

By: Guillen

H.B. No. 81

A BILL TO BE ENTITLED

1 AN ACT
2 relating to regulation of the sale, distribution, possession, use,
3 and advertising of nicotine products and cigarettes; authorizing a
4 fee; creating offenses.

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

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

8 SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, NICOTINE PRODUCTS, OR
9 TOBACCO PRODUCTS

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

13 (1-a) "Nicotine product" means a product that delivers
14 to an individual nicotine by inhalation, with or without
15 combustion, and that is not a cigarette or a tobacco product. The
16 term includes:

17 (A) an electronic cigarette or any other device
18 that uses a mechanical heating element, battery, or electronic
19 circuit to deliver nicotine to the individual inhaling from the
20 device; or

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

23 (3) "Retail sale" means a transfer of possession from
24 a retailer to a consumer in connection with a purchase, sale, or

1 exchange for value of cigarettes, nicotine products, or tobacco
2 products.

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

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

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

15 SECTION 4. Sections 161.082(a), (b), and (d), Health and
16 Safety Code, are amended to read as follows:

17 (a) A person commits an offense if the person, with criminal
18 negligence:

19 (1) sells, gives, or causes to be sold or given a
20 cigarette, nicotine product, or tobacco product to someone who is
21 younger than 18 years of age; or

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

26 (b) If an offense under this section occurs in connection
27 with a sale by an employee of the owner of a store in which

1 cigarettes, nicotine products, or tobacco products are sold at
2 retail, the employee is criminally responsible for the offense and
3 is subject to prosecution.

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

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

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

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

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

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

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

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

26 Sec. 161.083. SALE OF CIGARETTES, NICOTINE PRODUCTS, OR
27 TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

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

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

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

11 (c) A proof of identification described by Section
12 161.082(e) satisfies the requirements of Subsections [Subsection]
13 (a) and (a-1).

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

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

21 (b) The sign must include the statement:

22 PURCHASING OR ATTEMPTING TO PURCHASE NICOTINE PRODUCTS OR
23 TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY
24 LAW. SALE OR PROVISION OF NICOTINE PRODUCTS OR TOBACCO PRODUCTS TO
25 A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON
26 CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500,
27 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS

1 COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone
2 number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE
3 LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH
4 WEIGHT.

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

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

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

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

23 (2) requires each person who sells cigarettes,
24 nicotine products, or tobacco products at retail or by vending
25 machine to post a warning notice as provided by Section [161.084](#),
26 requires each employee to ensure that the appropriate sign is
27 always properly displayed while that employee is exercising the

1 employee's duties, and provides that a violation of Section [161.084](#)
2 is a Class C misdemeanor.

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

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

13 (a) Except as provided by Subsection (b), a retailer or
14 other person may not:

15 (1) offer cigarettes, nicotine products, or tobacco
16 products for sale in a manner that permits a customer direct access
17 to the cigarettes, nicotine products, or tobacco products; or

18 (2) install or maintain a vending machine containing
19 cigarettes, nicotine products, or tobacco products.

20 SECTION 11. The heading to Section [161.087](#), Health and
21 Safety Code, is amended to read as follows:

22 Sec. 161.087. DISTRIBUTION OF CIGARETTES, NICOTINE
23 PRODUCTS, OR TOBACCO PRODUCTS.

24 SECTION 12. Sections [161.087](#)(a) and (b), Health and Safety
25 Code, are amended to read as follows:

26 (a) A person may not distribute to persons younger than 18
27 years of age:

1 (1) a free sample of a cigarette, nicotine product, or
2 tobacco product; or

3 (2) a coupon or other item that the recipient may use
4 to receive a free or discounted cigarette, nicotine product, or
5 tobacco product or a sample cigarette, nicotine product, or tobacco
6 product.

7 (b) Except as provided by Subsection (c), a person,
8 including a permit holder, may not accept or redeem, offer to accept
9 or redeem, or hire a person to accept or redeem a coupon or other
10 item that the recipient may use to receive a free or discounted
11 cigarette, nicotine product, or tobacco product or a sample
12 cigarette, nicotine product, or tobacco product if the recipient is
13 younger than 18 years of age. A coupon or other item that such a
14 recipient may use to receive a free or discounted cigarette,
15 nicotine product, or tobacco product or a sample cigarette,
16 nicotine product, or tobacco product may not be redeemable through
17 mail or courier delivery.

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

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

1 distributed to ensure compliance with this subchapter. The
2 comptroller shall rely, to the fullest extent possible, on local
3 law enforcement agencies to enforce this subchapter.

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

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

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

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

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

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

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

26 Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter
27 does not preempt a local regulation of the sale, distribution, or

1 use of cigarettes, nicotine products, or tobacco products or affect
2 the authority of a political subdivision to adopt or enforce an
3 ordinance or requirement relating to the sale, distribution, or use
4 of cigarettes, nicotine products, or tobacco products if the
5 regulation, ordinance, or requirement:

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

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

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

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

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

19 (1) a baseline of statistics and analysis regarding
20 retail compliance with this subchapter, Subchapter K, and Chapters
21 154 and 155, Tax Code;

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

24 (A) sales to minors;

25 (B) enforcement actions concerning minors; and

26 (C) sources of citations;

27 (3) nicotine product and tobacco controls and

1 initiatives by the [~~Office of Smoking and Health of the~~]
2 department, or any other state agency, including an evaluation of
3 the effectiveness of the controls and initiatives;

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

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

10 (6) the incidence of use of nicotine products,
11 tobacco, and tobacco products by regions in this state, including
12 use of cigarettes, nicotine products, and tobacco products by
13 ethnicity.

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

16 SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, NICOTINE PRODUCT,
17 OR TOBACCO PRODUCT ADVERTISING; FEE

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

20 (2-a) "Nicotine product" has the meaning assigned by
21 Section 161.081.

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

24 (a) Except as provided by this section, a sign containing an
25 advertisement for cigarettes, nicotine products, or tobacco
26 products may not be located closer than 1,000 feet to a church or
27 school.

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

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

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

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

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

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

22 SUBCHAPTER N. NICOTINE AND TOBACCO USE BY MINORS

23 SECTION 22. Section 161.251, Health and Safety Code, is
24 amended by amending Subdivision (2) and adding Subdivision (3) to
25 read as follows:

26 (2) "Nicotine product" has the meaning assigned by
27 Section 161.081.

1 (3) "Tobacco product" has the meaning assigned by
2 Section 155.001, Tax Code.

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

5 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
6 RECEIPT OF CIGARETTES, NICOTINE PRODUCTS, OR TOBACCO PRODUCTS BY
7 MINORS PROHIBITED.

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

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

12 (1) possesses, purchases, consumes, or accepts a
13 cigarette, nicotine product, or tobacco product; or

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

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

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

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

27 SECTION 25. The heading to Section 161.253, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 161.253. NICOTINE AND TOBACCO AWARENESS PROGRAM;
3 COMMUNITY SERVICE.

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

6 (a) On conviction of an individual for an offense under
7 Section 161.252, the court shall suspend execution of sentence and
8 shall require the defendant to attend a nicotine and tobacco
9 awareness program approved by the commissioner. The court may
10 require the parent or guardian of the defendant to attend the
11 nicotine and tobacco awareness program with the defendant.

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

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

20 (d) The nicotine and tobacco awareness program and the
21 nicotine- and tobacco-related community service are remedial and
22 are not punishment.

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

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

3 (a) An individual convicted of an offense under Section
4 161.252 may apply to the court to have the conviction expunged. If
5 the court finds that the individual satisfactorily completed the
6 nicotine and tobacco awareness program or nicotine- and
7 tobacco-related community service ordered by the court, the court
8 shall order the conviction and any complaint, verdict, sentence, or
9 other document relating to the offense to be expunged from the
10 individual's record and the conviction may not be shown or made
11 known for any purpose.

12 SECTION 28. Section 161.256, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 161.256. JURISDICTION OF COURTS. A justice court or
15 municipal court may exercise jurisdiction over any matter in which
16 a court under this subchapter may:

17 (1) impose a requirement that a defendant attend a
18 nicotine and tobacco awareness program or perform nicotine- and
19 tobacco-related community service; or

20 (2) order the suspension or denial of a driver's
21 license or permit.

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

24 SUBCHAPTER O. PREVENTION OF NICOTINE AND TOBACCO USE BY MINORS

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

27 Sec. 161.301. NICOTINE AND TOBACCO USE PUBLIC AWARENESS

1 CAMPAIGN.

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

4 (a) The commissioner shall develop and implement a public
5 awareness campaign designed to reduce nicotine and tobacco use by
6 minors in this state. The campaign may use advertisements or
7 similar media to provide educational information about nicotine and
8 tobacco use.

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

11 (a) The entity administering Section 161.301 shall also
12 develop and implement a grant program to support youth groups that
13 include as a part of the group's program components related to
14 reduction of nicotine and tobacco use by the group's members.

15 SECTION 33. The heading to Subchapter R, Chapter 161,
16 Health and Safety Code, is amended to read as follows:

17 SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND NICOTINE PRODUCTS

18 SECTION 34. Section 161.451, Health and Safety Code, is
19 amended by amending Subdivisions (1) and (3) and adding Subdivision
20 (2-a) to read as follows:

21 (1) "Delivery sale" means a sale of cigarettes or
22 nicotine products to a consumer in this state in which the purchaser
23 submits the order for the sale by means of a telephonic or other
24 method of voice transmission, by using the mails or any other
25 delivery service, or through the Internet or another on-line
26 service, or the cigarettes or nicotine products are delivered by
27 use of the mails or another delivery service. A sale of cigarettes

1 or nicotine products is a delivery sale regardless of whether the
2 seller is located within or without this state. A sale of
3 cigarettes or nicotine products not for personal consumption to a
4 person who is a wholesale dealer or a retail dealer is not a
5 delivery sale.

6 (2-a) "Nicotine product" has the meaning assigned by
7 Section 161.081.

8 (3) "Shipping container" means a container in which
9 cigarettes or nicotine products are shipped in connection with a
10 delivery sale.

11 SECTION 35. Section 161.452, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A
14 person may not make a delivery sale of cigarettes or nicotine
15 products to an individual who is under the age prescribed by Section
16 161.082.

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

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

20 (2) the disclosure requirements prescribed by Section
21 161.454;

22 (3) the shipping requirements prescribed by Section
23 161.455;

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

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

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

4 (A) imposing a tax; or

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

7 SECTION 36. Section 161.453(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) A person may not mail or ship cigarettes or nicotine
10 products in connection with a delivery sale order unless before
11 mailing or shipping the cigarettes or nicotine products the person
12 accepting the delivery sale order first:

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

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

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

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

21 (ii) confirming that the prospective
22 purchaser understands that signing another person's name to the
23 certification is illegal, that sales of cigarettes or nicotine
24 products to an individual under the age prescribed by Section
25 161.082 are illegal under state law, and that the purchase of
26 cigarettes or nicotine products by an individual under that age is
27 illegal under state law; and

1 (iii) confirming that the prospective
2 purchaser wants to receive mailings from a nicotine product or
3 tobacco company;

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

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

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

17 SECTION 37. Section 161.454, Health and Safety Code, is
18 amended to read as follows:

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

22 (1) cigarette and nicotine product sales to
23 individuals who are below the age prescribed by Section 161.082 are
24 illegal under state law;

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

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

4 SECTION 38. Section 161.455, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who
7 mails or ships cigarettes or nicotine products in connection with a
8 delivery sale order shall:

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

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

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

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

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

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

1 (3) provide to the delivery service retained to make
2 the delivery evidence of full compliance with Section 161.457.

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

7 SECTION 39. Section 161.456, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a)
10 A person may not make a delivery sale or ship cigarettes or nicotine
11 products in connection with a delivery sale unless the person first
12 files with the comptroller a statement that includes:

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

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

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

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

24 (2) the brand or brands of the cigarettes or nicotine
25 products that were sold; and

26 (3) the quantity of cigarettes or nicotine products
27 that were sold.

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

4 SECTION 40. Section 161.461(a), Health and Safety Code, is
5 amended to read as follows:

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

9 SECTION 41. Section 38.006, Education Code, is amended to
10 read as follows:

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

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

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

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

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

23 SECTION 42. (a) The change in law made by this Act applies
24 only to the sale or distribution of nicotine products occurring on
25 or after October 1, 2015. The sale or distribution of nicotine
26 products occurring before October 1, 2015, is governed by the law in
27 effect immediately before that date, and that law is continued in

1 effect for that purpose.

2 (b) Sections 161.082(a) and 161.252(a), Health and Safety
3 Code, as amended by this Act, apply only to an offense committed on
4 or after October 1, 2015. An offense committed before that date is
5 governed by the law in effect on the date the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this subsection, an offense was committed before
8 October 1, 2015, if any element of the offense occurred before that
9 date.

10 SECTION 43. (a) The comptroller shall develop the sign
11 described by Section 161.084, Health and Safety Code, as amended by
12 this Act, and make the sign available to the public not later than
13 September 15, 2015.

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

15 SECTION 44. Except as otherwise provided by this Act, this
16 Act takes effect October 1, 2015.