

By: Uresti, et al.

S.B. No. 1049

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). PREGNANT WOMEN SHOULD NOT SMOKE.
17 SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR
18 WITH LOW BIRTH WEIGHT.

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

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

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

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

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

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

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

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

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

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

25 SECTION 7. Subsections (a) and (b), Section 161.087, Health
26 and Safety Code, are amended 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 SECTION 8. Subsections (b) and (d), Section 161.088, Health
16 and Safety Code, are amended to read as follows:

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

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

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

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

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

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

19 (5) the minor decoy answers truthfully any questions
20 about the minor's age.

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

23 (1-a) "Minor" means a person under 19 years of age.

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

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

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

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

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

11 (1) an adult parent, a guardian, or a spouse of the
12 individual; or

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

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

20 SECTION 11. Subsection (b), Section 161.452, Health and
21 Safety Code, is amended to read as follows:

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

23 (1) the age verification requirements prescribed by
24 Section 161.453;

25 (2) the disclosure requirements prescribed by Section
26 161.454;

27 (3) ~~the shipping requirements prescribed by Section~~

1 ~~161.455,~~

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

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

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

9 (A) imposing a tax; or

10 (B) prescribing a permitting or tax-stamping
11 requirement.

12 SECTION 12. Subsection (a), Section 161.453, Health and
13 Safety Code, is amended to read as follows:

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

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

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

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

23 (i) certifying the prospective purchaser's
24 address and date of birth;

25 (ii) confirming that the prospective
26 purchaser understands that signing another person's name to the
27 certification is illegal, that sales of cigarettes to an individual

1 under the age prescribed by Section 161.082 are illegal under state
2 law, and that the purchase of cigarettes by an individual under that
3 age is illegal under state law; and

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

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

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

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

19 SECTION 13. Section 161.455, Health and Safety Code, is
20 repealed.

21 SECTION 14. (a) The change in law made by this Act applies
22 only to an offense committed on or after the effective date of this
23 Act. For purposes of this section, an offense is committed before
24 the effective date of this Act if any element of the offense occurs
25 before that date.

26 (b) An offense committed before the effective date of this
27 Act is covered by the law in effect when the offense was committed,

1 and the former law is continued in effect for that purpose.

2 SECTION 15. This Act takes effect September 1, 2009.