

## **BILL ANALYSIS**

C.S.H.B. 170  
By: Alvarado  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerned parties note that there is insufficient regulation of e-cigarettes in Texas and that e-cigarettes are being sold to minors in Texas. The parties further note that many states have already prohibited the sale of e-cigarettes to minors and point to Centers for Disease Control and Prevention studies showing that an increasing number of minors, even minors who have never smoked a cigarette, are using e-cigarettes. The parties contend that the amounts of nicotine and other chemical substances that may be in an e-cigarette can vary among different products and can have negative effects on brain development from the prenatal period into adolescence. The goal of C.S.H.B. 170 is to address matters relating to the regulation of e-cigarettes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 170 amends the Health and Safety Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to include e-cigarettes among the products to which provisions regulating the sale and distribution of cigarettes and tobacco products apply, including provisions establishing prohibited conduct that constitutes an offense. The bill defines "e-cigarette" as an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device, regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description and includes a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device. The bill specifies that the term does not include a prescription medical device unrelated to the cessation of smoking.

C.S.H.B. 170 prohibits a person from selling, giving, or causing to be sold or given an e-cigarette to someone who is younger than 27 years of age unless the person to whom the e-cigarette was sold or given presents an apparently valid proof of identification. The bill changes the statutorily prescribed language of the warning sign containing information regarding the prohibited purchase of tobacco products by or sale or provision of tobacco products to a minor that is required to be posted by each person who sells such products to include references to the prohibited purchase of e-cigarettes by or sale or provision of e-cigarettes to a minor. Effective September 1, 2015, the bill requires the comptroller of public accounts to develop such a sign and make the sign available to the public not later than September 15, 2015.

C.S.H.B. 170 prohibits a person, including a permit holder, from accepting or redeeming, offering to accept or redeem, or hiring a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product if the recipient is younger than 18 years of age. The bill prohibits a person from selling or causing to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless the container satisfies federal child-resistant effectiveness standards or the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer. The bill specifies that if the federal government adopts standards for the packaging of such a liquid nicotine container and a person complies with those standards, that person is considered to be in compliance with the bill's provisions. The bill requires the Department of State Health Services (DSHS), not later than January 5th of each odd-numbered year, to report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in Texas. The bill sets out the requirements of the report and authorizes DSHS to include the report on e-cigarettes with a similar report for cigarettes or tobacco products required by law.

C.S.H.B. 170 includes e-cigarettes among the products to which provisions relating to the prohibited possession, purchase, consumption, or receipt of cigarettes or tobacco products by minors apply, including provisions establishing prohibited conduct that constitutes an offense. The bill includes the reduction of e-cigarette use by minors among the goals of DSHS's tobacco use public awareness campaign and as a required program component for a youth group to receive support through a related grant program.

C.S.H.B. 170 establishes that a person is considered to have complied with provisions relating to the disclosure of ingredients in cigarettes and tobacco products if the person complies with provisions of the federal Food, Drug, and Cosmetic Act regarding tobacco products and rules adopted under those federal provisions.

C.S.H.B. 170 includes e-cigarettes among the products to which provisions regulating the delivery sales of cigarettes apply, including provisions establishing prohibited conduct that constitutes an offense and provisions applicable to forfeiture of e-cigarettes. The bill includes the enforcement of such provisions as a purpose for which the comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies in a manner that can reasonably be expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold and distributed, including by delivery sale, to persons who are younger than 18 years of age. The bill requires a person taking a delivery sale order of e-cigarettes to comply with age verification, disclosure, shipping, and registration and reporting requirements and to comply with other state law that generally applies to sales of e-cigarettes that occur entirely within Texas. The bill prohibits a person from mailing or shipping e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 18 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. The bill requires the person, after the order is accepted, to use a method of mailing or shipping that requires an adult signature. The bill sets out the manner in which a retailer in Texas that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with the age verification requirements for delivery sale orders.

C.S.H.B. 170 requires a delivery sale of an e-cigarette to include a prominent and clearly legible statement that e-cigarette sales to individuals younger than 18 years of age are illegal under state law and that e-cigarette sales are restricted to individuals who provide verifiable proof of age. The bill requires a person who mails or ships e-cigarettes in connection with a delivery sale order to include as part of the shipping documents a clear and conspicuous specified statement regarding the prohibited sale of e-cigarettes to individuals younger than 18 years of age and the payment of required taxes. The bill exempts a person from the monthly requirement to file with the comptroller a memorandum or a copy of an invoice in connection with a delivery sale of

cigarettes or e-cigarettes if, in the two years preceding the date the report is due, the person has not violated provisions regarding the delivery sale of cigarettes and e-cigarettes and has not been reported to the comptroller as having violated provisions regarding the distribution of cigarettes, e-cigarettes, or tobacco products. The bill requires a person required to submit a memorandum or a copy of an invoice to submit such documentation to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller. The bill requires a person to maintain records of compliance with registration and reporting requirements for delivery sales until at least the fourth anniversary of the date the record was prepared.

C.S.H.B. 170 amends the Education Code to require the board of trustees of a school district to prohibit the use of e-cigarettes, among other products, at a school-related or school-sanctioned activity on or off school property and to prohibit students from possessing e-cigarettes, among other products, at such an activity. The bill requires a school district to indicate in the district's student handbook and on the district's website, if the district has a website, whether the school district has adopted and enforces policies and procedures that prescribe penalties for the use of e-cigarettes, among other products, by students and others on school campuses or at school-sponsored or school-related activities.

C.S.H.B. 170 amends the Penal Code to expand the conduct that constitutes the Class C misdemeanor offense involving possession of a burning tobacco product or smoking a tobacco product in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place to include operating an e-cigarette in those same places. The bill applies the exception to such an offense for a person engaging in prohibited conduct in an area designated for the conduct to the operation of an e-cigarette.

#### **EFFECTIVE DATE**

Except as otherwise provided, October 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 170 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

##### INTRODUCED

SECTION 1. The heading to Subchapter H, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS

SECTION 2. Section 161.081, Health and Safety Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (5-a) to read as follows:

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Subchapter H, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS

SECTION 2. Section 161.081, Health and Safety Code, is amended by adding Subdivision (1-a) and amending Subdivisions (3) and (4) to read as follows:

(1-a) "E-cigarette" means an electronic

cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

(A) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(B) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, vapor products, or tobacco products.

(4) "Retailer" means a person who engages in the practice of selling cigarettes, vapor products, or tobacco products to consumers and includes the owner of a coin-operated cigarette, vapor product, or tobacco product vending machine. The term includes a retailer as that term is defined [~~has the meaning assigned~~] by Section 154.001 or 155.001, Tax Code, as applicable.

(5-a) "Vapor product" means:

(A) an electronic cigarette or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device; or

(B) any substance used to fill or refill an electronic cigarette or other device described by Paragraph (A).

SECTION 3. The heading to Section 161.082, Health and Safety Code, is amended to read as follows:

Sec. 161.082. SALE OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

SECTION 4. Sections 161.082(a), (b), and

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products.

(4) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as that term is defined [~~has the meaning assigned~~] by Section 154.001 or 155.001, Tax Code, as applicable.

No equivalent provision.

SECTION 3. The heading to Section 161.082, Health and Safety Code, is amended to read as follows:

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

SECTION 4. Sections 161.082(a), (b), and

(d), 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, vapor product, or tobacco product to someone who is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, vapor product, or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, vapor products, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, vapor product, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

SECTION 5. Section 161.0825(e), Health and Safety Code, is amended to read as follows:

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, vapor products, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

SECTION 6. The heading to Section 161.083, Health and Safety Code, is amended to read as follows:

Sec. 161.083. SALE OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO

(d), 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, e-cigarette, or tobacco product to someone who is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

SECTION 5. Section 161.0825(e), Health and Safety Code, is amended to read as follows:

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

SECTION 6. The heading to Section 161.083, Health and Safety Code, is amended to read as follows:

Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO

PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

SECTION 7. Section 161.083, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) A person may not sell, give, or cause to be sold or given a vapor product to someone who is younger than 27 years of age unless the person to whom the vapor product was sold or given presents an apparently valid proof of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsections [Subsection] (a) and (a-1).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsections [Subsection] (a) and (a-1).

SECTION 8. Sections 161.084(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) Each person who sells cigarettes, vapor products, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, vapor products, or tobacco products may be purchased.

(b) The sign must include the statement:  
PURCHASING OR ATTEMPTING TO PURCHASE VAPOR PRODUCTS OR TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF VAPOR PRODUCTS OR TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

SECTION 7. Section 161.083, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) A person may not sell, give, or cause to be sold or given an e-cigarette to someone who is younger than 27 years of age unless the person to whom the e-cigarette was sold or given presents an apparently valid proof of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsections [Subsection] (a) and (a-1).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsections [Subsection] (a) and (a-1).

SECTION 8. Sections 161.084(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:  
PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, vapor products, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, vapor products, or tobacco products or wholesale dealers of cigarettes, vapor products, or tobacco products in this state for distribution to persons who sell cigarettes, vapor products, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

SECTION 9. Sections 161.085(a) and (b), Health and Safety Code, are amended to read as follows:

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

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

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

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of vapor or tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

SECTION 10. Section 161.086(a), Health and Safety Code, is amended to read as follows:

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

SECTION 9. Sections 161.085(a) and (b), Health and Safety Code, are amended to read as follows:

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

(1) prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 18 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

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

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail sales of e-cigarettes or tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

SECTION 10. Section 161.086(a), Health and Safety Code, is amended to read as follows:

- (a) Except as provided by Subsection (b), a retailer or other person may not:
- (1) offer cigarettes, vapor products, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, vapor products, or tobacco products; or
  - (2) install or maintain a vending machine containing cigarettes, vapor products, or tobacco products.

SECTION 11. The heading to Section 161.087, Health and Safety Code, is amended to read as follows:  
Sec. 161.087. DISTRIBUTION OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS.

- SECTION 12. Sections 161.087(a) and (b), Health and Safety Code, are amended to read as follows:
- (a) A person may not distribute to persons younger than 18 years of age:
- (1) a free sample of a cigarette, vapor product, or tobacco product; or
  - (2) a coupon or other item that the recipient may use to receive a free or discounted cigarette, vapor product, or tobacco product or a sample cigarette, vapor product, or tobacco product.
- (b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette, vapor product, or tobacco product or a sample cigarette, vapor product, or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette, vapor product, or tobacco product or a sample cigarette, vapor product, or tobacco product may not be redeemable through mail or courier delivery.

No equivalent provision.

- (a) Except as provided by Subsection (b), a retailer or other person may not:
- (1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or
  - (2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

SECTION 11. The heading to Section 161.087, Health and Safety Code, is amended to read as follows:  
Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS.

- SECTION 12. Sections 161.087(a) and (b), Health and Safety Code, are amended to read as follows:
- (a) A person may not distribute to persons younger than 18 years of age:
- (1) a free sample of a cigarette, e-cigarette, or tobacco product; or
  - (2) a coupon or other item that the recipient may use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.
- (b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

SECTION 13. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0875 to read as follows:  
Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS. (a) A person may not sell or cause to be sold a container

that contains liquid with nicotine and that is an accessory for an e-cigarette unless:  
(1) the container satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or  
(2) the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer.  
(b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section.

SECTION 13. Sections 161.088(b) and (d), Health and Safety Code, are amended to read as follows:

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

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

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

(2) at the time of the inspection, the minor decoy is younger than 17 years of age;

SECTION 14. Sections 161.088(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R in a manner that can reasonably be expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to persons who are younger than 18 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

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

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

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than

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

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

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

SECTION 14. Section 161.089, Health and Safety Code, is amended to read as follows:

Sec. 161.089. **PREEMPTION OF LOCAL LAW.** This subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes, vapor products, or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes, vapor products, or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

SECTION 15. Section 161.0901, Health and Safety Code, is amended to read as follows:

Sec. 161.0901. **DEPARTMENT REPORT [OF OFFICE OF SMOKING AND HEALTH].** (a) Not later than January 5th of each odd-numbered year the [~~Office of Smoking and Health of the~~] department shall report to the governor, lieutenant governor, and [the] speaker of the house of representatives on the status of smoking and the use of vapor products, tobacco, and tobacco products in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this

17 years of age;

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

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age at the time of the inspection, order, or delivery.

No equivalent provision.

SECTION 15. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0902 to read as follows:

Sec. 161.0902. E-CIGARETTE REPORT.

(a) Not later than January 5th of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this

subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;

(2) a baseline of statistics and analysis regarding illegal vapor product and tobacco sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) vapor product and tobacco controls and initiatives by the [~~Office of Smoking and Health of the~~] department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the [~~Office of Smoking and Health of the~~] department to decrease the use of vapor products, tobacco, and tobacco products;

(5) the educational programs of the [~~Office of Smoking and Health of the~~] department and the effectiveness of those programs; and

(6) the incidence of use of vapor products, tobacco, and tobacco products by regions in this state, including use of cigarettes, vapor products, and tobacco products by ethnicity.

No equivalent provision.

SECTION 16. The heading to Subchapter K, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, VAPOR PRODUCT, OR TOBACCO PRODUCT ADVERTISING; FEE

SECTION 17. Section 161.121, Health and Safety Code, is amended by adding Subdivision (6) to read as follows:

(6) "Vapor product" has the meaning assigned by Section 161.081.

SECTION 18. Sections 161.122(a) and (b), Health and Safety Code, are amended to read as follows:

(a) Except as provided by this section, a sign containing an advertisement for cigarettes, vapor products, or tobacco products may not be located closer than

subchapter and Subchapter R;

(2) a baseline of statistics and analysis regarding illegal e-cigarette sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the department to decrease the use of e-cigarettes;

(5) the educational programs of the department and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for cigarettes or tobacco products required by law.

No equivalent provision.

No equivalent provision.

No equivalent provision.

1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes, vapor products, or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

SECTION 19. Section 161.123(a), Health and Safety Code, is amended to read as follows:

(a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes, vapor products, and tobacco products in this state.

SECTION 20. Section 161.124(b), Health and Safety Code, is amended to read as follows:

(b) Money in the account may be appropriated only for administration and enforcement of this section, enforcement of law relating to cigarettes, vapor products, and tobacco products, and the education advertising campaign and grant program established under Subchapter O[, ~~Chapter 161~~].

SECTION 21. The heading to Subchapter N, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER N. VAPOR PRODUCT AND TOBACCO USE BY MINORS

SECTION 22. Section 161.251, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Vapor product" has the meaning assigned by Section 161.081.

SECTION 23. The heading to Section 161.252, Health and Safety Code, is amended to read as follows:

Sec. 161.252. POSSESSION, PURCHASE,

No equivalent provision.

No equivalent provision.

SECTION 16. The heading to Subchapter N, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

SECTION 17. Section 161.251, Health and Safety Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "E-cigarette" has the meaning assigned by Section 161.081.

SECTION 18. The heading to Section 161.252, Health and Safety Code, is amended to read as follows:

Sec. 161.252. POSSESSION, PURCHASE,

CONSUMPTION, OR RECEIPT OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS BY MINORS PROHIBITED.

SECTION 24. Sections 161.252(a) and (b), Health and Safety Code, are amended to read as follows:

(a) An individual who is younger than 18 years of age commits an offense if the individual:

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

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

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette, vapor product, or tobacco product in the presence of:

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

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

SECTION 25. The heading to Section 161.253, Health and Safety Code, is amended to read as follows:

Sec. 161.253. VAPOR PRODUCT AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE.

SECTION 26. Sections 161.253(a), (b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend a vapor product and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the vapor product and

CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED.

SECTION 19. Sections 161.252(a) and (b), Health and Safety Code, are amended to read as follows:

(a) An individual who is younger than 18 years of age commits an offense if the individual:

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

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

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of:

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

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

SECTION 20. The heading to Section 161.253, Health and Safety Code, is amended to read as follows:

Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE.

SECTION 21. Sections 161.253(a), (b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and [a] tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and

tobacco awareness program with the defendant.

(b) On request, a vapor product and tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to a vapor product and tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of vapor- and tobacco-related community service instead of attending the vapor product and tobacco awareness program.

(d) The vapor product and tobacco awareness program and the vapor- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the vapor product and tobacco awareness program or the vapor- and tobacco-related community service.

SECTION 27. Section 161.255(a), Health and Safety Code, is amended to read as follows:

(a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the vapor product and tobacco awareness program or vapor- and tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

SECTION 28. Section 161.256, Health and Safety Code, is amended to read as follows: Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

(1) impose a requirement that a defendant attend a vapor product and tobacco

tobacco awareness program with the defendant.

(b) On request, an e-cigarette and [a] tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and [a] tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.

(d) The e-cigarette and tobacco awareness program and the e-cigarette- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette- and tobacco-related community service.

SECTION 22. Section 161.255(a), Health and Safety Code, is amended to read as follows:

(a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the e-cigarette and tobacco awareness program or e-cigarette- and tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

SECTION 23. Section 161.256, Health and Safety Code, is amended to read as follows: Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

(1) impose a requirement that a defendant attend an e-cigarette and [a] tobacco

awareness program or perform vapor- and tobacco-related community service; or  
(2) order the suspension or denial of a driver's license or permit.

SECTION 29. The heading to Subchapter O, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER O. PREVENTION OF TOBACCO AND VAPOR PRODUCT USE BY MINORS

SECTION 30. The heading to Section 161.301, Health and Safety Code, is amended to read as follows:

Sec. 161.301. TOBACCO AND VAPOR PRODUCT USE PUBLIC AWARENESS CAMPAIGN.

SECTION 31. Section 161.301(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner shall develop and implement a public awareness campaign designed to reduce the [tobacco] use by minors in this state of tobacco and of vapor products as defined by Section 161.081. The campaign may use advertisements or similar media to provide educational information about tobacco and vapor product use.

SECTION 32. Section 161.302(a), Health and Safety Code, is amended to read as follows:

(a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of [tobacco] use by the group's members of tobacco and of vapor products as defined by Section 161.081.

SECTION 33. Section 161.351, Health and Safety Code, is amended by adding Subdivision (4) to read as follows:

(4) "Vapor product" has the meaning

awareness program or perform e-cigarette- and tobacco-related community service; or  
(2) order the suspension or denial of a driver's license or permit.

SECTION 24. The heading to Subchapter O, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

SECTION 25. The heading to Section 161.301, Health and Safety Code, is amended to read as follows:

Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS CAMPAIGN.

SECTION 26. Section 161.301(a), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(a) The department shall develop and implement a public awareness campaign designed to reduce the [tobacco] use by minors in this state of tobacco and e-cigarettes as defined by Section 161.081. The campaign may use advertisements or similar media to provide educational information about tobacco and e-cigarette use.

SECTION 27. Section 161.302(a), Health and Safety Code, is amended to read as follows:

(a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of [tobacco] use by the group's members of tobacco and e-cigarettes as defined by Section 161.081.

No equivalent provision.

assigned by Section 161.081.

SECTION 34. Sections 161.352(a) and (b), Health and Safety Code, are amended to read as follows:

(a) Each manufacturer shall file with the department an annual report for each cigarette, vapor product, or tobacco product distributed in this state, stating:

(1) the identity of each ingredient in the cigarette, vapor product, or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(A) tobacco;

(B) water; or

(C) a reconstituted tobacco sheet made wholly from tobacco; and

(2) a nicotine yield rating for the cigarette, vapor product, or tobacco product established under Section 161.353.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette, vapor product, or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.

No equivalent provision.

SECTION 35. Section 161.353, Health and Safety Code, is amended to read as follows:

Sec. 161.353. NICOTINE YIELD RATES.

(a) Each manufacturer shall assign a nicotine yield rating to each cigarette, vapor product, or tobacco product distributed in this state. The rating shall be assigned in accordance with standards adopted by the department.

(b) The department standards must be developed so that the nicotine yield rating reflects, as accurately as possible, nicotine intake for an average consumer of the cigarette, vapor product, or tobacco product.

No equivalent provision.

SECTION 36. Section 161.355(a), Health and Safety Code, is amended to read as follows:

(a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by

No equivalent provision.

injunction:

- (1) prohibit the sale or distribution in this state of a cigarette, vapor product, or tobacco product manufactured by the manufacturer; or
- (2) grant any other injunctive relief warranted by the facts.

No equivalent provision.

SECTION 37. The heading to Subchapter R, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND VAPOR PRODUCTS

SECTION 38. Section 161.451, Health and Safety Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (5) to read as follows:

(1) "Delivery sale" means a sale of cigarettes or vapor products to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or vapor products are delivered by use of the mails or another delivery service. A sale of cigarettes or vapor products is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or vapor products not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(3) "Shipping container" means a container in which cigarettes or vapor products are

SECTION 28. Subchapter P, Chapter 161, Health and Safety Code, is amended by adding Section 161.356 to read as follows:

Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter.

SECTION 29. The heading to Subchapter R, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

SECTION 30. Section 161.451, Health and Safety Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (2-a) to read as follows:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or e-cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes or e-cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or e-cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2-a) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "Shipping container" means a container in which cigarettes or e-cigarettes are

shipped in connection with a delivery sale.

(5) "Vapor product" has the meaning assigned by Section 161.081.

SECTION 39. Section 161.452, Health and Safety Code, is amended to read as follows:

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or vapor products to an individual who is under the age prescribed by Section 161.082.

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

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

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456;

(5) the tax collection requirements prescribed by Section 161.457, if applicable; and

(6) each law of this state that generally applies to sales of cigarettes or vapor products that occur entirely within this state, if applicable, including a law:

(A) imposing a tax; or

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

No equivalent provision.

SECTION 40. Section 161.453(a), Health and Safety Code, is amended to read as follows:

(a) A person may not mail or ship cigarettes or vapor products in connection with a

shipped in connection with a delivery sale.

SECTION 31. Section 161.452, Health and Safety Code, is amended to read as follows:

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual who is under the age prescribed by Section 161.082.

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

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

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456;

(5) the tax collection requirements prescribed by Section 161.457; and

(6) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

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

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

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

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456; and

(5) each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

SECTION 32. Section 161.453, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale

delivery sale order unless before mailing or shipping the cigarettes or vapor products the person accepting the delivery sale order first:

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

(A) reliable confirmation that the purchaser is at least 18 years of age; and

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

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

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

(iii) confirming that the prospective purchaser wants to receive mailings from a vapor product or tobacco company;

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

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

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

SECTION 41. Section 161.454, Health and Safety Code, is amended to read as follows:

Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required by Section 161.453(a)(3) must include a prominent and clearly legible statement that:

(1) cigarette and vapor product sales to individuals who are below the age prescribed by Section 161.082 are illegal

order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 18 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the prospective purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card that has been issued in the prospective purchaser's name or by a check that is associated with a bank account in the prospective purchaser's name.

SECTION 33. Section 161.454, Health and Safety Code, is amended to read as follows:

Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161.453(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

under state law;

- (2) sales of cigarettes and vapor products are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and
- (3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

No equivalent provision.

SECTION 42. Section 161.455, Health and Safety Code, is amended to read as follows:  
Sec. 161.455. SHIPPING REQUIREMENTS.

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

(1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES AND VAPOR PRODUCTS: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

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

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

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

(i) the addressee or an adult who is at least 18 years of age and who resides at the purchaser's address; and

(ii) at least 18 years of age if the person appears to be younger than 27 years of age; and

(3) provide to the delivery service retained

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161.082 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161.453.

SECTION 34. Section 161.455, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) A person who mails or ships e-cigarettes in connection with a delivery sale order shall include as part of the shipping documents a clear and conspicuous statement: "E-CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS YOUNGER THAN 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES."

to make the delivery evidence of full compliance with Section 161.457.

(b) A person taking a delivery sale order who delivers the cigarettes or vapor products without using a third-party delivery service shall comply with the requirements prescribed by this subchapter that apply to a delivery service.

SECTION 43. Section 161.456, Health and Safety Code, is amended to read as follows: Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or vapor products in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and  
(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or vapor products in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;  
(2) the brand or brands of the cigarettes or vapor products that were sold; and  
(3) the quantity of cigarettes or vapor products that were sold.

(c) With respect to cigarettes, a [A] person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

No equivalent provision.

(b) A person taking a delivery sale order who delivers the cigarettes or e-cigarettes without using a third-party delivery service shall comply with the delivery requirements prescribed by this subchapter that apply to a delivery service.

SECTION 35. Section 161.456, Health and Safety Code, is amended to read as follows: Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and  
(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not [~~Not~~] later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;  
(2) the brand or brands of the cigarettes or e-cigarettes that were sold; and  
(3) the quantity of cigarettes or e-cigarettes that were sold.

(c) With respect to cigarettes, a [A] person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section 161.090 to the comptroller as having violated Subchapter H.

No equivalent provision.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

No equivalent provision.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record was prepared.

SECTION 44. Section 161.461(a), Health and Safety Code, is amended to read as follows:

(a) Cigarettes or vapor products sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

SECTION 36. Section 161.461(a), Health and Safety Code, is amended to read as follows:

(a) Cigarettes or e-cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

SECTION 45. The heading to Chapter 796, Health and Safety Code, is amended to read as follows:

CHAPTER 796. CIGARETTE AND VAPOR PRODUCT FIRE SAFETY STANDARDS

No equivalent provision.

SECTION 46. Section 796.001, Health and Safety Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivision (6-a) to read as follows:

(1) "Agent" means a person licensed by the comptroller to purchase and affix adhesive or meter stamps on packages of cigarettes or vapor products.

(3) "Manufacturer" means:

(A) a person that manufactures or otherwise produces cigarettes or vapor products for sale in this state, including cigarettes or vapor products intended to be sold through an importer; or

(B) the first purchaser that intends to resell in this state cigarettes or vapor products manufactured anywhere that the original manufacturer does not intend to be sold in this state.

(4) "Retailer" means a person, other than a wholesale dealer, engaged in selling

No equivalent provision.

cigarettes, vapor products, or tobacco products.

(5) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. The term includes, in addition to sales using cash or credit, the giving of a cigarette or vapor product as a sample, prize, or gift and the exchange of a cigarette or vapor product for any consideration other than money.

(6-a) "Vapor product" has the meaning assigned by Section 161.081.

(7) "Wholesale dealer" means a person who sells cigarettes, vapor products, or tobacco products to retail dealers or other persons for purposes of resale, including a person who owns, operates, or maintains one or more cigarette, vapor product, or tobacco product vending machines in premises owned or occupied by another person.

SECTION 47. Section 796.002, Health and Safety Code, is amended to read as follows:  
Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE OR VAPOR PRODUCT. A cigarette or vapor product may not be sold or offered for sale in this state unless:

- (1) the cigarette or vapor product has been tested in accordance with Section 796.003, 796.0035, or 796.004, as applicable;
- (2) the cigarette meets the performance standard under Section 796.003;
- (3) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 796.005; and
- (4) the cigarette or vapor product has been marked in accordance with Section 796.006.

No equivalent provision.

SECTION 48. The heading to Section 796.003, Health and Safety Code, is amended to read as follows:  
Sec. 796.003. CIGARETTE TESTING.

No equivalent provision.

SECTION 49. Chapter 796, Health and Safety Code, is amended by adding Section 796.0035 to read as follows:  
Sec. 796.0035. VAPOR PRODUCT TESTING. (a) The state fire marshal by rule shall adopt a test method for testing the fire safety of a vapor product in accordance

No equivalent provision.

with applicable state and federal standards.  
(b) Except as provided by Section 796.004, a manufacturer of vapor products shall ensure that tests on vapor products are conducted in accordance with the test method adopted by the state fire marshal under this section.

SECTION 50. Section 796.004, Health and Safety Code, is amended to read as follows:  
Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A manufacturer of a cigarette or vapor product that the state fire marshal determines cannot be tested in accordance with Section 796.003 or 796.0035, as applicable, shall propose a test method and performance standard for the cigarette or vapor product to the state fire marshal. If the state fire marshal determines that the performance standard proposed by the manufacturer is equivalent to the performance standard under Section 796.003 or 796.0035, as applicable, the manufacturer may use the proposed test method.

(b) Unless the state fire marshal demonstrates a reasonable basis why an alternative test should not be accepted under this chapter, the state fire marshal shall authorize a manufacturer to employ the alternative test method and performance standard to certify a cigarette or vapor product for sale in this state if the state fire marshal:

(1) determines that another state has enacted reduced cigarette or vapor product ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter; and

(2) finds that the officials responsible for implementing those requirements have approved an alternative test method and performance standard for a particular cigarette or vapor product proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section.

SECTION 51. Sections 796.005(a), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

No equivalent provision.

No equivalent provision.

(a) Before a cigarette or vapor product may be sold or offered for sale in this state, the cigarette's or vapor product's manufacturer must certify in writing to the state fire marshal that the cigarette or vapor product has been tested in accordance with and meets the performance standard in Section 796.003, 796.0035, or 796.004, as applicable.

(d) A cigarette or vapor product certified under this section shall be recertified every three years.

(e) For each cigarette or vapor product included in a certification, a manufacturer shall pay to the state fire marshal a fee in the amount of \$250, to be deposited only to the Texas Department of Insurance operating account in the general revenue fund.

(f) A cigarette or vapor product certified under this section that is altered by the manufacturer in a way likely to alter its compliance with the reduced cigarette or vapor product ignition propensity standards required by this chapter may not be sold or offered for sale in this state unless the manufacturer retests the cigarette or vapor product in accordance with Section 796.003, 796.0035, or 796.004, as applicable, and maintains the records required by Section 796.007.

SECTION 52. Sections 796.006(a) and (e), Health and Safety Code, are amended to read as follows:

No equivalent provision.

(a) A manufacturer shall mark, in eight-point or larger type, cigarettes or vapor products certified by the manufacturer in accordance with Section 796.005 to indicate compliance with the requirements of Section 796.003 or 796.0035, as applicable. The marking must consist of:

(1) modification of the product Universal Product Code to include a visible mark printed at or around the area of the Universal Product Code and permanently stamped, engraved, embossed, or printed in conjunction with the Universal Product Code;

(2) a visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) other printed, stamped, engraved, or embossed text that indicates that the

cigarettes or vapor products meet the standards of this chapter.

(e) A manufacturer shall provide sufficient copies of an illustration of the package marking to a wholesale dealer and agent to which the manufacturer sells cigarettes or vapor products and provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retailer to which the wholesale dealers or agents will sell cigarettes or vapor products. A wholesale dealer and an agent shall provide a copy of package markings received from a manufacturer to a retail dealer to which the wholesale dealer or agent sells cigarettes or vapor products. A wholesale dealer, agent, and retail dealer shall permit the state fire marshal, the comptroller, and the attorney general to inspect markings of cigarette or vapor product packaging marked in accordance with this section.

SECTION 53. Section 796.007(a), Health and Safety Code, is amended to read as follows:

(a) A manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes or vapor products offered for sale for the previous three years and shall make copies of the reports available to the state fire marshal on the state fire marshal's written request.

No equivalent provision.

SECTION 54. Section 796.009, Health and Safety Code, is amended to read as follows:

Sec. 796.009. INSPECTION. (a) The state fire marshal may inspect the records and the stock of cigarettes or vapor products of a person who manufactures, stores, or sells cigarettes or vapor products to establish whether the person is complying with this chapter.

(b) The comptroller may, in the course of an inspection under Chapter 154, Tax Code, inspect cigarettes or vapor products for a marking required under Section 796.006 and report the comptroller's findings to the state fire marshal.

No equivalent provision.

SECTION 55. Section 796.010(a), Health and Safety Code, is amended to read as

No equivalent provision.

follows:

(a) A person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in the following amounts:

- (1) if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette or vapor product in violation of this chapter, a civil penalty not to exceed \$100 for each vapor product or pack of cigarettes sold or offered for sale, but not more than \$100,000 for all violations occurring within a 30-day period;
- (2) if the person is a retailer knowingly selling or offering to sell a cigarette or vapor product in violation of this chapter, a civil penalty not to exceed \$100 for each vapor product or pack of cigarettes sold or offered for sale, but not more than \$25,000 for all violations occurring within a 30-day period;
- (3) if the person knowingly makes a false certification under Section 796.005, a civil penalty not to exceed \$75,000 for a first violation or \$250,000 for a second or subsequent violation; and
- (4) if the person violates another provision of this chapter, other than Section 796.007(b), or another rule adopted under this chapter, a civil penalty not to exceed \$1,000 for a first violation or \$5,000 for a second or subsequent violation.

SECTION 56. Section 796.012, Health and Safety Code, is amended to read as follows:  
Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not prohibit a person from manufacturing or selling cigarettes or vapor products that do not meet the requirements of this chapter if:

- (1) the cigarettes or vapor products are or will be stamped for sale in another state or are packaged for sale outside the United States; and
- (2) the person has taken reasonable steps to ensure that the cigarettes or vapor products will not be sold or offered for sale in this state.

SECTION 57. Section 796.013, Health and Safety Code, is amended to read as follows:  
Sec. 796.013. INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make

No equivalent provision.

No equivalent provision.

uniform this chapter with the laws of those states that have enacted reduced cigarette or vapor product ignition propensity laws.

SECTION 58. Section 796.014, Health and Safety Code, is amended to read as follows:  
Sec. 796.014. CONSUMER TESTING. This chapter does not prohibit the sale of a cigarette or vapor product solely for the purpose of the cigarette's or vapor product's assessment conducted by a manufacturer, or under the control and direction of a manufacturer, to evaluate consumer acceptance of the cigarette or vapor product by using only the quantity of cigarettes or vapor products that is reasonably necessary for the assessment.

SECTION 59. Section 796.016, Health and Safety Code, is amended to read as follows:  
Sec. 796.016. FEDERAL REGULATION. On and after the date that a federal reduced cigarette or vapor product ignition propensity standard that preempts this chapter is adopted and becomes effective, the applicable part of this chapter has no effect.

SECTION 60. Section 28.004(k), Education Code, is amended to read as follows:  
(k) A school district shall publish in the student handbook and post on the district's Internet website, if the district has an Internet website:  
(1) a statement of the policies adopted to ensure that elementary school, middle school, and junior high school students engage in at least the amount and level of physical activity required by Section 28.002(1);  
(2) a statement of:  
(A) the number of times during the preceding year the district's school health advisory council has met;  
(B) whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and  
(C) whether the district has adopted and enforces policies and procedures that

No equivalent provision.

No equivalent provision.

SECTION 37. Section 28.004(k), Education Code, is amended to read as follows:  
(k) A school district shall publish in the student handbook and post on the district's Internet website, if the district has an Internet website:  
(1) a statement of the policies adopted to ensure that elementary school, middle school, and junior high school students engage in at least the amount and level of physical activity required by Section 28.002(1);  
(2) a statement of:  
(A) the number of times during the preceding year the district's school health advisory council has met;  
(B) whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and  
(C) whether the district has adopted and enforces policies and procedures that

prescribe penalties for the use of vapor products, as defined by Section 38.006, and tobacco products by students and others on school campuses or at school-sponsored or school-related activities; and

(3) a statement providing notice to parents that they can request in writing their child's physical fitness assessment results at the end of the school year.

SECTION 61. Section 38.006, Education Code, is amended to read as follows:

Sec. 38.006. VAPOR PRODUCTS AND TOBACCO PRODUCTS ON SCHOOL PROPERTY. (a) In this section, "vapor product" has the meaning assigned by Section 161.081, Health and Safety Code.

(b) The board of trustees of a school district shall:

(1) prohibit smoking or using vapor products or tobacco products at a school-related or school-sanctioned activity on or off school property;

(2) prohibit students from possessing vapor products or tobacco products at a school-related or school-sanctioned activity on or off school property; and

(3) ensure that school personnel enforce the policies on school property.

SECTION 62. Section 48.01, Penal Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) In this section, "vapor product" has the meaning assigned by Section 161.081, Health and Safety Code.

(a-1) A person commits an offense if the person [hæ] is in possession of a burning tobacco product, [œ] smokes tobacco, or operates a vapor product in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, [œ] intrastate bus, [as defined by Section 541.201, Transportation Code,] plane, or train which is a public place.

(c) All conveyances and public places set out in Subsection (a-1) [~~(a)~~ of Section 48.01] shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place

prescribe penalties for the use of e-cigarettes, as defined by Section 38.006, and tobacco products by students and others on school campuses or at school-sponsored or school-related activities; and

(3) a statement providing notice to parents that they can request in writing their child's physical fitness assessment results at the end of the school year.

SECTION 38. Section 38.006, Education Code, is amended to read as follows:

Sec. 38.006. E-CIGARETTES AND TOBACCO PRODUCTS ON SCHOOL PROPERTY. (a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(b) The board of trustees of a school district shall:

(1) prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property;

(2) prohibit students from possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property; and

(3) ensure that school personnel enforce the policies on school property.

SECTION 39. Section 48.01, Penal Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(a-1) A person commits an offense if the person [hæ] is in possession of a burning tobacco product, [œ] smokes tobacco, or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, [œ] intrastate bus, [as defined by Section 541.201, Transportation Code,] plane, or train which is a public place.

(c) All conveyances and public places set out in Subsection (a-1) [~~(a)~~ of Section 48.01] shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place

within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a-1) [~~(a)~~] if the person is in possession of the burning tobacco product, [~~or~~] smokes tobacco, or operates the vapor product exclusively within an area designated for smoking tobacco or inhaling from a vapor product or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco or inhaling from a vapor product on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

SECTION 63. Sections 161.082(a) and 161.252(a), Health and Safety Code, as amended by this Act, and Section 48.01, Penal Code, as amended by this Act, apply only to an offense committed on or after October 1, 2015. An offense committed before that date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before October 1, 2015, if any element of the offense occurred before that date.

SECTION 64. (a) The comptroller shall develop the sign described by Section 161.084, Health and Safety Code, as amended by this Act, and make the sign available to the public not later than September 15, 2015.

(b) This section takes effect September 1, 2015.

SECTION 65. Except as otherwise provided by this Act, this Act takes effect October 1, 2015.

within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a-1) [~~(a)~~] if the person is in possession of the burning tobacco product, [~~or~~] smokes tobacco, or operates the e-cigarette exclusively within an area designated for smoking tobacco or operating an e-cigarette or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco or operating an e-cigarette on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

SECTION 40. Same as introduced version.

SECTION 41. Same as introduced version.

SECTION 42. Same as introduced version.