

## **BILL ANALYSIS**

C.S.S.B. 97  
By: Hinojosa  
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. C.S.S.B. 97 seeks to provide for the regulation of e-cigarettes in Texas.

### **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.S.B. 97 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.S.B. 97 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.S.B. 97 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 and prohibits such a coupon from being redeemed through mail or courier delivery. 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.S.B. 97 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.S.B. 97 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.S.B. 97 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 sold or that a person attempted to sell in a noncompliant delivery sale. The bill includes the enforcement of such provisions as a purpose for which the comptroller may make block grants to counties and municipalities for use 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.S.B. 97 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 shipping of e-cigarettes to individuals younger than 18 years of age and

the payment of required taxes. The bill exempts a person from the requirement to file with the comptroller each month 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.S.B. 97 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 state 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.S.B. 97 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 in an area so designated.

#### **EFFECTIVE DATE**

Except as otherwise provided, October 1, 2015.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 97 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

##### SENATE ENGROSSED

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

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

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

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 of 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, 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.

SECTION 3. The heading to Section 161.082, Health and Safety Code, is amended.

SECTION 4. Sections 161.082(a), (b), and (d), Health and Safety Code, are amended.

SECTION 5. Section 161.0825(e), Health and Safety Code, is amended.

SECTION 6. The heading to Section 161.083, Health and Safety Code, is amended.

SECTION 7. Section 161.083, Health and Safety Code, is amended.

SECTION 8. Sections 161.084(a), (b), and (d), Health and Safety Code, are amended.

SECTION 9. Sections 161.085(a) and (b), Health and Safety Code, are amended.

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, 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.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.

SECTION 10. Section 161.086(a), Health and Safety Code, is amended.

SECTION 11. The heading to Section 161.087, Health and Safety Code, is amended.

SECTION 12. Sections 161.087(a) and (b), Health and Safety Code, are amended.

**No equivalent provision.**

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, e-cigarettes, 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, e-cigarettes, 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

SECTION 10. Same as engrossed version.

SECTION 11. Same as engrossed version.

SECTION 12. Same as engrossed version.

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 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

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;

(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 cigarettes, e-cigarettes, 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, e-cigarettes, 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, e-cigarettes, 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.

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 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. 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 e-cigarettes, 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 subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;
  - (2) a baseline of statistics and analysis regarding illegal e-cigarette and tobacco sales, including:
    - (A) sales to minors;
    - (B) enforcement actions concerning minors; and
    - (C) sources of citations;
  - (3) e-cigarette 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 e-cigarettes, 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 e-cigarettes, tobacco, and tobacco products by regions in this state, including use of cigarettes, e-cigarettes, and tobacco products by ethnicity.

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

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 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.

CERTAIN CIGARETTE, E-CIGARETTE,  
OR TOBACCO PRODUCT  
ADVERTISING; FEE

SECTION 17. Section 161.121, Health and Safety Code, is amended by adding Subdivision (2-a) to read as follows:

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

No equivalent provision.

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, e-cigarettes, or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes, e-cigarettes, 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.

No equivalent provision.

SECTION 19. The heading to Subchapter N, Chapter 161, Health and Safety Code, is amended.

SECTION 16. Same as engrossed version.

SECTION 20. Section 161.251, Health and Safety Code, is amended.

SECTION 17. Same as engrossed version.

SECTION 21. The heading to Section 161.252, Health and Safety Code, is amended.

SECTION 18. Same as engrossed version.

SECTION 22. Sections 161.252(a) and (b), Health and Safety Code, are amended.

SECTION 19. Same as engrossed version.

SECTION 23. The heading to Section 161.253, Health and Safety Code, is amended.

SECTION 20. Same as engrossed version.

SECTION 24. Sections 161.253(a), (b), (c), (d), and (e), Health and Safety Code, are amended.

SECTION 21. Same as engrossed version.



SECTION 25. Section 161.255(a), Health and Safety Code, is amended.

SECTION 22. Same as engrossed version.

SECTION 26. Section 161.256, Health and Safety Code, is amended.

SECTION 23. Same as engrossed version.

SECTION 27. The heading to Subchapter O, Chapter 161, Health and Safety Code, is amended.

SECTION 24. Same as engrossed version.

SECTION 28. The heading to Section 161.301, Health and Safety Code, is amended.

SECTION 25. Same as engrossed version.

SECTION 29. Section 161.301(a), Health and Safety Code, is amended.

SECTION 26. Substantially the same as engrossed version.

SECTION 30. Section 161.302(a), Health and Safety Code, is amended.

SECTION 27. Same as engrossed version.

**No equivalent provision.**

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 31. The heading to Subchapter R, Chapter 161, Health and Safety Code, is amended.

SECTION 29. Same as engrossed version.

SECTION 32. Section 161.451, Health and Safety Code, is amended.

SECTION 30. Same as engrossed version.

SECTION 33. 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

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

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, if applicable;
- (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 e-cigarettes 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 34. Section 161.453(a), Health and Safety Code, is amended to read as follows:

- (a) A person may not mail or ship cigarettes or e-cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes or e-cigarettes 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;

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:

**No equivalent provision.** *(But see Section 161.453 (c) and (d) below.)*

- (ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes or e-cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes or e-cigarettes by an individual under that age is illegal under state law; and
- (iii) confirming that the prospective purchaser wants to receive mailings from an e-cigarette or [a] 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.

**No equivalent provision.** *(But see Section 161.453 (a) above.)*

(c) A person may not mail or ship 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. 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 35. 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 e-cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;
- (2) sales of cigarettes and e-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.

No equivalent provision

SECTION 36. 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 e-cigarettes in connection with a delivery sale order shall:
- (1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES AND E-CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF

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;

- (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 PAYMENT OF ALL APPLICABLE

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 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 e-cigarettes without using a third-party delivery service shall comply with the requirements prescribed by this subchapter that apply to a delivery service.

No equivalent provision.

TAXES."

(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.

(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.

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

No equivalent provision.

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.

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 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.

No equivalent provision.

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 37. Section 48.01, Penal Code, is amended.

SECTION 39. Same as engrossed version.

SECTION 38. 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

SECTION 40. Same as engrossed version.

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 39. (a) The comptroller of public accounts 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 40. Except as otherwise provided by this Act, this Act takes effect October 1, 2015.

SECTION 41. Substantially the same as engrossed version.

SECTION 42. Same as engrossed version.