

By: Collier

H.B. No. 646

A BILL TO BE ENTITLED

AN ACT

relating to regulation of vapor products and cigarettes; creating offenses; authorizing fees.

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

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

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

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

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

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

(5-a) "Vapor product" means:

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

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 cigarettes, vapor products, or tobacco products. The
27 individual shall signify that the individual has received the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 as a minor decoy only if the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) a baseline of statistics and analysis regarding
13 retail compliance with this subchapter, Subchapter K, and Chapters
14 154 and 155, Tax Code;

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

17 (A) sales to minors;

18 (B) enforcement actions concerning minors; and

19 (C) sources of citations;

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

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

27 (5) the educational programs of the [~~Office of Smoking~~

1 ~~and Health of the]~~ department and the effectiveness of those
2 programs; and

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

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

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

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

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

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

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

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

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

27 (a) A purchaser of advertising is liable for and shall remit

1 to the comptroller a fee that is 10 percent of the gross sales price
2 of any outdoor advertising of cigarettes, vapor products, and
3 tobacco products in this state.

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

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

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

13 SUBCHAPTER N. VAPOR PRODUCT AND TOBACCO USE BY MINORS

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

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

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

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

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

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

27 (1) possesses, purchases, consumes, or accepts a

1 cigarette, vapor product, or tobacco product; or

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

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

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

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

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

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

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

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

27 (b) On request, a vapor product and tobacco awareness

1 program may be taught in languages other than English.

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

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

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

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

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

27 SECTION 28. Section 161.256, Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

27 (a) The entity administering Section 161.301 shall also

1 develop and implement a grant program to support youth groups that
2 include as a part of the group's program components related to
3 reduction of [~~tobacco~~] use by the group's members of tobacco and of
4 vapor products as defined by Section 161.081.

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

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

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

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

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

17 (A) tobacco;

18 (B) water; or

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

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

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

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

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

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

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

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

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

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

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

24 SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND VAPOR PRODUCTS

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

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

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

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

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

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

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

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

25 (2) the disclosure requirements prescribed by Section
26 161.454;

27 (3) the shipping requirements prescribed by Section

1 161.455;

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

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

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

9 (A) imposing a tax; or

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

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

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

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

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

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

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

26 (ii) confirming that the prospective
27 purchaser understands that signing another person's name to the

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

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

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

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

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

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

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

27 (1) cigarette and vapor product sales to individuals

1 who are below the age prescribed by Section 161.082 are illegal
2 under state law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) the name, address, telephone number, and e-mail

1 address of the individual to whom the delivery sale was made;

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

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

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

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

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

14 SECTION 45. Section 28.004(k), Education Code, is amended
15 to read as follows:

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

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

23 (2) a statement of:

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

26 (B) whether the district has adopted and enforces
27 policies to ensure that district campuses comply with agency

1 vending machine and food service guidelines for restricting student
2 access to vending machines; and

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

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

11 SECTION 46. Section 38.006, Education Code, is amended to
12 read as follows:

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

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

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

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

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

25 SECTION 47. Section 48.01, Penal Code, is amended by
26 amending Subsections (a), (c), (d), and (e) and adding Subsection
27 (a-1) to read as follows:

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

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

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

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

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

25 SECTION 48. (a) The change in law made by this Act applies
26 only to the sale or distribution of vapor products occurring on or
27 after October 1, 2015. The sale or distribution of vapor products

1 occurring before October 1, 2015, is governed by the law in effect
2 immediately before that date, and that law is continued in effect
3 for that purpose.

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

12 SECTION 49. (a) The comptroller shall develop the sign
13 described by Section 161.084, Health and Safety Code, as amended by
14 this Act, and make the sign available to the public not later than
15 September 15, 2015.

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

17 SECTION 50. Except as otherwise provided by this Act, this
18 Act takes effect October 1, 2015.