

By: Uresti

S.B. No. 183

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the distribution, possession, purchase, consumption,
3 and receipt of cigarettes, e-cigarettes, and tobacco products;
4 providing penalties.

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

6 SECTION 1. Section 161.081, Health and Safety Code, is
7 amended by adding Subdivision (1-b) to read as follows:

8 (1-b) "Minor" means a person under 21 years of age.

9 SECTION 2. The heading to Section 161.082, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
12 PRODUCTS TO PERSONS YOUNGER THAN 21 [~~18~~] YEARS OF AGE PROHIBITED;
13 PROOF OF AGE REQUIRED.

14 SECTION 3. Sections 161.082(a) and (e), Health and Safety
15 Code, are amended to read as follows:

16 (a) A person commits an offense if the person, with criminal
17 negligence:

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

21 (2) sells, gives, or causes to be sold or given a
22 cigarette, e-cigarette, or tobacco product to another person who
23 intends to deliver it to someone who is younger than 21 [~~18~~] years
24 of age.

1 (e) A proof of identification satisfies the requirements of
2 Subsection (d) if it contains a physical description and photograph
3 consistent with the person's appearance, purports to establish that
4 the person is 21 [~~18~~] years of age or older, and was issued by a
5 governmental agency. The proof of identification may include a
6 driver's license issued by this state or another state, a passport,
7 or an identification card issued by a state or the federal
8 government.

9 SECTION 4. Section [161.084\(b\)](#), Health and Safety Code, is
10 amended to read as follows:

11 (b) The sign must include the statement:

12 PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO
13 PRODUCTS BY A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW.
14 SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR
15 UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A
16 CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.
17 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY
18 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
19 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
20 PREMATURE OR WITH LOW BIRTH WEIGHT.

21 SECTION 5. Sections [161.085\(a\)](#) and (b), Health and Safety
22 Code, are amended to read as follows:

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

26 (1) prohibits the sale or distribution of cigarettes,
27 e-cigarettes, or tobacco products to any person who is younger than

1 21 [~~18~~] years of age as provided by Section 161.082 and that a
2 violation of that section is a Class C misdemeanor; and

3 (2) requires each person who sells cigarettes,
4 e-cigarettes, or tobacco products at retail or by vending machine
5 to post a warning notice as provided by Section 161.084, requires
6 each employee to ensure that the appropriate sign is always
7 properly displayed while that employee is exercising the employee's
8 duties, and provides that a violation of Section 161.084 is a Class
9 C misdemeanor.

10 (b) The notice required by this section [~~Subsection (a)~~]
11 must be provided within 72 hours of the date an individual begins to
12 engage in retail sales of cigarettes, e-cigarettes, or tobacco
13 products. The individual shall signify that the individual has
14 received the notice required by this section [~~Subsection (a)~~] by
15 signing a form stating that the law has been fully explained, that
16 the individual understands the law, and that the individual, as a
17 condition of employment, agrees to comply with the law.

18 SECTION 6. Section 161.086(b), Health and Safety Code, is
19 amended to read as follows:

20 (b) Subsection (a) does not apply to:

21 (1) a facility or business that is not open to persons
22 younger than 21 [~~18~~] years of age at any time;

23 (2) that part of a facility or business that is a
24 humidor or other enclosure designed to store cigars in a
25 climate-controlled environment; or

26 (3) a premises for which a person holds a package store
27 permit issued under the Alcoholic Beverage Code.

1 SECTION 7. Sections 161.087(a) and (b), Health and Safety
2 Code, are amended to read as follows:

3 (a) A person may not distribute to persons younger than 21
4 [~~18~~] years of age:

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

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

10 (b) Except as provided by Subsection (c), a person,
11 including a permit holder, may not accept or redeem, offer to accept
12 or redeem, or hire a person to accept or redeem a coupon or other
13 item that the recipient may use to receive a free or discounted
14 cigarette, e-cigarette, or tobacco product or a sample cigarette,
15 e-cigarette, or tobacco product if the recipient is younger than 21
16 [~~18~~] years of age. A coupon or other item that such a recipient may
17 use to receive a free or discounted cigarette, e-cigarette, or
18 tobacco product or a sample cigarette, e-cigarette, or tobacco
19 product may not be redeemable through mail or courier delivery.

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

22 (b) The comptroller may make block grants to counties and
23 municipalities to be used by local law enforcement agencies to
24 enforce this subchapter and Subchapter R in a manner that can
25 reasonably be expected to reduce the extent to which cigarettes,
26 e-cigarettes, and tobacco products are sold or distributed,
27 including by delivery sale, to persons who are younger than 21 [~~18~~]

1 years of age. At least annually, random unannounced inspections
2 shall be conducted at various locations where cigarettes,
3 e-cigarettes, and tobacco products are sold or distributed,
4 including by delivery sale, to ensure compliance with this
5 subchapter and Subchapter R. The comptroller shall rely, to the
6 fullest extent possible, on local law enforcement agencies to
7 enforce this subchapter and Subchapter R.

8 (d) The use of a person younger than 21 [~~18~~] years of age to
9 act as a minor decoy to test compliance with this subchapter and
10 Subchapter R shall be conducted in a fashion that promotes
11 fairness. A person may be enlisted by the comptroller or a local
12 law enforcement agency to act as a minor decoy only if the following
13 requirements are met:

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

17 (2) at the time of the inspection, order, or delivery,
18 the minor decoy is younger than 20 [~~17~~] years of age;

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

22 (4) the minor decoy carries either the minor's own
23 identification showing the minor's correct date of birth or carries
24 no identification, and a minor decoy who carries identification
25 presents it on request to any seller of or any person who delivers
26 cigarettes, e-cigarettes, or tobacco products; and

27 (5) the minor decoy answers truthfully any questions

1 about the minor's age at the time of the inspection, order, or
2 delivery.

3 SECTION 9. Section 161.251, Health and Safety Code, is
4 amended by adding Subdivision (1-b) to read as follows:

5 (1-b) "Minor" means a person under 21 years of age.

6 SECTION 10. Sections 161.252(a), (b), and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) An individual who is younger than 21 [~~18~~] years of age
9 commits an offense if the individual:

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

12 (2) falsely represents himself or herself to be 21
13 [~~18~~] years of age or older by displaying proof of age that is false,
14 fraudulent, or not actually proof of the individual's own age in
15 order to obtain possession of, purchase, or receive a cigarette,
16 e-cigarette, or tobacco product.

17 (b) It is an exception to the application of this section
18 that the individual younger than 21 [~~18~~] years of age possessed the
19 cigarette, e-cigarette, or tobacco product in the presence of:

20 (1) an adult parent, a guardian, or a spouse of the
21 individual; or

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

26 (c) It is an exception to the application of this section
27 that the individual younger than 21 [~~18~~] years of age is

1 participating in an inspection or test of compliance in accordance
2 with Section 161.088.

3 SECTION 11. Sections 161.452(b) and (c), Health and Safety
4 Code, are amended to read as follows:

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

7 (1) the age verification requirements prescribed by
8 Section 161.453;

9 (2) the disclosure requirements prescribed by Section
10 161.454;

11 (3) ~~[the shipping requirements prescribed by Section~~
12 ~~161.455,~~

13 ~~[(4)]~~ the registration and reporting requirements
14 prescribed by Section 161.456;

15 (4) ~~[(5)]~~ the tax collection requirements prescribed
16 by Section 161.457; and

17 (5) ~~[(6)]~~ each law of this state that generally
18 applies to sales of cigarettes that occur entirely within this
19 state, including a law:

20 (A) imposing a tax; or

21 (B) prescribing a permitting or tax-stamping
22 requirement.

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

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

27 (2) the disclosure requirements prescribed by Section

1 161.454;

2 (3) [~~the shipping requirements prescribed by Section~~
3 ~~161.455,~~

4 [~~4~~] the registration and reporting requirements
5 prescribed by Section 161.456; and

6 (4) [~~5~~] each law of this state that generally
7 applies to sales of e-cigarettes that occur entirely within this
8 state.

9 SECTION 12. Sections 161.453(a) and (c), Health and Safety
10 Code, are amended to read as follows:

11 (a) A person may not mail or ship cigarettes in connection
12 with a delivery sale order unless before mailing or shipping the
13 cigarettes the person accepting the delivery sale order first:

14 (1) obtains from the prospective customer a
15 certification that includes:

16 (A) reliable confirmation that the purchaser is
17 at least 21 [~~18~~] years of age; and

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

20 (i) certifying the prospective purchaser's
21 address and date of birth;

22 (ii) confirming that the prospective
23 purchaser understands that signing another person's name to the
24 certification is illegal, that sales of cigarettes to an individual
25 under the age prescribed by Section 161.082 are illegal under state
26 law, and that the purchase of cigarettes by an individual under that
27 age is illegal under state law; and

1 (iii) confirming that the prospective
2 purchaser wants to receive mailings from a tobacco company;

3 (2) makes a good faith effort to verify the
4 information contained in the certification provided by the
5 prospective purchaser under Subdivision (1) against a commercially
6 available database or obtains a photocopy or other image of a
7 government-issued identification bearing a photograph of the
8 prospective purchaser and stating the date of birth or age of the
9 prospective purchaser;

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

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

16 (c) A person may not mail or ship e-cigarettes in connection
17 with a delivery sale order unless before accepting a delivery sale
18 order the person verifies that the prospective purchaser is at
19 least 21 [~~18~~] years of age through a commercially available
20 database or aggregate of databases that is regularly used for the
21 purpose of age and identity verification. After the order is
22 accepted, the person must use a method of mailing or shipping that
23 requires an adult signature.

24 SECTION 13. Section 161.455, Health and Safety Code, is
25 repealed.

26 SECTION 14. (a) The changes in law made by this Act to
27 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply

1 only to an offense committed on or after the effective date of this
2 Act. For purposes of this section, an offense is committed before
3 the effective date of this Act if any element of the offense occurs
4 before that date.

5 (b) An offense committed before the effective date of this
6 Act is covered by the law in effect when the offense was committed,
7 and the former law is continued in effect for that purpose.

8 SECTION 15. This Act takes effect September 1, 2017.