

By: Menendez

H.B. No. 1234

Substitute the following for H.B. No. 1234:

By: Solomons

C.S.H.B. No. 1234

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the delivery sale of graffiti materials; providing
3 penalties.

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

5 SECTION 1. Title 6, Business & Commerce Code, is amended by
6 adding Chapter 204 to read as follows:

7 CHAPTER 204. DELIVERY SALES OF GRAFFITI-RELATED MATERIALS

8 Sec. 204.001. DEFINITIONS. In this chapter:

9 (1) "Delivery sale" means a sale of graffiti materials
10 to a consumer in this state in which the purchaser submits the order
11 for the sale by means of a telephonic or other method of voice
12 transmission, by using the mails or any other delivery service, or
13 through the Internet or another online service, or the graffiti
14 materials are delivered by use of the mails or another delivery
15 service. A sale of graffiti materials is a delivery sale regardless
16 of whether the seller is located within or without this state. A
17 sale of graffiti materials not for personal use to a person who is a
18 wholesale dealer or a retail dealer is not a delivery sale.

19 (2) "Delivery service" means a person, including the
20 United States Postal Service, that is engaged in the commercial
21 delivery of letters, packages, or other containers.

22 (3) "Graffiti materials" means the following, as
23 defined by Section 28.08, Penal Code:

24 (A) aerosol paint;

1 (B) an indelible marker; or

2 (C) an etching or engraving device.

3 (4) "Shipping container" means a container in which
4 graffiti materials are shipped in connection with a delivery sale.

5 (5) "Shipping documents" means a bill of lading, an
6 airbill, a United States Postal Service form, or any other document
7 used to evidence the undertaking by a delivery service to deliver
8 letters, packages, or other containers.

9 Sec. 204.002. REQUIREMENTS FOR DELIVERY SALES. (a) A
10 person may not make a delivery sale of graffiti materials to an
11 individual who is younger than 21 years of age.

12 (b) A person taking a delivery sale order shall comply with:

13 (1) the age verification requirements prescribed by
14 Section 204.003;

15 (2) the disclosure requirements prescribed by Section
16 204.004;

17 (3) the shipping requirements prescribed by Section
18 204.005;

19 (4) the registration and reporting requirements
20 prescribed by Section 204.006; and

21 (5) each law of this state that generally applies to
22 sales of graffiti materials that occur entirely within this state,
23 including a law imposing a tax.

24 Sec. 204.003. AGE VERIFICATION REQUIREMENTS. (a) A person
25 may not mail or ship graffiti materials in connection with a
26 delivery sale order unless before mailing or shipping the graffiti
27 materials the person accepting the delivery sale order first:

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

3 (A) reliable confirmation that the purchaser is
4 at least 21 years of age; and

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

7 (i) certifying the prospective purchaser's
8 address and date of birth; and

9 (ii) confirming that the prospective
10 purchaser understands that signing another person's name to the
11 certification is illegal, that delivery sales of graffiti materials
12 to an individual younger than the age of 21 are illegal under state
13 law, and that the purchase of graffiti materials by an individual
14 under that age is illegal under state law;

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

22 (3) sends to the prospective purchaser, by e-mail or
23 other means, a notice that complies with Section 204.004; and

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

1 (b) A person taking a delivery sale order may request that a
2 prospective purchaser provide the purchaser's e-mail address.

3 Sec. 204.004. DISCLOSURE REQUIREMENTS. The notice required
4 by Section 204.003(a)(3) must include a prominent and clearly
5 legible statement that:

6 (1) delivery sales of graffiti materials to
7 individuals who are younger than 21 years of age are illegal under
8 state law; and

9 (2) delivery sales of graffiti materials are
10 restricted to those individuals who provide verifiable proof of age
11 in accordance with Section 204.003.

12 Sec. 204.005. SHIPPING REQUIREMENTS. (a) A person who
13 mails or ships graffiti materials in connection with a delivery
14 sale order shall:

15 (1) include as part of the shipping documents a clear
16 and conspicuous statement: "GRAFFITI MATERIALS: TEXAS LAW
17 PROHIBITS SHIPPING TO INDIVIDUALS UNDER 21 YEARS OF AGE"; and

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

20 (A) the purchaser placing the delivery sale
21 order, or an adult who is at least 21 years of age and who resides at
22 the purchaser's address, to sign to accept delivery of the shipping
23 container; and

24 (B) the person signing to accept delivery of the
25 shipping container to provide proof, in the form of a
26 government-issued identification bearing a photograph that the
27 person is:

1 (i) the addressee or an adult who is at
2 least 21 years of age and who resides at the purchaser's address;
3 and

4 (ii) at least 21 years of age if the person
5 appears to be younger than 27 years of age.

6 (b) A person taking a delivery sale order who delivers the
7 graffiti materials without using a third-party delivery service
8 shall comply with the requirements prescribed by this chapter that
9 apply to a delivery service.

10 Sec. 204.006. REGISTRATION AND REPORTING REQUIREMENTS. (a)
11 A person may not make a delivery sale or ship graffiti materials in
12 connection with a delivery sale unless the person first files with
13 the comptroller a statement that includes:

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

15 (2) the address of the person's principal place of
16 business and any other place of business, and the person's
17 telephone number and e-mail address.

18 (b) Not later than the 10th day of each month, each person
19 who has made a delivery sale or shipped or delivered graffiti
20 materials in connection with a delivery sale during the previous
21 month shall file with the comptroller a memorandum or a copy of the
22 invoice that provides for each delivery sale:

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

25 (2) the brand or brands of the graffiti materials that
26 were sold; and

27 (3) the quantity of graffiti materials that were sold.

1 Sec. 204.007. GENERAL OFFENSES. (a) A person commits an
2 offense if the person violates a provision of this chapter for which
3 a criminal penalty is not otherwise provided.

4 (b) An offense under Subsection (a) is a misdemeanor
5 punishable by a fine not to exceed \$1,000.

6 (c) If it is shown on the trial of a person that the person
7 has previously been convicted of an offense under this section, the
8 offense is a Class B misdemeanor.

9 Sec. 204.008. KNOWING VIOLATION. (a) A person who
10 knowingly violates a provision of this chapter or who knowingly
11 submits a certification under Section 204.003(a)(1) in another
12 person's name commits an offense.

13 (b) An offense under this section is a felony of the third
14 degree.

15 Sec. 204.009. FORFEITURE. (a) Graffiti materials sold or
16 that a person attempted to sell in a delivery sale that does not
17 comply with this chapter are forfeited to the state and shall be
18 destroyed.

19 (b) A fixture, equipment, or other material or personal
20 property on the premises of a person who, with the intent to defraud
21 this state, fails to comply with this chapter is forfeited to the
22 state.

23 Sec. 204.010. ENFORCEMENT. The attorney general or the
24 attorney general's designee may bring an action in a court of this
25 state to prevent or restrain a violation of this chapter by any
26 person or by a person controlling such a person.

27 SECTION 2. Chapter 204, Business & Commerce Code, as added

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1 by this Act, applies only to a delivery sale order placed on or
2 after September 1, 2009.

3 SECTION 3. This Act takes effect September 1, 2009.