

1-1 By: Uresti, et al. S.B. No. 448  
1-2 (In the Senate - Filed February 5, 2007; February 21, 2007,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; April 16, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;  
1-6 April 16, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 448 By: Uresti

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the distribution, possession, purchase, consumption,  
1-11 and receipt of tobacco products; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 161.081, Health and Safety Code, is  
1-14 amended by adding Subdivision (1-a) to read as follows:

1-15 (1-a) "Minor" means a person under 19 years of age.

1-16 SECTION 2. The heading to Section 161.082, Health and  
1-17 Safety Code, is amended to read as follows:

1-18 Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO  
1-19 PERSONS YOUNGER THAN 19 [~~18~~] YEARS OF AGE PROHIBITED; PROOF OF AGE  
1-20 REQUIRED.

1-21 SECTION 3. Subsections (a) and (e), Section 161.082, Health  
1-22 and Safety Code, are amended to read as follows:

1-23 (a) A person commits an offense if the person, with criminal  
1-24 negligence:

1-25 (1) sells, gives, or causes to be sold or given a  
1-26 cigarette or tobacco product to someone who is younger than 19 [~~18~~]  
1-27 years of age; or

1-28 (2) sells, gives, or causes to be sold or given a  
1-29 cigarette or tobacco product to another person who intends to  
1-30 deliver it to someone who is younger than 19 [~~18~~] years of age.

1-31 (e) A proof of identification satisfies the requirements of  
1-32 Subsection (d) if it contains a physical description and photograph  
1-33 consistent with the person's appearance, purports to establish that  
1-34 the person is 19 [~~18~~] years of age or older, and was issued by a  
1-35 governmental agency. The proof of identification may include a  
1-36 driver's license issued by this state or another state, a passport,  
1-37 or an identification card issued by a state or the federal  
1-38 government.

1-39 SECTION 4. Subsection (b), Section 161.084, Health and  
1-40 Safety Code, is amended to read as follows:

1-41 (b) The sign must include the statement:

1-42 PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A  
1-43 MINOR UNDER 19 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR  
1-44 PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 19 [~~18~~] YEARS OF AGE  
1-45 IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR,  
1-46 INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE  
1-47 REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert  
1-48 toll-free telephone number).

1-49 SECTION 5. Subsections (a) and (b), Section 161.085, Health  
1-50 and Safety Code, are amended to read as follows:

1-51 (a) Each retailer shall notify each individual employed by  
1-52 that retailer who is to be engaged in retail sales of cigarettes or  
1-53 tobacco products that state law:

1-54 (1) prohibits the sale or distribution of cigarettes  
1-55 or tobacco products to any person who is younger than 19 [~~18~~] years  
1-56 of age as provided by Section 161.082 and that a violation of that  
1-57 section is a Class C misdemeanor; and

1-58 (2) requires each person who sells cigarettes or  
1-59 tobacco products at retail or by vending machine to post a warning  
1-60 notice as provided by Section 161.084, requires each employee to  
1-61 ensure that the appropriate sign is always properly displayed while  
1-62 that employee is exercising the employee's duties, and provides  
1-63 that a violation of Section 161.084 is a Class C misdemeanor.

2-1 (b) The notice required by this section [~~Subsection (a)~~]  
 2-2 must be provided within 72 hours of the date an individual begins to  
 2-3 engage in retail sales of tobacco products. The individual shall  
 2-4 signify that the individual has received the notice required by  
 2-5 this section [~~Subsection (a)~~] by signing a form stating that the law  
 2-6 has been fully explained, that the individual understands the law,  
 2-7 and that the individual, as a condition of employment, agrees to  
 2-8 comply with the law.

2-9 SECTION 6. Subsection (b), Section 161.086, Health and  
 2-10 Safety Code, is amended to read as follows:

2-11 (b) Subsection (a) does not apply to:

2-12 (1) a facility or business that is not open to persons  
 2-13 younger than 19 [~~18~~] years of age at any time;

2-14 (2) that part of a facility or business that is a  
 2-15 humidor or other enclosure designed to store cigars in a  
 2-16 climate-controlled environment; or

2-17 (3) a premises for which a person holds a package store  
 2-18 permit issued under the Alcoholic Beverage Code.

2-19 SECTION 7. Subsections (a) and (b), Section 161.087, Health  
 2-20 and Safety Code, are amended to read as follows:

2-21 (a) A person may not distribute to persons younger than 19  
 2-22 [~~18~~] years of age:

2-23 (1) a free sample of a cigarette or tobacco product; or

2-24 (2) a coupon or other item that the recipient may use  
 2-25 to receive a free or discounted cigarette or tobacco product or a  
 2-26 sample cigarette or tobacco product.

2-27 (b) Except as provided by Subsection (c), a permit holder  
 2-28 may not accept or redeem, offer to accept or redeem, or hire a  
 2-29 person to accept or redeem a coupon or other item that the recipient  
 2-30 may use to receive a free or discounted cigarette or tobacco product  
 2-31 or a sample cigarette or tobacco product if the recipient is younger  
 2-32 than 19 [~~18~~] years of age. A coupon or other item that such a  
 2-33 recipient may use to receive a free or discounted cigarette or  
 2-34 tobacco product or a sample cigarette or tobacco product may not be  
 2-35 redeemable through mail or courier delivery.

2-36 SECTION 8. Subsections (b) and (d), Section 161.088, Health  
 2-37 and Safety Code, are amended to read as follows:

2-38 (b) The comptroller may make block grants to counties and  
 2-39 municipalities to be used by local law enforcement agencies to  
 2-40 enforce this subchapter in a manner that can reasonably be expected  
 2-41 to reduce the extent to which cigarettes and tobacco products are  
 2-42 sold or distributed to persons who are younger than 19 [~~18~~] years of  
 2-43 age. At least annually, random unannounced inspections shall be  
 2-44 conducted at various locations where cigarettes and tobacco  
 2-45 products are sold or distributed to ensure compliance with this  
 2-46 subchapter. The comptroller shall rely, to the fullest extent  
 2-47 possible, on local law enforcement agencies to enforce this  
 2-48 subchapter.

2-49 (d) The use of a person younger than 19 [~~18~~] years of age to  
 2-50 act as a minor decoy to test compliance with this subchapter shall  
 2-51 be conducted in a fashion that promotes fairness. A person may be  
 2-52 enlisted by the comptroller or a local law enforcement agency to act  
 2-53 as a minor decoy only if the following requirements are met:

2-54 (1) written parental consent is obtained for the use  
 2-55 of a person younger than 18 years of age to act as a minor decoy to  
 2-56 test compliance with this subchapter;

2-57 (2) at the time of the inspection, the minor decoy is  
 2-58 younger than 18 [~~17~~] years of age;

2-59 (3) the minor decoy has an appearance that would cause  
 2-60 a reasonably prudent seller of cigarettes or tobacco products to  
 2-61 request identification and proof of age;

2-62 (4) the minor decoy carries either the minor's own  
 2-63 identification showing the minor's correct date of birth or carries  
 2-64 no identification, and a minor decoy who carries identification  
 2-65 presents it on request to any seller of cigarettes or tobacco  
 2-66 products; and

2-67 (5) the minor decoy answers truthfully any questions  
 2-68 about the minor's age.

2-69 SECTION 9. Section 161.251, Health and Safety Code, is

3-1 amended by adding Subdivision (1-a) to read as follows:

3-2 (1-a) "Minor" means a person under 19 years of age.  
3-3 SECTION 10. Subsections (a), (b), and (c), Section 161.252,  
3-4 Health and Safety Code, are amended to read as follows:

3-5 (a) An individual who is younger than 19 [~~18~~] years of age  
3-6 commits an offense if the individual:

3-7 (1) possesses, purchases, consumes, or accepts a  
3-8 cigarette or tobacco product; or

3-9 (2) falsely represents himself or herself to be 19  
3-10 [~~18~~] years of age or older by displaying proof of age that is false,  
3-11 fraudulent, or not actually proof of the individual's own age in  
3-12 order to obtain possession of, purchase, or receive a cigarette or  
3-13 tobacco product.

3-14 (b) It is an exception to the application of this section  
3-15 that the individual younger than 19 [~~18~~] years of age possessed the  
3-16 cigarette or tobacco product in the presence of:

3-17 (1) an adult parent, a guardian, or a spouse of the  
3-18 individual; or

3-19 (2) an employer of the individual, if possession or  
3-20 receipt of the tobacco product is required in the performance of the  
3-21 employee's duties as an employee.

3-22 (c) It is an exception to the application of this section  
3-23 that the individual younger than 19 [~~18~~] years of age is  
3-24 participating in an inspection or test of compliance in accordance  
3-25 with Section 161.088.

3-26 SECTION 11. Subsection (a), Section 161.453, Health and  
3-27 Safety Code, is amended to read as follows:

3-28 (a) A person may not mail or ship cigarettes in connection  
3-29 with a delivery sale order unless before mailing or shipping the  
3-30 cigarettes the person accepting the delivery sale order first:

3-31 (1) obtains from the prospective customer a  
3-32 certification that includes:

3-33 (A) reliable confirmation that the purchaser is  
3-34 at least 19 [~~18~~] years of age; and

3-35 (B) a statement signed by the prospective  
3-36 purchaser in writing and under penalty of law:

3-37 (i) certifying the prospective purchaser's  
3-38 address and date of birth;

3-39 (ii) confirming that the prospective  
3-40 purchaser understands that signing another person's name to the  
3-41 certification is illegal, that sales of cigarettes to an individual  
3-42 under the age prescribed by Section 161.082 are illegal under state  
3-43 law, and that the purchase of cigarettes by an individual under that  
3-44 age is illegal under state law; and

3-45 (iii) confirming that the prospective  
3-46 purchaser wants to receive mailings from a tobacco company;

3-47 (2) makes a good faith effort to verify the  
3-48 information contained in the certification provided by the  
3-49 prospective purchaser under Subdivision (1) against a commercially  
3-50 available database or obtains a photocopy or other image of a  
3-51 government-issued identification bearing a photograph of the  
3-52 prospective purchaser and stating the date of birth or age of the  
3-53 prospective purchaser;

3-54 (3) sends to the prospective purchaser, by e-mail or  
3-55 other means, a notice that complies with Section 161.454; and

3-56 (4) for an order made over the Internet or as a result  
3-57 of an advertisement, receives payment for the delivery sale from  
3-58 the prospective purchaser by a credit or debit card that has been  
3-59 issued in the purchaser's name or by check.

3-60 SECTION 12. Subsection (a), Section 161.455, Health and  
3-61 Safety Code, is amended to read as follows:

3-62 (a) A person who mails or ships cigarettes in connection  
3-63 with a delivery sale order shall:

3-64 (1) include as part of the shipping documents a clear  
3-65 and conspicuous statement:

3-66 "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS  
3-67 UNDER 19 [~~18~~] YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL  
3-68 APPLICABLE TAXES";

3-69 (2) use a method of mailing or shipping that obligates

4-1 the delivery service to require:

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

4-6 (B) the person signing to accept delivery of the  
4-7 shipping container to provide proof, in the form of a  
4-8 government-issued identification bearing a photograph, that the  
4-9 person is:

4-10 (i) the addressee or an adult who is at  
4-11 least 19 [~~18~~] years of age and who resides at the purchaser's  
4-12 address; and

4-13 (ii) at least 19 [~~18~~] years of age if the  
4-14 person appears to be younger than 27 years of age; and

4-15 (3) provide to the delivery service retained to make  
4-16 the delivery evidence of full compliance with Section 161.457.

4-17 SECTION 13. (a) The change in law made by this Act applies  
4-18 only to an offense committed on or after the effective date of this  
4-19 Act. For purposes of this section, an offense is committed before  
4-20 the effective date of this Act if any element of the offense occurs  
4-21 before that date.

4-22 (b) An offense committed before the effective date of this  
4-23 Act is covered by the law in effect when the offense was committed,  
4-24 and the former law is continued in effect for that purpose.

4-25 SECTION 14. This Act takes effect September 1, 2007.

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