to the delivery sale.

10 SECTION 36. Section 161.455, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who
13 mails or ships cigarettes or e-cigarettes in connection with a
14 delivery sale order shall:

15 (1) include as part of the shipping documents a clear
16 and conspicuous statement: "CIGARETTES AND E-CIGARETTES: TEXAS
17 LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND
18 REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

19 (2) use a method of mailing or shipping that obligates
20 the delivery service to require:

21 (A) the purchaser placing the delivery sale
22 order, or an adult who is at least 18 years of age and who resides at
23 the purchaser's address, to sign to accept delivery of the shipping
24 container; and

25 (B) the person signing to accept delivery of the
26 shipping container to provide proof, in the form of a
27 government-issued identification bearing a photograph that the

1 person is:

2 (i) the addressee or an adult who is at
3 least 18 years of age and who resides at the purchaser's address;
4 and

5 (ii) at least 18 years of age if the person
6 appears to be younger than 27 years of age; and

7 (3) provide to the delivery service retained to make
8 the delivery evidence of full compliance with Section 161.457.

9 (b) A person taking a delivery sale order who delivers the
10 cigarettes or e-cigarettes without using a third-party delivery
11 service shall comply with the requirements prescribed by this
12 subchapter that apply to a delivery service.

13 SECTION 37. Section 48.01, Penal Code, is amended by
14 amending Subsections (a), (c), (d), and (e) and adding Subsection
15 (a-1) to read as follows:

16 (a) In this section, "e-cigarette" has the meaning assigned
17 by Section 161.081, Health and Safety Code.

18 (a-1) A person commits an offense if the person [~~he~~] is in
19 possession of a burning tobacco product, [~~or~~] smokes tobacco, or
20 operates an e-cigarette in a facility of a public primary or
21 secondary school or an elevator, enclosed theater or movie house,
22 library, museum, hospital, transit system bus, [~~or~~] intrastate bus,
23 [~~as defined by Section 541.201, Transportation Code,~~] plane, or
24 train which is a public place.

25 (c) All conveyances and public places set out in Subsection
26 (a-1) [~~(a) of Section 48.01~~] shall be equipped with facilities for
27 extinguishment of smoking materials and it shall be a defense to

1 prosecution under this section if the conveyance or public place
2 within which the offense takes place is not so equipped.

3 (d) It is an exception to the application of Subsection
4 (a-1) [~~(a)~~] if the person is in possession of the burning tobacco
5 product, ~~[or]~~ smokes tobacco, or operates the e-cigarette
6 exclusively within an area designated for smoking tobacco or
7 operating an e-cigarette or as a participant in an authorized
8 theatrical performance.

9 (e) An area designated for smoking tobacco or operating an
10 e-cigarette on a transit system bus or intrastate plane or train
11 must also include the area occupied by the operator of the transit
12 system bus, plane, or train.

13 SECTION 38. Sections [161.082\(a\)](#) and [161.252\(a\)](#), Health and
14 Safety Code, as amended by this Act, and Section [48.01](#), Penal Code,
15 as amended by this Act, apply only to an offense committed on or
16 after October 1, 2015. An offense committed before that date is
17 governed by the law in effect on the date the offense was committed,
18 and the former law is continued in effect for that purpose. For
19 purposes of this section, an offense was committed before October
20 1, 2015, if any element of the offense occurred before that date.

21 SECTION 39. (a) The comptroller of public accounts shall
22 develop the sign described by Section [161.084](#), Health and Safety
23 Code, as amended by this Act, and make the sign available to the
24 public not later than September 15, 2015.

25 (b) This section takes effect September 1, 2015.

26 SECTION 40. Except as otherwise provided by this Act, this
27 Act takes effect October 1, 2015.