

By: Paddie

H.B. No. 970

A BILL TO BE ENTITLED

1 AN ACT
2 relating to prohibiting the sale of nicotine products to minors;
3 creating an offense.

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, NICOTINE PRODUCTS, OR
8 TOBACCO PRODUCTS

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

12 (1-a) "Nicotine product" means a product that delivers
13 to an individual nicotine by inhalation and that is not a cigarette
14 or tobacco product. The term includes:

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

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

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

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

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

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

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

15 (a) A person commits an offense if the person, with criminal
16 negligence:

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

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

24 (b) If an offense under this section occurs in connection
25 with a sale by an employee of the owner of a store in which
26 cigarettes, nicotine products, or tobacco products are sold at
27 retail, the employee is criminally responsible for the offense and

1 is subject to prosecution.

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

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

8 (e) It is an affirmative defense to prosecution under
9 Section 161.082 that:

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

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

18 (A) a transaction scan device in working
19 condition; and

20 (B) adequate training in the use of the
21 transaction scan device.

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

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

26 SECTION 7. Section 161.083, Health and Safety Code, is
27 amended by adding Subsection (a-1) and amending Subsections (b) and

1 (c) to read as follows:

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

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

9 (c) A proof of identification described by Section
10 [161.082](#)(e) satisfies the requirements of Subsections [Subsection]
11 (a) and (a-1).

12 SECTION 8. Sections [161.084](#)(a), (b), and (d), Health and
13 Safety Code, are amended to read as follows:

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

19 (b) The sign must include the statement:

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

1 LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH
2 WEIGHT.

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 161.087. DISTRIBUTION OF CIGARETTES, NICOTINE
21 PRODUCTS, OR TOBACCO PRODUCTS.

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

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

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

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

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

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

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

1 law enforcement agencies to enforce this subchapter.

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

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

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

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

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

20 (5) the minor decoy answers truthfully any questions
21 about the minor's age.

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

24 Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter
25 does not preempt a local regulation of the sale, distribution, or
26 use of cigarettes, nicotine products, or tobacco products or affect
27 the authority of a political subdivision to adopt or enforce an

1 ordinance or requirement relating to the sale, distribution, or use
2 of cigarettes, nicotine products, or tobacco products if the
3 regulation, ordinance, or requirement:

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

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

8 SECTION 15. (a) The change in law made by this Act applies
9 only to the sale or distribution of nicotine products occurring on
10 or after October 1, 2015. The sale or distribution of nicotine
11 products occurring before October 1, 2015, is governed by the law in
12 effect immediately before that date, and that law is continued in
13 effect for that purpose.

14 (b) Section 161.082(a), Health and Safety Code, as amended
15 by this Act, applies only to an offense committed on or after
16 October 1, 2015. An offense committed before that date is governed
17 by the law in effect on the date the offense was committed, and the
18 former law is continued in effect for that purpose. For purposes of
19 this subsection, an offense was committed before October 1, 2015,
20 if any element of the offense occurred before that date.

21 SECTION 16. (a) The comptroller shall develop the sign
22 described by Section 161.084, Health and Safety Code, as amended by
23 this Act, and make the sign available to the public not later than
24 September 15, 2015.

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

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