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H.B. No. 170

Substitute the following for H.B. No. 170:

By: Crownover

C.S.H.B. No. 170

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to regulation of the sale, distribution, possession, use,  
3 and advertising of e-cigarettes, cigarettes, and tobacco products;  
4 creating criminal 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, E-CIGARETTES, OR TOBACCO  
9 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) "E-cigarette" means an electronic cigarette or  
14 any other device that simulates smoking by using a mechanical  
15 heating element, battery, or electronic circuit to deliver nicotine  
16 or other substances to the individual inhaling from the device. The  
17 term does not include a prescription medical device unrelated to  
18 the cessation of smoking. The term includes:

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

23 (B) a component, part, or accessory for the  
24 device, regardless of whether the component, part, or accessory is

1 sold separately from the device.

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

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

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

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

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

19 (a) A person commits an offense if the person, with criminal  
20 negligence:

21 (1) sells, gives, or causes to be sold or given a  
22 cigarette, e-cigarette, or tobacco product to someone who is  
23 younger than 18 years of age; or

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

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

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

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

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

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

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

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

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

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

1           Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO  
2 PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

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

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

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

13           (c) A proof of identification described by Section  
14 161.082(e) satisfies the requirements of Subsections [~~Subsection~~]  
15 (a) and (a-1).

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

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

23           (b) The sign must include the statement:

24           PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO  
25 PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY  
26 LAW. SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A  
27 MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION,

1 A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE  
2 IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S  
3 OFFICE BY CALLING (insert toll-free telephone number). PREGNANT  
4 WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO  
5 ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

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

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

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

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

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

1 properly displayed while that employee is exercising the employee's  
2 duties, and provides that a violation of Section 161.084 is a Class  
3 C misdemeanor.

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

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

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

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

19 (2) install or maintain a vending machine containing  
20 cigarettes, e-cigarettes, or tobacco products.

21 SECTION 11. The heading to Section 161.087, Health and  
22 Safety Code, is amended to read as follows:

23 Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR  
24 TOBACCO PRODUCTS.

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

27 (a) A person may not distribute to persons younger than 18

1 years of age:

2 (1) a free sample of a cigarette, e-cigarette, or  
3 tobacco product; or

4 (2) a coupon or other item that the recipient may use  
5 to receive a free or discounted cigarette, e-cigarette, or tobacco  
6 product or a sample cigarette, e-cigarette, or tobacco 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, e-cigarette, or tobacco product or a sample cigarette,  
12 e-cigarette, or tobacco product if the recipient is younger than 18  
13 years of age. A coupon or other item that such a recipient may use  
14 to receive a free or discounted cigarette, e-cigarette, or tobacco  
15 product or a sample cigarette, e-cigarette, or tobacco product may  
16 not be redeemable through mail or courier delivery.

17 SECTION 13. Subchapter H, Chapter 161, Health and Safety  
18 Code, is amended by adding Section 161.0875 to read as follows:

19 Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS.

20 (a) A person may not sell or cause to be sold a container that  
21 contains liquid with nicotine and that is an accessory for an  
22 e-cigarette unless:

23 (1) the container satisfies the child-resistant  
24 effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when  
25 tested in accordance with the method described by 16 C.F.R. Section  
26 1700.20; or

27 (2) the container is a cartridge that is prefilled and

1 sealed by the manufacturer and is not intended to be opened by a  
2 consumer.

3 (b) If the federal government adopts standards for the  
4 packaging of a container described by Subsection (a), a person who  
5 complies with those standards is considered to be in compliance  
6 with this section.

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

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

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



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

4 (2) at the time of the inspection, order, or delivery,  
5 the minor decoy is younger than 17 years of age;

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

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

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

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

19 Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than  
20 January 5th of each odd-numbered year, the department shall report  
21 to the governor, lieutenant governor, and speaker of the house of  
22 representatives on the status of the use of e-cigarettes in this  
23 state.

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

25 (1) a baseline of statistics and analysis regarding  
26 retail compliance with this subchapter and Subchapter R;

27 (2) a baseline of statistics and analysis regarding

1 illegal e-cigarette sales, including:

2 (A) sales to minors;

3 (B) enforcement actions concerning minors; and

4 (C) sources of citations;

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

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

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

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

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

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

19 SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

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

22 (1-a) "E-cigarette" has the meaning assigned by  
23 Section 161.081.

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

26 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR  
27 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS

1 PROHIBITED.

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

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

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

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

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

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

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

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

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

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

27 (a) On conviction of an individual for an offense under

1 Section 161.252, the court shall suspend execution of sentence and  
2 shall require the defendant to attend an e-cigarette and [a]  
3 tobacco awareness program approved by the commissioner. The court  
4 may require the parent or guardian of the defendant to attend the  
5 e-cigarette and tobacco awareness program with the defendant.

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

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

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

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

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

24 (a) An individual convicted of an offense under Section  
25 161.252 may apply to the court to have the conviction expunged. If  
26 the court finds that the individual satisfactorily completed the  
27 e-cigarette and tobacco awareness program or e-cigarette- and

1 tobacco-related community service ordered by the court, the court  
2 shall order the conviction and any complaint, verdict, sentence, or  
3 other document relating to the offense to be expunged from the  
4 individual's record and the conviction may not be shown or made  
5 known for any purpose.

6 SECTION 23. Section 161.256, Health and Safety Code, is  
7 amended to read as follows:

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

11 (1) impose a requirement that a defendant attend an  
12 e-cigarette and [~~a~~] tobacco awareness program or perform  
13 e-cigarette- and tobacco-related community service; or

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

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

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

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

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

23 SECTION 26. Section 161.301(a), Health and Safety Code, as  
24 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,  
25 2015, is amended to read as follows:

26 (a) The department shall develop and implement a public  
27 awareness campaign designed to reduce the [~~tobacco~~] use by minors

1 in this state of tobacco and e-cigarettes as defined by Section  
2 161.081. The campaign may use advertisements or similar media to  
3 provide educational information about tobacco and e-cigarette use.

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

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

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

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

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

19 SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

20 SECTION 30. Section 161.451, Health and Safety Code, is  
21 amended by amending Subdivisions (1) and (3) and adding Subdivision  
22 (2-a) to read as follows:

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

1 service, or the cigarettes or e-cigarettes are delivered by use of  
2 the mails or another delivery service. A sale of cigarettes or  
3 e-cigarettes is a delivery sale regardless of whether the seller is  
4 located within or without this state. A sale of cigarettes or  
5 e-cigarettes not for personal consumption to a person who is a  
6 wholesale dealer or a retail dealer is not a delivery sale.

7 (2-a) "E-cigarette" has the meaning assigned by  
8 Section 161.081.

9 (3) "Shipping container" means a container in which  
10 cigarettes or e-cigarettes are shipped in connection with a  
11 delivery sale.

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

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

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

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

21 (2) the disclosure requirements prescribed by Section  
22 161.454;

23 (3) the shipping requirements prescribed by Section  
24 161.455;

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

27 (5) the tax collection requirements prescribed by

1 Section [161.457](#); and

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

5 (A) imposing a tax; or

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

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

10 (1) the age verification requirements prescribed by  
11 Section [161.453](#);

12 (2) the disclosure requirements prescribed by Section  
13 [161.454](#);

14 (3) the shipping requirements prescribed by Section  
15 [161.455](#);

16 (4) the registration and reporting requirements  
17 prescribed by Section [161.456](#); and

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

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

22 (c) A person may not mail or ship e-cigarettes in connection  
23 with a delivery sale order unless before accepting a delivery sale  
24 order the person verifies that the prospective purchaser is at  
25 least 18 years of age through a commercially available database or  
26 aggregate of databases that is regularly used for the purpose of age  
27 and identity verification. After the order is accepted, the person



1 must use a method of mailing or shipping that requires an adult  
2 signature.

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

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

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

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

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

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

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

25 (2) sales of cigarettes are restricted to those  
26 individuals who provide verifiable proof of age in accordance with  
27 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 (b) A delivery sale of an e-cigarette must include a  
5 prominent and clearly legible statement that:

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

8 (2) e-cigarette sales are restricted to individuals  
9 who provide verifiable proof of age in accordance with Section  
10 161.453.

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

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

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

23 SECTION 35. Section 161.456, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a)  
26 A person may not make a delivery sale or ship cigarettes or  
27 e-cigarettes in connection with a delivery sale unless the person

1 first files with the comptroller a statement that includes:

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

3 (2) the address of the person's principal place of  
4 business and any other place of business, and the person's  
5 telephone number and e-mail address.

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

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

14 (2) the brand or brands of the cigarettes or  
15 e-cigarettes that were sold; and

16 (3) the quantity of cigarettes or e-cigarettes that  
17 were sold.

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

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

27 (e) A person required to submit a memorandum or a copy of an

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

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

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

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

13 SECTION 37. Section 28.004(k), Education Code, is amended  
14 to read as follows:

15 (k) A school district shall publish in the student handbook  
16 and post on the district's Internet website, if the district has an  
17 Internet website:

18 (1) a statement of the policies adopted to ensure that  
19 elementary school, middle school, and junior high school students  
20 engage in at least the amount and level of physical activity  
21 required by Section 28.002(1);

22 (2) a statement of:

23 (A) the number of times during the preceding year  
24 the district's school health advisory council has met;

25 (B) whether the district has adopted and enforces  
26 policies to ensure that district campuses comply with agency  
27 vending machine and food service guidelines for restricting student

1 access to vending machines; and

2 (C) whether the district has adopted and enforces  
3 policies and procedures that prescribe penalties for the use of  
4 e-cigarettes, as defined by Section 38.006, and tobacco products by  
5 students and others on school campuses or at school-sponsored or  
6 school-related activities; and

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

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

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

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

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

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

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

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

27 (a) In this section, "e-cigarette" has the meaning assigned

1 by Section 161.081, Health and Safety Code.

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

9 (c) All conveyances and public places set out in Subsection  
10 (a-1) [~~(a) of Section 48.01~~] shall be equipped with facilities for  
11 extinguishment of smoking materials and it shall be a defense to  
12 prosecution under this section if the conveyance or public place  
13 within which the offense takes place is not so equipped.

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

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

24 SECTION 40. Sections 161.082(a) and 161.252(a), Health and  
25 Safety Code, as amended by this Act, and Section 48.01, Penal Code,  
26 as amended by this Act, apply only to an offense committed on or  
27 after October 1, 2015. An offense committed before that date is

1 governed by the law in effect on the date the offense was committed,  
2 and the former law is continued in effect for that purpose. For  
3 purposes of this section, an offense was committed before October  
4 1, 2015, if any element of the offense occurred before that date.

5 SECTION 41. (a) The comptroller shall develop the sign  
6 described by Section [161.084](#), Health and Safety Code, as amended by  
7 this Act, and make the sign available to the public not later than  
8 September 15, 2015.

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

10 SECTION 42. Except as otherwise provided by this Act, this  
11 Act takes effect October 1, 2015.