

1-1 By: Uresti S.B. No. 1049
1-2 (In the Senate - Filed February 20, 2009; March 13, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 1, 2009, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 1, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the distribution, possession, purchase, consumption,
1-9 and receipt of tobacco products; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 161.081, Health and Safety Code, is
1-12 amended by adding Subdivision (1-a) to read as follows:

1-13 (1-a) "Minor" means a person under 19 years of age.

1-14 SECTION 2. The heading to Section 161.082, Health and
1-15 Safety Code, is amended to read as follows:

1-16 Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO
1-17 PERSONS YOUNGER THAN 19 [~~18~~] YEARS OF AGE PROHIBITED; PROOF OF AGE
1-18 REQUIRED.

1-19 SECTION 3. Subsections (a) and (e), Section 161.082, Health
1-20 and Safety Code, are amended to read as follows:

1-21 (a) A person commits an offense if the person, with criminal
1-22 negligence:

1-23 (1) sells, gives, or causes to be sold or given a
1-24 cigarette or tobacco product to someone who is younger than 19 [~~18~~]
1-25 years of age; or

1-26 (2) sells, gives, or causes to be sold or given a
1-27 cigarette or tobacco product to another person who intends to
1-28 deliver it to someone who is younger than 19 [~~18~~] years of age.

1-29 (e) A proof of identification satisfies the requirements of
1-30 Subsection (d) if it contains a physical description and photograph
1-31 consistent with the person's appearance, purports to establish that
1-32 the person is 19 [~~18~~] years of age or older, and was issued by a
1-33 governmental agency. The proof of identification may include a
1-34 driver's license issued by this state or another state, a passport,
1-35 or an identification card issued by a state or the federal
1-36 government.

1-37 SECTION 4. Subsection (b), Section 161.084, Health and
1-38 Safety Code, is amended to read as follows:

1-39 (b) The sign must include the statement:

1-40 PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A
1-41 MINOR UNDER 19 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR
1-42 PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 19 [~~18~~] YEARS OF AGE
1-43 IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR,
1-44 INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE
1-45 REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert
1-46 toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE.
1-47 SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR
1-48 WITH LOW BIRTH WEIGHT.

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.

1-64 (b) The notice required by this section [~~Subsection (a)~~]

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

2-8 SECTION 6. Subsection (b), Section 161.086, Health and
 2-9 Safety Code, is amended to read as follows:

2-10 (b) Subsection (a) does not apply to:

2-11 (1) a facility or business that is not open to persons
 2-12 younger than 19 [~~18~~] years of age at any time;

2-13 (2) that part of a facility or business that is a
 2-14 humidor or other enclosure designed to store cigars in a
 2-15 climate-controlled environment; or

2-16 (3) a premises for which a person holds a package store
 2-17 permit issued under the Alcoholic Beverage Code.

2-18 SECTION 7. Subsections (a) and (b), Section 161.087, Health
 2-19 and Safety Code, are amended to read as follows:

2-20 (a) A person may not distribute to persons younger than 19
 2-21 [~~18~~] years of age:

2-22 (1) a free sample of a cigarette or tobacco product; or

2-23 (2) a coupon or other item that the recipient may use
 2-24 to receive a free or discounted cigarette or tobacco product or a
 2-25 sample cigarette or tobacco product.

2-26 (b) Except as provided by Subsection (c), a permit holder
 2-27 may not accept or redeem, offer to accept or redeem, or hire a
 2-28 person to accept or redeem a coupon or other item that the recipient
 2-29 may use to receive a free or discounted cigarette or tobacco product
 2-30 or a sample cigarette or tobacco product if the recipient is younger
 2-31 than 19 [~~18~~] years of age. A coupon or other item that such a
 2-32 recipient may use to receive a free or discounted cigarette or
 2-33 tobacco product or a sample cigarette or tobacco product may not be
 2-34 redeemable through mail or courier delivery.

2-35 SECTION 8. Subsections (b) and (d), Section 161.088, Health
 2-36 and Safety Code, are amended to read as follows:

2-37 (b) The comptroller may make block grants to counties and
 2-38 municipalities to be used by local law enforcement agencies to
 2-39 enforce this subchapter in a manner that can reasonably be expected
 2-40 to reduce the extent to which cigarettes and tobacco products are
 2-41 sold or distributed to persons who are younger than 19 [~~18~~] years of
 2-42 age. At least annually, random unannounced inspections shall be
 2-43 conducted at various locations where cigarettes and tobacco
 2-44 products are sold or distributed to ensure compliance with this
 2-45 subchapter. The comptroller shall rely, to the fullest extent
 2-46 possible, on local law enforcement agencies to enforce this
 2-47 subchapter.

2-48 (d) The use of a person younger than 19 [~~18~~] years of age to
 2-49 act as a minor decoy to test compliance with this subchapter shall
 2-50 be conducted in a fashion that promotes fairness. A person may be
 2-51 enlisted by the comptroller or a local law enforcement agency to act
 2-52 as a minor decoy only if the following requirements are met:

2-53 (1) written parental consent is obtained for the use
 2-54 of a person younger than 18 years of age to act as a minor decoy to
 2-55 test compliance with this subchapter;

2-56 (2) at the time of the inspection, the minor decoy is
 2-57 younger than 18 [~~17~~] years of age;

2-58 (3) the minor decoy has an appearance that would cause
 2-59 a reasonably prudent seller of cigarettes or tobacco products to
 2-60 request identification and proof of age;

2-61 (4) the minor decoy carries either the minor's own
 2-62 identification showing the minor's correct date of birth or carries
 2-63 no identification, and a minor decoy who carries identification
 2-64 presents it on request to any seller of cigarettes or tobacco
 2-65 products; and

2-66 (5) the minor decoy answers truthfully any questions
 2-67 about the minor's age.

2-68 SECTION 9. Section 161.251, Health and Safety Code, is
 2-69 amended by adding Subdivision (1-a) to read as follows:

3-1 (1-a) "Minor" means a person under 19 years of age.

3-2 SECTION 10. Subsections (a), (b), and (c), Section 161.252,
3-3 Health and Safety Code, are amended to read as follows:

3-4 (a) An individual who is younger than 19 [18] years of age
3-5 commits an offense if the individual:

3-6 (1) possesses, purchases, consumes, or accepts a
3-7 cigarette or tobacco product; or

3-8 (2) falsely represents himself or herself to be 19
3-9 [18] years of age or older by displaying proof of age that is false,
3-10 fraudulent, or not actually proof of the individual's own age in
3-11 order to obtain possession of, purchase, or receive a cigarette or
3-12 tobacco product.

3-13 (b) It is an exception to the application of this section
3-14 that the individual younger than 19 [18] years of age possessed the
3-15 cigarette or tobacco product in the presence of:

3-16 (1) an adult parent, a guardian, or a spouse of the
3-17 individual; or

3-18 (2) an employer of the individual, if possession or
3-19 receipt of the tobacco product is required in the performance of the
3-20 employee's duties as an employee.

3-21 (c) It is an exception to the application of this section
3-22 that the individual younger than 19 [18] years of age is
3-23 participating in an inspection or test of compliance in accordance
3-24 with Section 161.088.

3-25 SECTION 11. Subsection (b), Section 161.452, Health and
3-26 Safety Code, is amended to read as follows:

3-27 (b) A person taking a delivery sale order shall comply with:

3-28 (1) the age verification requirements prescribed by
3-29 Section 161.453;

3-30 (2) the disclosure requirements prescribed by Section
3-31 161.454;

3-32 (3) ~~the shipping requirements prescribed by Section~~
3-33 ~~161.455;~~

3-34 ~~[(4)]~~ the registration and reporting requirements
3-35 prescribed by Section 161.456;

3-36 (4) ~~[(5)]~~ the tax collection requirements prescribed
3-37 by Section 161.457; and

3-38 (5) ~~[(6)]~~ each law of this state that generally
3-39 applies to sales of cigarettes that occur entirely within this
3-40 state, including a law:

3-41 (A) imposing a tax; or

3-42 (B) prescribing a permitting or tax-stamping
3-43 requirement.

3-44 SECTION 12. Subsection (a), Section 161.453, Health and
3-45 Safety Code, is amended to read as follows:

3-46 (a) A person may not mail or ship cigarettes in connection
3-47 with a delivery sale order unless before mailing or shipping the
3-48 cigarettes the person accepting the delivery sale order first:

3-49 (1) obtains from the prospective customer a
3-50 certification that includes:

3-51 (A) reliable confirmation that the purchaser is
3-52 at least 19 [18] years of age; and

3-53 (B) a statement signed by the prospective
3-54 purchaser in writing and under penalty of law:

3-55 (i) certifying the prospective purchaser's
3-56 address and date of birth;

3-57 (ii) confirming that the prospective
3-58 purchaser understands that signing another person's name to the
3-59 certification is illegal, that sales of cigarettes to an individual
3-60 under the age prescribed by Section 161.082 are illegal under state
3-61 law, and that the purchase of cigarettes by an individual under that
3-62 age is illegal under state law; and

3-63 (iii) confirming that the prospective
3-64 purchaser wants to receive mailings from a tobacco company;

3-65 (2) makes a good faith effort to verify the
3-66 information contained in the certification provided by the
3-67 prospective purchaser under Subdivision (1) against a commercially
3-68 available database or obtains a photocopy or other image of a
3-69 government-issued identification bearing a photograph of the

4-1 prospective purchaser and stating the date of birth or age of the
4-2 prospective purchaser;

4-3 (3) sends to the prospective purchaser, by e-mail or
4-4 other means, a notice that complies with Section 161.454; and

4-5 (4) for an order made over the Internet or as a result
4-6 of an advertisement, receives payment for the delivery sale from
4-7 the prospective purchaser by a credit or debit card that has been
4-8 issued in the purchaser's name or by check.

4-9 SECTION 13. Section 161.455, Health and Safety Code, is
4-10 repealed.

4-11 SECTION 14. (a) The change in law made by this Act applies
4-12 only to an offense committed on or after the effective date of this
4-13 Act. For purposes of this section, an offense is committed before
4-14 the effective date of this Act if any element of the offense occurs
4-15 before that date.

4-16 (b) An offense committed before the effective date of this
4-17 Act is covered by the law in effect when the offense was committed,
4-18 and the former law is continued in effect for that purpose.

4-19 SECTION 15. This Act takes effect September 1, 2009.

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