

By: Uresti

S.B. No. 448

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the distribution, possession, purchase, consumption,
3 and receipt of tobacco products.

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

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

7 (1-a) "Minor" means a person under 19 years of age.

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

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

13 SECTION 3. Section 161.082, Health and Safety Code, is
14 amended by amending Subsections (a) and (e) and adding Subsections
15 (f) and (g) 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 or tobacco product to someone who is younger than 19 [~~18~~]
20 years of age; or

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

24 (e) A proof of identification satisfies the requirements of

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

8 (f) It is an exception to the application of this section
9 that the person to whom the cigarette or tobacco product is sold or
10 given, or the person to whom the cigarette or tobacco product is
11 intended to be delivered as described by Subsection (a)(2), is 18
12 years of age or older on September 1, 2007. This subsection expires
13 September 1, 2008.

14 (g) Notwithstanding the minimum age established by
15 Subsection (a-1), a proof of identification satisfies the
16 requirements of Subsection (d) if it contains a physical
17 description and photograph consistent with the person's
18 appearance, purports to establish that the person was 18 years of
19 age or older on September 1, 2007, and was issued by a governmental
20 agency. The proof of identification may include a driver's license
21 issued by this state or another state, a passport, or an
22 identification card issued by a state or the federal government.
23 This subsection expires September 1, 2008.

24 SECTION 4. Section 161.084, Health and Safety Code, is
25 amended by amending Subsection (b) and adding Subsections (b-1) and
26 (b-2) to read as follows:

27 (b) The sign must include the statement:

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

8 (b-1) The sign may also include the statement:

9 A PERSON WHO IS AT LEAST 18 YEARS OF AGE ON SEPTEMBER 1, 2007,
10 MAY PURCHASE TOBACCO PRODUCTS UNDER LAW.

11 (b-2) Subsection (b-1) and this subsection expire September
12 1, 2008.

13 SECTION 5. Section 161.085, Health and Safety Code, is
14 amended by amending Subsections (a) and (b) and adding Subsection
15 (a-1) 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 or
18 tobacco products that state law:

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

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

1 that a violation of Section 161.084 is a Class C misdemeanor.

2 (a-1) A retailer shall notify each individual employed by
3 the retailer of the exception provided by Section 161.082(f) for a
4 person who is 18 years of age or older on September 1, 2007. This
5 subsection expires September 1, 2008.

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

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

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

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

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

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

24 SECTION 7. Section 161.087, Health and Safety Code, is
25 amended by amending Subsections (a) and (b) and adding Subsection
26 (e) to read as follows:

27 (a) A person may not distribute to persons younger than 19

1 ~~18~~ years of age:

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

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

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

15 (e) It is an exception to the application of this section
16 that the person to whom the free sample of the cigarette or tobacco
17 product or the coupon or item is distributed, or the recipient from
18 whom a coupon or other item is accepted or for whom a coupon or other
19 item is redeemed, is 18 years of age or older on September 1, 2007.
20 This subsection expires September 1, 2008.

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

23 (b) The comptroller may make block grants to counties and
24 municipalities to be used by local law enforcement agencies to
25 enforce this subchapter in a manner that can reasonably be expected
26 to reduce the extent to which cigarettes and tobacco products are
27 sold or distributed to persons who are younger than 19 ~~18~~ years of

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

7 (d) The use of a person younger than 19 [~~18~~] years of age to
8 act as a minor decoy to test compliance with this subchapter shall
9 be conducted in a fashion that promotes fairness. A person may be
10 enlisted by the comptroller or a local law enforcement agency to act
11 as a minor decoy only if the following requirements are met:

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

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

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

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

25 (5) the minor decoy answers truthfully any questions
26 about the minor's age.

27 SECTION 9. Section 161.251, Health and Safety Code, is

1 amended by adding Subdivision (1-a) to read as follows:

2 (1-a) "Minor" means a person under 19 years of age.

3 SECTION 10. Section 161.252, Health and Safety Code, is
4 amended by amending Subsections (a), (b), and (c) and adding
5 Subsection (c-1) to read as follows:

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

8 (1) possesses, purchases, consumes, or accepts a
9 cigarette or tobacco product; or

10 (2) falsely represents himself or herself to be 19
11 [~~18~~] years of age or older by displaying proof of age that is false,
12 fraudulent, or not actually proof of the individual's own age in
13 order to obtain possession of, purchase, or receive a cigarette or
14 tobacco product.

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

18 (1) an adult parent, a guardian, or a spouse of the
19 individual; or

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

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

27 (c-1) It is an exception to the application of this section

1 that the individual who possesses, purchases, consumes, or accepts
2 a cigarette or tobacco product is 18 years of age or older on
3 September 1, 2007. This subsection expires September 1, 2008.

4 SECTION 11. Section 161.453, Health and Safety Code, is
5 amended by amending Subsection (a) and adding Subsection (c) to
6 read as follows:

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

10 (1) obtains from the prospective customer a
11 certification that includes:

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

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

16 (i) certifying the prospective purchaser's
17 address and date of birth;

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

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

26 (2) makes a good faith effort to verify the
27 information contained in the certification provided by the

1 prospective purchaser under Subdivision (1) against a commercially
2 available database or obtains a photocopy or other image of a
3 government-issued identification bearing a photograph of the
4 prospective purchaser and stating the date of birth or age of the
5 prospective purchaser;

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

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

12 (c) A person may satisfy the requirement of Subsection
13 (a)(1)(A) by obtaining from the prospective customer a
14 certification that includes reliable confirmation that the
15 purchaser is 18 years of age or older on September 1, 2007. This
16 subsection expires September 1, 2008.

17 SECTION 12. Section 161.455, Health and Safety Code, is
18 amended by amending Subsection (a) and adding Subsections (a-1) and
19 (a-2) to read as follows:

20 (a) A person who mails or ships cigarettes in connection
21 with a delivery sale order shall:

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

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

27 (2) use a method of mailing or shipping that obligates

1 the delivery service to require:

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

6 (B) the person signing to accept delivery of the
7 shipping container to provide proof, in the form of a
8 government-issued identification bearing a photograph, that the
9 person is:

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

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

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

17 (a-1) Notwithstanding Subsection (a), a person who mails or
18 ships cigarettes in connection with a delivery sale order shall:

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

21 "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO CERTAIN MINORS
22 AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

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

25 (A) the purchaser placing the delivery sale
26 order, or an adult who is at least 19 years of age or who is at least
27 18 years of age on September 1, 2007, and who resides at the

1 purchaser's address, to sign to accept delivery of the shipping
2 container; and

3 (B) the person signing to accept delivery of the
4 shipping container to provide proof, in the form of a
5 government-issued identification bearing a photograph, that the
6 person is:

7 (i) the addressee or an adult who is at
8 least 19 years of age or who is at least 18 years of age on September
9 1, 2007, and who resides at the purchaser's address; and

10 (ii) at least 19 years of age or is at least
11 18 years of age on September 1, 2007, if the person appears to be
12 younger than 27 years of age; and

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

15 (a-2) Subsection (a-1) and this subsection expire September
16 1, 2008.

17 SECTION 13. (a) The change in law made by this Act applies
18 only to an offense committed on or after the effective date of this
19 Act. For purposes of this section, an offense is committed before
20 the effective date of this Act if any element of the offense occurs
21 before that date.

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

25 SECTION 14. (a) The expiration of Sections 161.082(f) and
26 (g), 161.084(b-1), 161.085(a-1), 161.087(e), 161.252(c-1),
27 161.453(c), and 161.455(a-1), Health and Safety Code, as added by

1 this Act, does not apply to an offense committed before the date of
2 the expiration. For purposes of this section, an offense is
3 committed before the date of the expiration if any element of the
4 offense occurs before that date.

5 (b) An offense committed before the date of the expiration
6 is covered by the law as it existed when the offense was committed,
7 and that law is continued in effect for that purpose.

8 SECTION 15. This Act takes effect September 1, 2007.