AN ACT

relating to regulation of the sale, distribution, possession, use, and advertising of e-cigarettes, cigarettes, and tobacco products; amending provisions subject to a criminal penalty.

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, E-CIGARETTES, OR TOBACCO PRODUCTS

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

(1-a) "E-cigarette" means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes:

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

(B) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is
sold separately from the device.

(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, e-cigarettes, or tobacco products.

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

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

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

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

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

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

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.
(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

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

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

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

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

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

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

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

SECTION 6. The heading to Section 161.083, Health and Safety Code, is amended to read as follows:
Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

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

(a-1) A person may not sell, give, or cause to be sold or given an e-cigarette to someone who is younger than 27 years of age unless the person to whom the e-cigarette was sold or given presents an apparently valid proof of identification.
(b) A retailer shall adequately supervise and train the retailer’s agents and employees to prevent a violation of Subsections [Subsection] (a) and (a-1).
(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsections [Subsection] (a) and (a-1).

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

(a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.
(b) The sign must include the statement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) a coupon or other item that the recipient may use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

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

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

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

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

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

(2) the container is a cartridge that is prefilled and
sealed by the manufacturer and is not intended to be opened by a consumer.

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

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

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

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

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

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

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

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

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

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

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

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

(2) a baseline of statistics and analysis regarding

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illegal e-cigarette sales, including:

(A) sales to minors;
(B) enforcement actions concerning minors; and
(C) sources of citations;

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

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

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

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

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

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

SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) On conviction of an individual for an offense under
Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.

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

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

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

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

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

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

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

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

(1) impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or perform e-cigarette- and tobacco-related community service; or

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

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

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

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

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

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

(a) The department shall develop and implement a public awareness campaign designed to reduce the tobacco use by minors
1 in this state of tobacco and e-cigarettes as defined by Section 2 \textbf{161.081}. The campaign may use advertisements or similar media to 3 provide educational information about tobacco and e-cigarette use.

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

6 \hspace{1em} (a) The entity administering Section \textbf{161.301} shall also 7 develop and implement a grant program to support youth groups that 8 include as a part of the group's program components related to 9 reduction of \textbf{tobacco and e-cigarettes as defined by Section 161.081.}

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

12 \hspace{1em} \textbf{Sec. 161.356. COMPLIANCE WITH FEDERAL LAW.} A person is 13 considered to have complied with this subchapter if the person 14 complies with Subchapter IX of \textbf{21 U.S.C. Chapter 9} and rules adopted 15 under that subchapter.

16 \textbf{SECTION 29.} The heading to Subchapter \textbf{R}, Chapter 161, 17 Health and Safety Code, is amended to read as follows:

18 \hspace{1em} \textbf{SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES}

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

22 \hspace{1em} (1) "Delivery sale" means a sale of cigarettes \textbf{or} 23 e-cigarettes to a consumer in this state in which the purchaser 24 submits the order for the sale by means of a telephonic or other 25 method of voice transmission, by using the mails or any other 26 delivery service, or through the Internet or another on-line
service, or the cigarettes or e-cigarettes are delivered by use of
the mails or another delivery service. A sale of cigarettes or
e-cigarettes is a delivery sale regardless of whether the seller is
located within or without this state. A sale of cigarettes or
e-cigarettes not for personal consumption to a person who is a
wholesale dealer or a retail dealer is not a delivery sale.

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

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

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

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

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

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

(2) the disclosure requirements prescribed by Section
161.454;

(3) the shipping requirements prescribed by Section
161.455;

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

(5) the tax collection requirements prescribed by
Section 161.457; and

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

(A) imposing a tax; or

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

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

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

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

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

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

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

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 18 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person
must use a method of mailing or shipping that requires an adult
signature.

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

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

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

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

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

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

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

(2) sales of cigarettes are restricted to those
individuals who provide verifiable proof of age in accordance with
Section 161.453; and
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(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

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

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

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

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

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

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

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS.

(a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person
first files with the comptroller a statement that includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) a statement of:

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

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

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

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

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

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

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

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

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

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

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

(a) In this section, "e-cigarette" has the meaning assigned
by Section 161.081, Health and Safety Code.

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

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

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

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

SECTION 40. Sections 161.082(a) and 161.252(a), Health and Safety Code, as amended by this Act, and Section 48.01, Penal Code, as amended by this Act, apply only to an offense committed on or after October 1, 2015. An offense committed before that date is
governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before October 1, 2015, if any element of the offense occurred before that date.

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

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

SECTION 42. Except as otherwise provided by this Act, this Act takes effect October 1, 2015.
President of the Senate

I hereby certify that S.B. No. 97 passed the Senate on March 17, 2015, by the following vote: Yeas 27, Nays 3; and that the Senate concurred in House amendment on May 18, 2015, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 97 passed the House, with amendment, on May 12, 2015, by the following vote: Yeas 119, Nays 24, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor