

By: Alvarado

H.B. No. 170

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to regulation of vapor products; authorizing fees;  
3 creating offenses; providing a penalty.

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

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

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

9 SECTION 2. Section 161.081, Health and Safety Code, is  
10 amended by amending Subdivisions (3) and (4) and adding Subdivision  
11 (5-a) to read as follows:

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

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

22 (5-a) "Vapor product" means:

23 (A) an electronic cigarette or any other device  
24 that uses a mechanical heating element, battery, or electronic

1 circuit to deliver vapor that may include nicotine to the  
2 individual inhaling from the device; or

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

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

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

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

12 (a) A person commits an offense if the person, with criminal  
13 negligence:

14 (1) sells, gives, or causes to be sold or given a  
15 cigarette, vapor product, or tobacco product to someone who is  
16 younger than 18 years of age; or

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

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

26 (d) It is a defense to prosecution under Subsection (a)(1)  
27 that the person to whom the cigarette, vapor product, or tobacco

1 product was sold or given presented to the defendant apparently  
2 valid proof of identification.

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

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

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

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

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

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

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

21 Sec. 161.083. SALE OF CIGARETTES, VAPOR PRODUCTS, OR  
22 TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

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

26 (a-1) A person may not sell, give, or cause to be sold or  
27 given a vapor product to someone who is younger than 27 years of age

1 unless the person to whom the vapor product was sold or given  
2 presents an apparently valid proof of identification.

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

6 (c) A proof of identification described by Section  
7 161.082(e) satisfies the requirements of Subsections [~~Subsection~~]  
8 (a) and (a-1).

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

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

16 (b) The sign must include the statement:

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

26 (d) The comptroller on request shall provide the sign  
27 without charge to any person who sells cigarettes, vapor products,

1 or tobacco products. The comptroller may provide the sign without  
2 charge to distributors of cigarettes, vapor products, or tobacco  
3 products or wholesale dealers of cigarettes, vapor products, or  
4 tobacco products in this state for distribution to persons who sell  
5 cigarettes, vapor products, or tobacco products. A distributor or  
6 wholesale dealer may not charge for distributing a sign under this  
7 subsection.

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

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

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

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

24 (b) The notice required by Subsection (a) must be provided  
25 within 72 hours of the date an individual begins to engage in retail  
26 sales of vapor or tobacco products. The individual shall signify  
27 that the individual has received the notice required by Subsection

1 (a) by signing a form stating that the law has been fully explained,  
2 that the individual understands the law, and that the individual,  
3 as a condition of employment, agrees to comply with the law.

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

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

8 (1) offer cigarettes, vapor products, or tobacco  
9 products for sale in a manner that permits a customer direct access  
10 to the cigarettes, vapor products, or tobacco products; or

11 (2) install or maintain a vending machine containing  
12 cigarettes, vapor products, or tobacco products.

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

15 Sec. 161.087. DISTRIBUTION OF CIGARETTES, VAPOR PRODUCTS,  
16 OR TOBACCO PRODUCTS.

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

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

21 (1) a free sample of a cigarette, vapor product, or  
22 tobacco product; or

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

27 (b) Except as provided by Subsection (c), a person,

1 including a permit holder, may not accept or redeem, offer to accept  
2 or redeem, or hire a person to accept or redeem a coupon or other  
3 item that the recipient may use to receive a free or discounted  
4 cigarette, vapor product, or tobacco product or a sample cigarette,  
5 vapor product, or tobacco product if the recipient is younger than  
6 18 years of age. A coupon or other item that such a recipient may  
7 use to receive a free or discounted cigarette, vapor product, or  
8 tobacco product or a sample cigarette, vapor product, or tobacco  
9 product may not be redeemable through mail or courier delivery.

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

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

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

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

6           (3) the minor decoy has an appearance that would cause  
7 a reasonably prudent seller of cigarettes, vapor products, or  
8 tobacco 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 cigarettes, vapor products,  
13 or tobacco products; and

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

16           SECTION 14. Section [161.089](#), Health and Safety Code, is  
17 amended to read as follows:

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

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

27           (2) relates to an issue that is not specifically



1 addressed by this subchapter or Chapter 154 or 155, Tax Code.

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

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

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

11 (1) a baseline of statistics and analysis regarding  
12 retail compliance with this subchapter, Subchapter K, and Chapters  
13 154 and 155, Tax Code;

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

16 (A) sales to minors;

17 (B) enforcement actions concerning minors; and

18 (C) sources of citations;

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

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

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

1 programs; and

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

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

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

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

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

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

15 (a) Except as provided by this section, a sign containing an  
16 advertisement for cigarettes, vapor products, or tobacco products  
17 may not be located closer than 1,000 feet to a church or school.

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

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

26 (a) A purchaser of advertising is liable for and shall remit  
27 to the comptroller a fee that is 10 percent of the gross sales price

1 of any outdoor advertising of cigarettes, vapor products, and  
2 tobacco products in this state.

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

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

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

12 SUBCHAPTER N. VAPOR PRODUCT AND TOBACCO USE BY MINORS

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

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

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

19 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR  
20 RECEIPT OF CIGARETTES, VAPOR PRODUCTS, OR TOBACCO PRODUCTS BY  
21 MINORS PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) An individual convicted of an offense under Section  
18 161.252 may apply to the court to have the conviction expunged. If  
19 the court finds that the individual satisfactorily completed the  
20 vapor product and tobacco awareness program or vapor- and  
21 tobacco-related community service ordered by the court, the court  
22 shall order the conviction and any complaint, verdict, sentence, or  
23 other document relating to the offense to be expunged from the  
24 individual's record and the conviction may not be shown or made  
25 known for any purpose.

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

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

4           (1) impose a requirement that a defendant attend a  
5 vapor product and tobacco awareness program or perform vapor- and  
6 tobacco-related community service; or

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

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

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

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

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

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

18           (a) The commissioner shall develop and implement a public  
19 awareness campaign designed to reduce the [~~tobacco~~] use by minors  
20 in this state of tobacco and of vapor products as defined by Section  
21 161.081. The campaign may use advertisements or similar media to  
22 provide educational information about tobacco and vapor product  
23 use.

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

26           (a) The entity administering Section 161.301 shall also  
27 develop and implement a grant program to support youth groups that

1 include as a part of the group's program components related to  
2 reduction of [~~tobacco~~] use by the group's members of tobacco and of  
3 vapor products as defined by Section 161.081.

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

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

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

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

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

16 (A) tobacco;

17 (B) water; or

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

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

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

27 SECTION 35. Section 161.353, Health and Safety Code, is

1 amended to read as follows:

2           Sec. 161.353. NICOTINE YIELD RATES. (a) Each manufacturer  
3 shall assign a nicotine yield rating to each cigarette, vapor  
4 product, or tobacco product distributed in this state. The rating  
5 shall be assigned in accordance with standards adopted by the  
6 department.

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

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

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

16                 (1) prohibit the sale or distribution in this state of  
17 a cigarette, vapor product, or tobacco product manufactured by the  
18 manufacturer; or

19                 (2) grant any other injunctive relief warranted by the  
20 facts.

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

23           SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND VAPOR PRODUCTS

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

27                 (1) "Delivery sale" means a sale of cigarettes or



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

11 (3) "Shipping container" means a container in which  
12 cigarettes or vapor products are shipped in connection with a  
13 delivery sale.

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

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

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

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

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

24 (2) the disclosure requirements prescribed by Section  
25 161.454;

26 (3) the shipping requirements prescribed by Section  
27 161.455;

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

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

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

8 (A) imposing a tax; or

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

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

13 (a) A person may not mail or ship cigarettes or vapor  
14 products in connection with a delivery sale order unless before  
15 mailing or shipping the cigarettes or vapor products the person  
16 accepting the delivery sale order first:

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

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

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

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

25 (ii) confirming that the prospective  
26 purchaser understands that signing another person's name to the  
27 certification is illegal, that sales of cigarettes or vapor

1 products to an individual under the age prescribed by Section  
2 161.082 are illegal under state law, and that the purchase of  
3 cigarettes or vapor products by an individual under that age is  
4 illegal under state law; and

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

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

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

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

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

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

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

1 under state law;

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

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

8 SECTION 42. Section 161.455, Health and Safety Code, is  
9 amended to read as follows:

10 Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who  
11 mails or ships cigarettes or vapor products in connection with a  
12 delivery sale order shall:

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

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

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

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

27 (i) the addressee or an adult who is at

1 least 18 years of age and who resides at the purchaser's address;  
2 and

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

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

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

11 SECTION 43. Section 161.456, Health and Safety Code, is  
12 amended to read as follows:

13 Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a)  
14 A person may not make a delivery sale or ship cigarettes or vapor  
15 products in connection with a delivery sale unless the person first  
16 files with the comptroller a statement that includes:

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

18 (2) the address of the person's principal place of  
19 business and any other place of business, and the person's  
20 telephone number and e-mail address.

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

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

1           (2) the brand or brands of the cigarettes or vapor  
2 products that were sold; and

3           (3) the quantity of cigarettes or vapor products that  
4 were sold.

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

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

10           (a) Cigarettes or vapor products 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 45. The heading to Chapter 796, Health and Safety  
14 Code, is amended to read as follows:

15           CHAPTER 796. CIGARETTE AND VAPOR PRODUCT FIRE SAFETY STANDARDS

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

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

22           (3) "Manufacturer" means:

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

27           (B) the first purchaser that intends to resell in

1 this state cigarettes or vapor products manufactured anywhere that  
2 the original manufacturer does not intend to be sold in this state.

3 (4) "Retailer" means a person, other than a wholesale  
4 dealer, engaged in selling cigarettes, vapor products, or tobacco  
5 products.

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

12 (6-a) "Vapor product" has the meaning assigned by  
13 Section 161.081.

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

20 SECTION 47. Section 796.002, Health and Safety Code, is  
21 amended to read as follows:

22 Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE OR VAPOR  
23 PRODUCT. A cigarette or vapor product may not be sold or offered  
24 for sale in this state unless:

25 (1) the cigarette or vapor product has been tested in  
26 accordance with Section 796.003, 796.0035, or 796.004, as  
27 applicable;

1           (2) the cigarette meets the performance standard under  
2 Section 796.003;

3           (3) a written certification has been filed by the  
4 manufacturer with the state fire marshal in accordance with Section  
5 796.005; and

6           (4) the cigarette or vapor product has been marked in  
7 accordance with Section 796.006.

8           SECTION 48. The heading to Section 796.003, Health and  
9 Safety Code, is amended to read as follows:

10           Sec. 796.003. CIGARETTE TESTING.

11           SECTION 49. Chapter 796, Health and Safety Code, is amended  
12 by adding Section 796.0035 to read as follows:

13           Sec. 796.0035. VAPOR PRODUCT TESTING. (a) The state fire  
14 marshal by rule shall adopt a test method for testing the fire  
15 safety of a vapor product in accordance with applicable state and  
16 federal standards.

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

21           SECTION 50. Section 796.004, Health and Safety Code, is  
22 amended to read as follows:

23           Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A  
24 manufacturer of a cigarette or vapor product that the state fire  
25 marshal determines cannot be tested in accordance with Section  
26 796.003 or 796.0035, as applicable, shall propose a test method and  
27 performance standard for the cigarette or vapor product to the



1 state fire marshal. If the state fire marshal determines that the  
2 performance standard proposed by the manufacturer is equivalent to  
3 the performance standard under Section 796.003 or 796.0035, as  
4 applicable, the manufacturer may use the proposed test method.

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

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

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

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

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

1 796.004, as applicable.

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

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

9 (f) A cigarette or vapor product certified under this  
10 section that is altered by the manufacturer in a way likely to alter  
11 its compliance with the reduced cigarette or vapor product ignition  
12 propensity standards required by this chapter may not be sold or  
13 offered for sale in this state unless the manufacturer retests the  
14 cigarette or vapor product in accordance with Section 796.003,  
15 796.0035, or 796.004, as applicable, and maintains the records  
16 required by Section 796.007.

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

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

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

1 Code;

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

5 (3) other printed, stamped, engraved, or embossed text  
6 that indicates that the cigarettes or vapor products meet the  
7 standards of this chapter.

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

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

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

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

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

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

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

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

17 (1) if the person is a manufacturer, wholesale dealer,  
18 or agent knowingly selling or offering to sell a cigarette or vapor  
19 product in violation of this chapter, a civil penalty not to exceed  
20 \$100 for each vapor product or pack of cigarettes sold or offered  
21 for sale, but not more than \$100,000 for all violations occurring  
22 within a 30-day period;

23 (2) if the person is a retailer knowingly selling or  
24 offering to sell a cigarette or vapor product in violation of this  
25 chapter, a civil penalty not to exceed \$100 for each vapor product  
26 or pack of cigarettes sold or offered for sale, but not more than  
27 \$25,000 for all violations occurring within a 30-day period;

1           (3) if the person knowingly makes a false  
2 certification under Section 796.005, a civil penalty not to exceed  
3 \$75,000 for a first violation or \$250,000 for a second or subsequent  
4 violation; and

5           (4) if the person violates another provision of this  
6 chapter, other than Section 796.007(b), or another rule adopted  
7 under this chapter, a civil penalty not to exceed \$1,000 for a first  
8 violation or \$5,000 for a second or subsequent violation.

9           SECTION 56. Section 796.012, Health and Safety Code, is  
10 amended to read as follows:

11           Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not  
12 prohibit a person from manufacturing or selling cigarettes or vapor  
13 products that do not meet the requirements of this chapter if:

14           (1) the cigarettes or vapor products are or will be  
15 stamped for sale in another state or are packaged for sale outside  
16 the United States; and

17           (2) the person has taken reasonable steps to ensure  
18 that the cigarettes or vapor products will not be sold or offered  
19 for sale in this state.

20           SECTION 57. Section 796.013, Health and Safety Code, is  
21 amended to read as follows:

22           Sec. 796.013. INTERPRETATION. This chapter shall be so  
23 interpreted and construed as to effectuate its general purpose to  
24 make uniform this chapter with the laws of those states that have  
25 enacted reduced cigarette or vapor product ignition propensity  
26 laws.

27           SECTION 58. Section 796.014, Health and Safety Code, is

1 amended to read as follows:

2           Sec. 796.014. CONSUMER TESTING. This chapter does not  
3 prohibit the sale of a cigarette or vapor product solely for the  
4 purpose of the cigarette's or vapor product's assessment conducted  
5 by a manufacturer, or under the control and direction of a  
6 manufacturer, to evaluate consumer acceptance of the cigarette or  
7 vapor product by using only the quantity of cigarettes or vapor  
8 products that is reasonably necessary for the assessment.

9           SECTION 59. Section [796.016](#), Health and Safety Code, is  
10 amended to read as follows:

11           Sec. 796.016. FEDERAL REGULATION. On and after the date  
12 that a federal reduced cigarette or vapor product ignition  
13 propensity standard that preempts this chapter is adopted and  
14 becomes effective, the applicable part of this chapter has no  
15 effect.

16           SECTION 60. Section [28.004\(k\)](#), Education Code, is amended  
17 to read as follows:

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

21                   (1) a statement of the policies adopted to ensure that  
22 elementary school, middle school, and junior high school students  
23 engage in at least the amount and level of physical activity  
24 required by Section [28.002\(1\)](#);

25                   (2) a statement of:

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

1 (B) whether the district has adopted and enforces  
2 policies to ensure that district campuses comply with agency  
3 vending machine and food service guidelines for restricting student  
4 access to vending machines; and

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

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

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

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

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

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

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

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

27 SECTION 62. Section 48.01, Penal Code, is amended by

1 amending Subsections (a), (c), (d), and (e) and adding Subsection  
2 (a-1) to read as follows:

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

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

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

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

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

27 SECTION 63. Sections 161.082(a) and 161.252(a), Health and



1 Safety Code, as amended by this Act, and Section 48.01, Penal Code,  
2 as amended by this Act, apply only to an offense committed on or  
3 after October 1, 2015. An offense committed before that date is  
4 governed by the law in effect on the date the offense was committed,  
5 and the former law is continued in effect for that purpose. For  
6 purposes of this section, an offense was committed before October  
7 1, 2015, if any element of the offense occurred before that date.

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

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

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