

By: Uresti, et al.

S.B. No. 448

A BILL TO BE ENTITLED

AN ACT

relating to the distribution, possession, purchase, consumption,
and receipt of tobacco products; providing penalties.

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

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

(1-a) "Minor" means a person under 19 years of age.

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

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 19 [~~18~~] YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

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

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

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

(2) sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 19 [~~18~~] years of age.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph

1 consistent with the person's appearance, purports to establish that
2 the person is 19 [~~18~~] years of age or older, and was issued by a
3 governmental agency. The proof of identification may include a
4 driver's license issued by this state or another state, a passport,
5 or an identification card issued by a state or the federal
6 government.

7 SECTION 4. Subsection (b), Section 161.084, Health and
8 Safety Code, is amended to read as follows:

9 (b) The sign must include the statement:

10 PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A
11 MINOR UNDER 19 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR
12 PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 19 [~~18~~] YEARS OF AGE
13 IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR,
14 INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE
15 REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert
16 toll-free telephone number).

17 SECTION 5. Subsections (a) and (b), Section 161.085, Health
18 and Safety Code, are amended to read as follows:

19 (a) Each retailer shall notify each individual employed by
20 that retailer who is to be engaged in retail sales of cigarettes or
21 tobacco products that state law:

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

26 (2) requires each person who sells cigarettes or
27 tobacco products at retail or by vending machine to post a warning

1 notice as provided by Section 161.084, requires each employee to
2 ensure that the appropriate sign is always properly displayed while
3 that employee is exercising the employee's duties, and provides
4 that a violation of Section 161.084 is a Class C misdemeanor.

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

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

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

16 (1) a facility or business that is not open to persons
17 younger than 19 [~~18~~] years of age at any time;

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

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

23 SECTION 7. Subsections (a) and (b), Section 161.087, Health
24 and Safety Code, are amended to read as follows:

25 (a) A person may not distribute to persons younger than 19
26 [~~18~~] years of age:

27 (1) a free sample of a cigarette or tobacco product; or

1 (2) a coupon or other item that the recipient may use
2 to receive a free or discounted cigarette or tobacco product or a
3 sample cigarette or tobacco product.

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

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

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

26 (d) The use of a person younger than 19 [~~18~~] years of age to
27 act as a minor decoy to test compliance with this subchapter shall

1 be conducted in a fashion that promotes fairness. A person may be
2 enlisted by the comptroller or a local law enforcement agency to act
3 as a minor decoy only if the following requirements are met:

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

7 (2) at the time of the inspection, the minor decoy is
8 younger than 18 [~~17~~] years of age;

9 (3) the minor decoy has an appearance that would cause
10 a reasonably prudent seller of cigarettes or tobacco products to
11 request identification and proof of age;

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

17 (5) the minor decoy answers truthfully any questions
18 about the minor's age.

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

21 (1-a) "Minor" means a person under 19 years of age.

22 SECTION 10. Subsections (a), (b), and (c), Section 161.252,
23 Health and Safety Code, are amended to read as follows:

24 (a) An individual who is younger than 19 [~~18~~] years of age
25 commits an offense if the individual:

26 (1) possesses, purchases, consumes, or accepts a
27 cigarette or tobacco product; or

1 (2) falsely represents himself or herself to be 19
2 [~~18~~] years of age or older by displaying proof of age that is false,
3 fraudulent, or not actually proof of the individual's own age in
4 order to obtain possession of, purchase, or receive a cigarette or
5 tobacco product.

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

9 (1) an adult parent, a guardian, or a spouse of the
10 individual; or

11 (2) an employer of the individual, if possession or
12 receipt of the tobacco product is required in the performance of the
13 employee's duties as an employee.

14 (c) It is an exception to the application of this section
15 that the individual younger than 19 [~~18~~] years of age is
16 participating in an inspection or test of compliance in accordance
17 with Section 161.088.

18 SECTION 11. Subsection (a), Section 161.453, Health and
19 Safety Code, is amended to read as follows:

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

23 (1) obtains from the prospective customer a
24 certification that includes:

25 (A) reliable confirmation that the purchaser is
26 at least 19 [~~18~~] years of age; and

27 (B) a statement signed by the prospective

1 purchaser in writing and under penalty of law:

2 (i) certifying the prospective purchaser's
3 address and date of birth;

4 (ii) confirming that the prospective
5 purchaser understands that signing another person's name to the
6 certification is illegal, that sales of cigarettes to an individual
7 under the age prescribed by Section 161.082 are illegal under state
8 law, and that the purchase of cigarettes by an individual under that
9 age is illegal under state law; and

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

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

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

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

25 SECTION 12. Subsection (a), Section 161.455, Health and
26 Safety Code, is amended to read as follows:

27 (a) A person who mails or ships cigarettes in connection

1 with a delivery sale order shall:

2 (1) include as part of the shipping documents a clear
3 and conspicuous statement:

4 "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS
5 UNDER 19 [~~18~~] YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL
6 APPLICABLE TAXES";

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

9 (A) the purchaser placing the delivery sale
10 order, or an adult who is at least 19 [~~18~~] years of age and who
11 resides at the purchaser's address, to sign to accept delivery of
12 the shipping container; and

13 (B) the person signing to accept delivery of the
14 shipping container to provide proof, in the form of a
15 government-issued identification bearing a photograph, that the
16 person is:

17 (i) the addressee or an adult who is at
18 least 19 [~~18~~] years of age and who resides at the purchaser's
19 address; and

20 (ii) at least 19 [~~18~~] years of age if the
21 person appears to be younger than 27 years of age; and

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

24 SECTION 13. (a) The change in law made by this Act applies
25 only to an offense committed on or after the effective date of this
26 Act. For purposes of this section, an offense is committed before
27 the effective date of this Act if any element of the offense occurs

1 before that date.

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

5 SECTION 14. This Act takes effect September 1, 2007.