

By: Alvarado, Collier, Guillen, Isaac,
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H.B. No. 170

Substitute the following for H.B. No. 170:

By: Crownover

C.S.H.B. No. 170

A BILL TO BE ENTITLED

1 AN ACT

2 relating to regulation of the sale, distribution, possession, use,
3 and advertising of e-cigarettes, cigarettes, and tobacco products;
4 creating criminal offenses.

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

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

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

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

13 (1-a) "E-cigarette" means an electronic cigarette or
14 any other device that simulates smoking by using a mechanical
15 heating element, battery, or electronic circuit to deliver nicotine
16 or other substances to the individual inhaling from the device. The
17 term does not include a prescription medical device unrelated to
18 the cessation of smoking. The term includes:

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

23 (B) a component, part, or accessory for the
24 device, regardless of whether the component, part, or accessory is

1 sold separately from the device.

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

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

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

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

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

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

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

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

C.S.H.B. No. 170

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

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

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

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

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

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

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

26 SECTION 6. The heading to Section [161.083](#), Health and
27 Safety Code is amended to read as follows:

1 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
2 PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

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

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

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

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

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

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

23 (b) The sign must include the statement:

24 PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO
25 PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY
26 LAW. SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A
27 MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION,

C.S.H.B. No. 170

1 A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE
2 IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S
3 OFFICE BY CALLING (insert toll-free telephone number). PREGNANT
4 WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO
5 ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

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

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

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

20 (1) prohibits the sale or distribution of cigarettes, 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

24 (2) requires each person who sells cigarettes, 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

C.S.H.B. No. 170

1 properly displayed while that employee is exercising the employee's
2 duties, and provides that a violation of Section 161.084 is a Class
3 C misdemeanor.

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

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

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

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

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

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

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

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

27 (a) A person may not distribute to persons younger than 18

1 years of age:

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

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

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

17 SECTION 13. Subchapter H, Chapter 161, Health and Safety
18 Code, is amended by adding Section 161.0875 to read as follows:

19 Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS.
20 (a) A person may not sell or cause to be sold a container that
21 contains liquid with nicotine and that is an accessory for an
22 e-cigarette unless:

23 (1) the container satisfies the child-resistant
24 effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when
25 tested in accordance with the method described by 16 C.F.R. Section
26 1700.20; or

27 (2) the container is a cartridge that is prefilled and

1 sealed by the manufacturer and is not intended to be opened by a
2 consumer.

3 (b) If the federal government adopts standards for the
4 packaging of a container described by Subsection (a), a person who
5 complies with those standards is considered to be in compliance
6 with this section.

7 SECTION 14. Sections 161.088(b) and (d), Health and Safety
8 Code, are amended to read as follows:

9 (b) The comptroller may make block grants to counties and
10 municipalities to be used by local law enforcement agencies to
11 enforce this subchapter and Subchapter R in a manner that can
12 reasonably be expected to reduce the extent to which cigarettes,
13 e-cigarettes, and tobacco products are sold or distributed,
14 including by delivery sale, to persons who are younger than 18
15 years of age. At least annually, random unannounced inspections
16 shall be conducted at various locations where cigarettes,
17 e-cigarettes, and tobacco products are sold or distributed,
18 including by delivery sale, to ensure compliance with this
19 subchapter and Subchapter R. The comptroller shall rely, to the
20 fullest extent possible, on local law enforcement agencies to
21 enforce this subchapter and Subchapter R.

22 (d) The use of a person younger than 18 years of age to act
23 as a minor decoy to test compliance with this subchapter and
24 Subchapter R shall be conducted in a fashion that promotes
25 fairness. A person may be enlisted by the comptroller or a local
26 law enforcement agency to act as a minor decoy only if the following
27 requirements are met:

C.S.H.B. No. 170

1 (1) written parental consent is obtained for the use
2 of a person younger than 18 years of age to act as a minor decoy to
3 test compliance with this subchapter and Subchapter R;

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

9 (4) the minor decoy carries either the minor's own
10 identification showing the minor's correct date of birth or carries
11 no identification, and a minor decoy who carries identification
12 presents it on request to any seller of or any person who delivers
13 cigarettes, e-cigarettes, or tobacco products; and

14 (5) the minor decoy answers truthfully any questions
15 about the minor's age at the time of the inspection, order, or
16 delivery.

17 SECTION 15. Subchapter H, Chapter 161, Health and Safety
18 Code, is amended by adding Section 161.0902 to read as follows:

19 Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than
20 January 5th of each odd-numbered year, the department shall report
21 to the governor, lieutenant governor, and speaker of the house of
22 representatives on the status of the use of e-cigarettes in this
23 state.

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

27 (2) a baseline of statistics and analysis regarding

1 illegal e-cigarette sales, including:
2 (A) sales to minors;
3 (B) enforcement actions concerning minors; and
4 (C) sources of citations;
5 (3) e-cigarette controls and initiatives by the
6 department, or any other state agency, including an evaluation of
7 the effectiveness of the controls and initiatives;
8 (4) the future goals and plans of the department to
9 decrease the use of e-cigarettes;
10 (5) the educational programs of the department and the
11 effectiveness of those programs; and
12 (6) the incidence of use of e-cigarettes by regions in
13 this state, including use of e-cigarettes by ethnicity.
14 (c) The department may include the report required by this
15 section with a similar report for cigarettes or tobacco products
16 required by law.

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

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

20 SECTION 17. Section 161.251, Health and Safety Code, is amended by adding Subdivision (1-a) to read as follows:

22 (1-a) "E-cigarette" has the meaning assigned by
23 Section 161.081.

24 SECTION 18. The heading to Section 161.252, Health and Safety Code, is amended to read as follows:

26 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
27 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS

1 PROHIBITED.

2 SECTION 19. Sections 161.252(a) and (b), Health and Safety
3 Code, are amended to read as follows:

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

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

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

13 (b) It is an exception to the application of this section
14 that the individual younger than 18 years of age possessed the
15 cigarette, e-cigarette, or tobacco product in the presence of:

16 (1) an adult parent, a guardian, or a spouse of the
17 individual; or

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

21 SECTION 20. The heading to Section 161.253, Health and
22 Safety Code, is amended to read as follows:

23 Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM;
24 COMMUNITY SERVICE.

25 SECTION 21. Sections 161.253(a), (b), (c), (d), and (e),
26 Health and Safety Code, are amended to read as follows:

27 (a) On conviction of an individual for an offense under

1 Section 161.252, the court shall suspend execution of sentence and
2 shall require the defendant to attend an e-cigarette and [a]
3 tobacco awareness program approved by the commissioner. The court
4 may require the parent or guardian of the defendant to attend the
5 e-cigarette and tobacco awareness program with the defendant.

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

8 (c) If the defendant resides in a rural area of this state or
9 another area of this state in which access to an e-cigarette and [a]
10 tobacco awareness program is not readily available, the court shall
11 require the defendant to perform eight to 12 hours of e-cigarette-
12 and tobacco-related community service instead of attending the
13 e-cigarette and tobacco awareness program.

14 (d) The e-cigarette and tobacco awareness program and the
15 e-cigarette- and tobacco-related community service are remedial
16 and are not punishment.

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

22 SECTION 22. Section 161.255(a), Health and Safety Code, is
23 amended to read as follows:

24 (a) An individual convicted of an offense under Section
25 161.252 may apply to the court to have the conviction expunged. If
26 the court finds that the individual satisfactorily completed the
27 e-cigarette and tobacco awareness program or e-cigarette- and

1 tobacco-related community service ordered by the court, the court
2 shall order the conviction and any complaint, verdict, sentence, or
3 other document relating to the offense to be expunged from the
4 individual's record and the conviction may not be shown or made
5 known for any purpose.

6 SECTION 23. Section 161.256, Health and Safety Code, is
7 amended to read as follows:

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

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

14 (2) order the suspension or denial of a driver's
15 license or permit.

16 SECTION 24. The heading to Subchapter O, Chapter 161,
17 Health and Safety Code, is amended to read as follows:

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

19 SECTION 25. The heading to Section 161.301, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS
22 CAMPAIGN.

23 SECTION 26. Section 161.301(a), Health and Safety Code, as
24 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,
25 2015, is amended to read as follows:

26 (a) The department shall develop and implement a public
27 awareness campaign designed to reduce the [tobacco] use by minors

1 in this state of tobacco and e-cigarettes as defined by Section
2 161.081. The campaign may use advertisements or similar media to
3 provide educational information about tobacco and e-cigarette use.

4 SECTION 27. Section 161.302(a), Health and Safety Code, is
5 amended to read as follows:

6 (a) The entity administering Section 161.301 shall also
7 develop and implement a grant program to support youth groups that
8 include as a part of the group's program components related to
9 reduction of ~~tobacco~~ use by the group's members of tobacco and
10 e-cigarettes as defined by Section 161.081.

11 SECTION 28. Subchapter P, Chapter 161, Health and Safety
12 Code, is amended by adding Section 161.356 to read as follows:

13 Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is
14 considered to have complied with this subchapter if the person
15 complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted
16 under that subchapter.

17 SECTION 29. The heading to Subchapter R, Chapter 161,
18 Health and Safety Code, is amended to read as follows:

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

20 SECTION 30. Section 161.451, Health and Safety Code, is
21 amended by amending Subdivisions (1) and (3) and adding Subdivision
22 (2-a) to read as follows:

23 (1) "Delivery sale" means a sale of cigarettes or
24 e-cigarettes to a consumer in this state in which the purchaser
25 submits the order for the sale by means of a telephonic or other
26 method of voice transmission, by using the mails or any other
27 delivery service, or through the Internet or another on-line

1 service, or the cigarettes or e-cigarettes are delivered by use of
2 the mails or another delivery service. A sale of cigarettes or
3 e-cigarettes is a delivery sale regardless of whether the seller is
4 located within or without this state. A sale of cigarettes or
5 e-cigarettes not for personal consumption to a person who is a
6 wholesale dealer or a retail dealer is not a delivery sale.

7 (2-a) "E-cigarette" has the meaning assigned by
8 Section 161.081.

9 (3) "Shipping container" means a container in which
10 cigarettes or e-cigarettes are shipped in connection with a
11 delivery sale.

12 SECTION 31. Section 161.452, Health and Safety Code, is
13 amended to read as follows:

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

17 (b) A person taking a delivery sale order of cigarettes
18 shall comply with:

19 (1) the age verification requirements prescribed by
20 Section 161.453;

21 (2) the disclosure requirements prescribed by Section
22 161.454;

23 (3) the shipping requirements prescribed by Section
24 161.455;

25 (4) the registration and reporting requirements
26 prescribed by Section 161.456;

27 (5) the tax collection requirements prescribed by

1 Section [161.457](#); and

2 (6) each law of this state that generally applies to
3 sales of cigarettes that occur entirely within this state,
4 including a law:

5 (A) imposing a tax; or

6 (B) prescribing a permitting or tax-stamping
7 requirement.

8 (c) A person taking a delivery sale order of e-cigarettes
9 shall comply with:

10 (1) the age verification requirements prescribed by
11 Section [161.453](#);

12 (2) the disclosure requirements prescribed by Section
13 [161.454](#);

14 (3) the shipping requirements prescribed by Section
15 [161.455](#);

16 (4) the registration and reporting requirements
17 prescribed by Section [161.456](#); and

18 (5) each law of this state that generally applies to
19 sales of e-cigarettes that occur entirely within this state.

20 SECTION 32. Section [161.453](#), Health and Safety Code, is
21 amended by adding Subsections (c) and (d) to read as follows:

22 (c) A person may not mail or ship e-cigarettes in connection
23 with a delivery sale order unless before accepting a delivery sale
24 order the person verifies that the prospective purchaser is at
25 least 18 years of age through a commercially available database or
26 aggregate of databases that is regularly used for the purpose of age
27 and identity verification. After the order is accepted, the person

1 must use a method of mailing or shipping that requires an adult
2 signature.

3 (d) A retailer in this state that otherwise complies with
4 applicable laws relating to retail sales and primarily sells
5 e-cigarettes may comply with Subsection (c) by:

6 (1) verifying the age of the prospective purchaser
7 with a commercially available database or a photocopy or other
8 image of a government-issued identification bearing a photograph of
9 the prospective purchaser and stating the date of birth or age of
10 the prospective purchaser;

11 (2) obtaining a written statement signed by the
12 prospective purchaser, under penalty of law, certifying the
13 prospective purchaser's address and date of birth; and

14 (3) receiving payment for the delivery sale from the
15 prospective purchaser by a credit card or debit card that has been
16 issued in the prospective purchaser's name or by a check that is
17 associated with a bank account in the prospective purchaser's name.

18 SECTION 33. Section [161.454](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice
21 required by Section [161.453](#)(a)(3) for a delivery sale of cigarettes
22 must include a prominent and clearly legible statement that:

23 (1) cigarette sales to individuals who are below the
24 age prescribed by Section [161.082](#) are illegal under state law;

25 (2) sales of cigarettes are restricted to those
26 individuals who provide verifiable proof of age in accordance with
27 Section [161.453](#); and

C.S.H.B. No. 170

4 (b) A delivery sale of an e-cigarette must include a
5 prominent and clearly legible statement that:

11 SECTION 34. Section [161.455](#), Health and Safety Code, is
12 amended by adding Subsection (a-1) and amending Subsection (b) to
13 read as follows:

14 (a-1) A person who mails or ships e-cigarettes in connection
15 with a delivery sale order shall include as part of the shipping
16 documents a clear and conspicuous statement: "E-CIGARETTES: TEXAS
17 LAW PROHIBITS SHIPPING TO INDIVIDUALS YOUNGER THAN 18 YEARS OF AGE
18 AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES."

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

23 SECTION 35. Section [161.456](#), Health and Safety Code, is
24 amended to read as follows:

25 Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a)
26 A person may not make a delivery sale or ship cigarettes or
27 e-cigarettes in connection with a delivery sale unless the person

1 first files with the comptroller a statement that includes:

2 (1) the person's name and trade name; and

3 (2) the address of the person's principal place of
4 business and any other place of business, and the person's
5 telephone number and e-mail address.

6 (b) Except as provided by Subsection (d), not [Not] later
7 than the 10th day of each month, each person who has made a delivery
8 sale or shipped or delivered cigarettes or e-cigarettes in
9 connection with a delivery sale during the previous month shall
10 file with the comptroller a memorandum or a copy of the invoice that
11 provides for each delivery sale:

12 (1) the name, address, telephone number, and e-mail
13 address of the individual to whom the delivery sale was made;

14 (2) the brand or brands of the cigarettes or
15 e-cigarettes that were sold; and

16 (3) the quantity of cigarettes or e-cigarettes that
17 were sold.

18 (c) With respect to cigarettes, a [A] person who complies
19 with 15 U.S.C. Section 376, as amended, is considered to have
20 complied with this section.

21 (d) A person is exempt from the requirement of filing with
22 the comptroller a memorandum or a copy of an invoice under
23 Subsection (b) if, in the two years preceding the date the report is
24 due, the person has not violated this subchapter and has not been
25 reported under Section 161.090 to the comptroller as having
26 violated Subchapter H.

27 (e) A person required to submit a memorandum or a copy of an

1 invoice under Subsection (b) shall submit a memorandum or a copy of
2 an invoice to the comptroller for each delivery sale of a cigarette
3 or e-cigarette in the previous two years unless the person has
4 previously submitted the memorandum or copy to the comptroller.

5 (f) A person shall maintain records of compliance with this
6 section until at least the fourth anniversary of the date the record
7 was prepared.

8 SECTION 36. Section [161.461\(a\)](#), Health and Safety Code, is
9 amended to read as follows:

10 (a) Cigarettes or e-cigarettes sold or that a person
11 attempted to sell in a delivery sale that does not comply with this
12 subchapter are forfeited to the state and shall be destroyed.

13 SECTION 37. Section [28.004\(k\)](#), Education Code, is amended
14 to read as follows:

15 (k) A school district shall publish in the student handbook
16 and post on the district's Internet website, if the district has an
17 Internet website:

18 (1) a statement of the policies adopted to ensure that
19 elementary school, middle school, and junior high school students
20 engage in at least the amount and level of physical activity
21 required by Section [28.002\(1\)](#);

22 (2) a statement of:

23 (A) the number of times during the preceding year
24 the district's school health advisory council has met;

25 (B) whether the district has adopted and enforces
26 policies to ensure that district campuses comply with agency
27 vending machine and food service guidelines for restricting student

1 access to vending machines; and

2 (C) whether the district has adopted and enforces
3 policies and procedures that prescribe penalties for the use of
4 e-cigarettes, as defined by Section 38.006, and tobacco products by
5 students and others on school campuses or at school-sponsored or
6 school-related activities; and

7 (3) a statement providing notice to parents that they
8 can request in writing their child's physical fitness assessment
9 results at the end of the school year.

10 SECTION 38. Section 38.006, Education Code, is amended to
11 read as follows:

12 Sec. 38.006. E-CIGARETTES AND TOBACCO PRODUCTS ON SCHOOL
13 PROPERTY. (a) In this section, "e-cigarette" has the meaning
14 assigned by Section 161.081, Health and Safety Code.

15 (b) The board of trustees of a school district shall:

16 (1) prohibit smoking or using e-cigarettes or tobacco
17 products at a school-related or school-sanctioned activity on or
18 off school property;

19 (2) prohibit students from possessing e-cigarettes or
20 tobacco products at a school-related or school-sanctioned activity
21 on or off school property; and

22 (3) ensure that school personnel enforce the policies
23 on school property.

24 SECTION 39. Section 48.01, Penal Code, is amended by
25 amending Subsections (a), (c), (d), and (e) and adding Subsection
26 (a-1) to read as follows:

27 (a) In this section, "e-cigarette" has the meaning assigned

1 by Section [161.081](#), Health and Safety Code.

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

9 (c) All conveyances and public places set out in Subsection
10 (a-1) [~~(a) of Section 48.01~~] shall be equipped with facilities for
11 extinguishment of smoking materials and it shall be a defense to
12 prosecution under this section if the conveyance or public place
13 within which the offense takes place is not so equipped.

14 (d) It is an exception to the application of Subsection
15 (a-1) [~~(a)~~] if the person is in possession of the burning tobacco
16 product, [~~or~~] smokes tobacco, or operates the e-cigarette
17 exclusively within an area designated for smoking tobacco or
18 operating an e-cigarette or as a participant in an authorized
19 theatrical performance.

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

24 SECTION 40. Sections [161.082\(a\)](#) and [161.252\(a\)](#), Health and
25 Safety Code, as amended by this Act, and Section [48.01](#), Penal Code,
26 as amended by this Act, apply only to an offense committed on or
27 after October 1, 2015. An offense committed before that date is

C.S.H.B. No. 170

1 governed by the law in effect on the date the offense was committed,
2 and the former law is continued in effect for that purpose. For
3 purposes of this section, an offense was committed before October
4 1, 2015, if any element of the offense occurred before that date.

5 SECTION 41. (a) The comptroller shall develop the sign
6 described by Section [161.084](#), Health and Safety Code, as amended by
7 this Act, and make the sign available to the public not later than
8 September 15, 2015.

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

10 SECTION 42. Except as otherwise provided by this Act, this
11 Act takes effect October 1, 2015.