

1-1 By: Hinojosa, et al. S.B. No. 97
1-2 (In the Senate - Filed November 10, 2014; January 26, 2015,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 2, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 2, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 97 By: Kolthorst

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to regulation of the sale, distribution, possession, use,
1-22 and advertising of e-cigarettes; creating offenses.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Subchapter H, Chapter 161, Health
1-25 and Safety Code, is amended to read as follows:

1-26 SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO
1-27 PRODUCTS

1-28 SECTION 2. Section 161.081, Health and Safety Code, is
1-29 amended by adding Subdivision (1-a) and amending Subdivisions (3)
1-30 and (4) to read as follows:

1-31 (1-a) "E-cigarette" means an electronic cigarette or
1-32 any other device that simulates smoking by using a mechanical
1-33 heating element, battery, or electronic circuit to deliver nicotine
1-34 or other substances to the individual inhaling from the device. The
1-35 term does not include a prescription medical device unrelated to
1-36 the cessation of smoking. The term includes:

1-37 (A) a device described by this subdivision
1-38 regardless of whether the device is manufactured, distributed, or
1-39 sold as an e-cigarette, e-cigar, or e-pipe or under another product
1-40 name or description; and

1-41 (B) a component, part, or accessory of the
1-42 device, regardless of whether the component, part, or accessory is
1-43 sold separately from the device.

1-44 (3) "Retail sale" means a transfer of possession from
1-45 a retailer to a consumer in connection with a purchase, sale, or
1-46 exchange for value of cigarettes, e-cigarettes, or tobacco
1-47 products.

1-48 (4) "Retailer" means a person who engages in the
1-49 practice of selling cigarettes, e-cigarettes, or tobacco products
1-50 to consumers and includes the owner of a coin-operated cigarette,
1-51 e-cigarette, or tobacco product vending machine. The term includes
1-52 a retailer as that term is defined ~~[has the meaning assigned]~~ by
1-53 Section 154.001 or 155.001, Tax Code, as applicable.

1-54 SECTION 3. The heading to Section 161.082, Health and
1-55 Safety Code, is amended to read as follows:

1-56 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
1-57 PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF
1-58 OF AGE REQUIRED.

1-59 SECTION 4. Sections 161.082(a), (b), and (d), Health and
1-60 Safety Code, are amended to read as follows:

2-1 (a) A person commits an offense if the person, with criminal
2-2 negligence:

2-3 (1) sells, gives, or causes to be sold or given a
2-4 cigarette, e-cigarette, or tobacco product to someone who is
2-5 younger than 18 years of age; or

2-6 (2) sells, gives, or causes to be sold or given a
2-7 cigarette, e-cigarette, or tobacco product to another person who
2-8 intends to deliver it to someone who is younger than 18 years of
2-9 age.

2-10 (b) If an offense under this section occurs in connection
2-11 with a sale by an employee of the owner of a store in which
2-12 cigarettes, e-cigarettes, or tobacco products are sold at retail,
2-13 the employee is criminally responsible for the offense and is
2-14 subject to prosecution.

2-15 (d) It is a defense to prosecution under Subsection (a)(1)
2-16 that the person to whom the cigarette, e-cigarette, or tobacco
2-17 product was sold or given presented to the defendant apparently
2-18 valid proof of identification.

2-19 SECTION 5. Section 161.0825(e), Health and Safety Code, is
2-20 amended to read as follows:

2-21 (e) It is an affirmative defense to prosecution under
2-22 Section 161.082 that:

2-23 (1) a transaction scan device identified a license or
2-24 certificate as valid and the defendant accessed the information and
2-25 relied on the results in good faith; or

2-26 (2) if the defendant is the owner of a store in which
2-27 cigarettes, e-cigarettes, or tobacco products are sold at retail,
2-28 the offense under Section 161.082 occurs in connection with a sale
2-29 by an employee of the owner, and the owner had provided the employee
2-30 with:

2-31 (A) a transaction scan device in working
2-32 condition; and

2-33 (B) adequate training in the use of the
2-34 transaction scan device.

2-35 SECTION 6. The heading to Section 161.083, Health and
2-36 Safety Code, is amended to read as follows:

2-37 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
2-38 PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE.

2-39 SECTION 7. Section 161.083, Health and Safety Code, is
2-40 amended by adding Subsection (a-1) and amending Subsections (b) and
2-41 (c) to read as follows:

2-42 (a-1) A person may not sell, give, or cause to be sold or
2-43 given an e-cigarette to someone who is younger than 27 years of age
2-44 unless the person to whom the e-cigarette was sold or given presents
2-45 an apparently valid proof of identification.

2-46 (b) A retailer shall adequately supervise and train the
2-47 retailer's agents and employees to prevent a violation of
2-48 Subsections [Subsection] (a) and (a-1).

2-49 (c) A proof of identification described by Section
2-50 161.082(e) satisfies the requirements of Subsections [Subsection]
2-51 (a) and (a-1).

2-52 SECTION 8. Sections 161.084(a), (b), and (d), Health and
2-53 Safety Code, are amended to read as follows:

2-54 (a) Each person who sells cigarettes, e-cigarettes, or
2-55 tobacco products at retail or by vending machine shall post a sign
2-56 in a location that is conspicuous to all employees and customers and
2-57 that is close to the place at which the cigarettes, e-cigarettes, or
2-58 tobacco products may be purchased.

2-59 (b) The sign must include the statement:

2-60 PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO
2-61 PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE
2-62 OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR UNDER 18
2-63 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C
2-64 MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.
2-65 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY
2-66 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
2-67 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
2-68 PREMATURE OR WITH LOW BIRTH WEIGHT.

2-69 (d) The comptroller on request shall provide the sign

3-1 without charge to any person who sells cigarettes, e-cigarettes, or
 3-2 tobacco products. The comptroller may provide the sign without
 3-3 charge to distributors of cigarettes, e-cigarettes, or tobacco
 3-4 products or wholesale dealers of cigarettes, e-cigarettes, or
 3-5 tobacco products in this state for distribution to persons who sell
 3-6 cigarettes, e-cigarettes, or tobacco products. A distributor or
 3-7 wholesale dealer may not charge for distributing a sign under this
 3-8 subsection.

3-9 SECTION 9. Sections 161.085(a) and (b), Health and Safety
 3-10 Code, are amended to read as follows:

3-11 (a) Each retailer shall notify each individual employed by
 3-12 that retailer who is to be engaged in retail sales of cigarettes,
 3-13 e-cigarettes, or tobacco products that state law:

3-14 (1) prohibits the sale or distribution of cigarettes,
 3-15 e-cigarettes, or tobacco products to any person who is younger than
 3-16 18 years of age as provided by Section 161.082 and that a violation
 3-17 of that section is a Class C misdemeanor; and

3-18 (2) requires each person who sells cigarettes,
 3-19 e-cigarettes, or tobacco products at retail or by vending machine
 3-20 to post a warning notice as provided by Section 161.084, requires
 3-21 each employee to ensure that the appropriate sign is always
 3-22 properly displayed while that employee is exercising the employee's
 3-23 duties, and provides that a violation of Section 161.084 is a Class
 3-24 C misdemeanor.

3-25 (b) The notice required by Subsection (a) must be provided
 3-26 within 72 hours of the date an individual begins to engage in retail
 3-27 sales of e-cigarettes or tobacco products. The individual shall
 3-28 signify that the individual has received the notice required by
 3-29 Subsection (a) by signing a form stating that the law has been fully
 3-30 explained, that the individual understands the law, and that the
 3-31 individual, as a condition of employment, agrees to comply with the
 3-32 law.

3-33 SECTION 10. Section 161.086(a), Health and Safety Code, is
 3-34 amended to read as follows:

3-35 (a) Except as provided by Subsection (b), a retailer or
 3-36 other person may not:

3-37 (1) offer cigarettes, e-cigarettes, or tobacco
 3-38 products for sale in a manner that permits a customer direct access
 3-39 to the cigarettes, e-cigarettes, or tobacco products; or

3-40 (2) install or maintain a vending machine containing
 3-41 cigarettes, e-cigarettes, or tobacco products.

3-42 SECTION 11. The heading to Section 161.087, Health and
 3-43 Safety Code, is amended to read as follows:

3-44 Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR
 3-45 TOBACCO PRODUCTS.

3-46 SECTION 12. Sections 161.087(a) and (b), Health and Safety
 3-47 Code, are amended to read as follows:

3-48 (a) A person may not distribute to persons younger than 18
 3-49 years of age:

3-50 (1) a free sample of a cigarette, e-cigarette, or
 3-51 tobacco product; or

3-52 (2) a coupon or other item that the recipient may use
 3-53 to receive a free or discounted cigarette, e-cigarette, or tobacco
 3-54 product or a sample cigarette, e-cigarette, or tobacco product.

3-55 (b) Except as provided by Subsection (c), a person,
 3-56 including a permit holder, may not accept or redeem, offer to accept
 3-57 or redeem, or hire a person to accept or redeem a coupon or other
 3-58 item that the recipient may use to receive a free or discounted
 3-59 cigarette, e-cigarette, or tobacco product or a sample cigarette,
 3-60 e-cigarette, or tobacco product if the recipient is younger than 18
 3-61 years of age. A coupon or other item that such a recipient may use
 3-62 to receive a free or discounted cigarette, e-cigarette, or tobacco
 3-63 product or a sample cigarette, e-cigarette, or tobacco product may
 3-64 not be redeemable through mail or courier delivery.

3-65 SECTION 13. Sections 161.088(b) and (d), Health and Safety
 3-66 Code, are amended to read as follows:

3-67 (b) The comptroller may make block grants to counties and
 3-68 municipalities to be used by local law enforcement agencies to
 3-69 enforce this subchapter in a manner that can reasonably be expected

4-1 to reduce the extent to which cigarettes, e-cigarettes, and tobacco
 4-2 products are sold or distributed to persons who are younger than 18
 4-3 years of age. At least annually, random unannounced inspections
 4-4 shall be conducted at various locations where cigarettes,
 4-5 e-cigarettes, and tobacco products are sold or distributed to
 4-6 ensure compliance with this subchapter. The comptroller shall
 4-7 rely, to the fullest extent possible, on local law enforcement
 4-8 agencies to enforce this subchapter.

4-9 (d) The use of a person younger than 18 years of age to act
 4-10 as a minor decoy to test compliance with this subchapter shall be
 4-11 conducted in a fashion that promotes fairness. A person may be
 4-12 enlisted by the comptroller or a local law enforcement agency to act
 4-13 as a minor decoy only if the following requirements are met:

4-14 (1) written parental consent is obtained for the use
 4-15 of a person younger than 18 years of age to act as a minor decoy to
 4-16 test compliance with this subchapter;

4-17 (2) at the time of the inspection, the minor decoy is
 4-18 younger than 17 years of age;

4-19 (3) the minor decoy has an appearance that would cause
 4-20 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco
 4-21 products to request identification and proof of age;

4-22 (4) the minor decoy carries either the minor's own
 4-23 identification showing the minor's correct date of birth or carries
 4-24 no identification, and a minor decoy who carries identification
 4-25 presents it on request to any seller of cigarettes, e-cigarettes,
 4-26 or tobacco products; and

4-27 (5) the minor decoy answers truthfully any questions
 4-28 about the minor's age.

4-29 SECTION 14. Section 161.089, Health and Safety Code, is
 4-30 amended to read as follows:

4-31 Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter
 4-32 does not preempt a local regulation of the sale, distribution, or
 4-33 use of cigarettes, e-cigarettes, or tobacco products or affect the
 4-34 authority of a political subdivision to adopt or enforce an
 4-35 ordinance or requirement relating to the sale, distribution, or use
 4-36 of cigarettes, e-cigarettes, or tobacco products if the regulation,
 4-37 ordinance, or requirement:

4-38 (1) is compatible with and equal to or more stringent
 4-39 than a requirement prescribed by this subchapter; or

4-40 (2) relates to an issue that is not specifically
 4-41 addressed by this subchapter or Chapter 154 or 155, Tax Code.

4-42 SECTION 15. Section 161.0901, Health and Safety Code, is
 4-43 amended to read as follows:

4-44 Sec. 161.0901. DEPARTMENT REPORT [~~OF OFFICE OF SMOKING AND~~
 4-45 ~~HEALTH~~]. (a) Not later than January 5th of each odd-numbered year
 4-46 the [~~Office of Smoking and Health of the~~] department shall report to
 4-47 the governor, lieutenant governor, and [~~the~~] speaker of the house
 4-48 of representatives on the status of smoking and the use of
 4-49 e-cigarettes, tobacco, and tobacco products in this state.

4-50 (b) The report must include, at a minimum:

4-51 (1) a baseline of statistics and analysis regarding
 4-52 retail compliance with this subchapter, Subchapter K, and Chapters
 4-53 154 and 155, Tax Code;

4-54 (2) a baseline of statistics and analysis regarding
 4-55 illegal e-cigarette and tobacco sales, including:

4-56 (A) sales to minors;

4-57 (B) enforcement actions concerning minors; and

4-58 (C) sources of citations;

4-59 (3) e-cigarette and tobacco controls and initiatives
 4-60 by the [~~Office of Smoking and Health of the~~] department, or any
 4-61 other state agency, including an evaluation of the effectiveness of
 4-62 the controls and initiatives;

4-63 (4) the future goals and plans of the [~~Office of~~
 4-64 ~~Smoking and Health of the~~] department to decrease the use of
 4-65 e-cigarettes, tobacco, and tobacco products;

4-66 (5) the educational programs of the [~~Office of Smoking~~
 4-67 ~~and Health of the~~] department and the effectiveness of those
 4-68 programs; and

4-69 (6) the incidence of use of e-cigarettes, tobacco, and

5-1 tobacco products by regions in this state, including use of
5-2 cigarettes, e-cigarettes, and tobacco products by ethnicity.

5-3 SECTION 16. The heading to Subchapter K, Chapter 161,
5-4 Health and Safety Code, is amended to read as follows:

5-5 SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, E-CIGARETTE, OR
5-6 TOBACCO PRODUCT ADVERTISING; FEE

5-7 SECTION 17. Section 161.121, Health and Safety Code, is
5-8 amended by adding Subdivision (2-a) to read as follows:

5-9 (2-a) "E-cigarette" has the meaning assigned by
5-10 Section 161.081.

5-11 SECTION 18. Sections 161.122(a) and (b), Health and Safety
5-12 Code, are amended to read as follows:

5-13 (a) Except as provided by this section, a sign containing an
5-14 advertisement for cigarettes, e-cigarettes, or tobacco products
5-15 may not be located closer than 1,000 feet to a church or school.

5-16 (b) The measurement of the distance between the sign
5-17 containing an advertisement for cigarettes, e-cigarettes, or
5-18 tobacco products and an institution listed in Subsection (a) is
5-19 from the nearest property line of the institution to a point on a
5-20 street or highway closest to the sign, along street lines and in
5-21 direct lines across intersections.

5-22 SECTION 19. The heading to Subchapter N, Chapter 161,
5-23 Health and Safety Code, is amended to read as follows:

5-24 SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

5-25 SECTION 20. Section 161.251, Health and Safety Code, is
5-26 amended by adding Subdivision (1-a) to read as follows:

5-27 (1-a) "E-cigarette" has the meaning assigned by
5-28 Section 161.081.

5-29 SECTION 21. The heading to Section 161.252, Health and
5-30 Safety Code, is amended to read as follows:

5-31 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
5-32 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS
5-33 PROHIBITED.

5-34 SECTION 22. Sections 161.252(a) and (b), Health and Safety
5-35 Code, are amended to read as follows:

5-36 (a) An individual who is younger than 18 years of age
5-37 commits an offense if the individual:

5-38 (1) possesses, purchases, consumes, or accepts a
5-39 cigarette, e-cigarette, or tobacco product; or

5-40 (2) falsely represents himself or herself to be 18
5-41 years of age or older by displaying proof of age that is false,
5-42 fraudulent, or not actually proof of the individual's own age in
5-43 order to obtain possession of, purchase, or receive a cigarette,
5-44 e-cigarette, or tobacco product.

5-45 (b) It is an exception to the application of this section
5-46 that the individual younger than 18 years of age possessed the
5-47 cigarette, e-cigarette, or tobacco product in the presence of:

5-48 (1) an adult parent, a guardian, or a spouse of the
5-49 individual; or

5-50 (2) an employer of the individual, if possession or
5-51 receipt of the e-cigarette or tobacco product is required in the
5-52 performance of the employee's duties as an employee.

5-53 SECTION 23. The heading to Section 161.253, Health and
5-54 Safety Code, is amended to read as follows:

5-55 Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM;
5-56 COMMUNITY SERVICE.

5-57 SECTION 24. Sections 161.253(a), (b), (c), (d), and (e),
5-58 Health and Safety Code, are amended to read as follows:

5-59 (a) On conviction of an individual for an offense under
5-60 Section 161.252, the court shall suspend execution of sentence and
5-61 shall require the defendant to attend an e-cigarette and [a]
5-62 tobacco awareness program approved by the commissioner. The court
5-63 may require the parent or guardian of the defendant to attend the
5-64 e-cigarette and tobacco awareness program with the defendant.

5-65 (b) On request, an e-cigarette and [a] tobacco awareness
5-66 program may be taught in languages other than English.

5-67 (c) If the defendant resides in a rural area of this state or
5-68 another area of this state in which access to an e-cigarette and [a]
5-69 tobacco awareness program is not readily available, the court shall

6-1 require the defendant to perform eight to 12 hours of e-cigarette-
 6-2 and tobacco-related community service instead of attending the
 6-3 e-cigarette and tobacco awareness program.

6-4 (d) The e-cigarette and tobacco awareness program and the
 6-5 e-cigarette- and tobacco-related community service are remedial
 6-6 and are not punishment.

6-7 (e) Not later than the 90th day after the date of a
 6-8 conviction under Section 161.252, the defendant shall present to
 6-9 the court, in the manner required by the court, evidence of
 6-10 satisfactory completion of the e-cigarette and tobacco awareness
 6-11 program or the e-cigarette- and tobacco-related community service.

6-12 SECTION 25. Section 161.255(a), Health and Safety Code, is
 6-13 amended to read as follows:

6-14 (a) An individual convicted of an offense under Section
 6-15 161.252 may apply to the court to have the conviction expunged. If
 6-16 the court finds that the individual satisfactorily completed the
 6-17 e-cigarette and tobacco awareness program or e-cigarette- and
 6-18 tobacco-related community service ordered by the court, the court
 6-19 shall order the conviction and any complaint, verdict, sentence, or
 6-20 other document relating to the offense to be expunged from the
 6-21 individual's record and the conviction may not be shown or made
 6-22 known for any purpose.

6-23 SECTION 26. Section 161.256, Health and Safety Code, is
 6-24 amended to read as follows:

6-25 Sec. 161.256. JURISDICTION OF COURTS. A justice court or
 6-26 municipal court may exercise jurisdiction over any matter in which
 6-27 a court under this subchapter may:

6-28 (1) impose a requirement that a defendant attend an
 6-29 e-cigarette and [a] tobacco awareness program or perform
 6-30 e-cigarette- and tobacco-related community service; or

6-31 (2) order the suspension or denial of a driver's
 6-32 license or permit.

6-33 SECTION 27. The heading to Subchapter O, Chapter 161,
 6-34 Health and Safety Code, is amended to read as follows:

6-35 SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

6-36 SECTION 28. The heading to Section 161.301, Health and
 6-37 Safety Code, is amended to read as follows:

6-38 Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS
 6-39 CAMPAIGN.

6-40 SECTION 29. Section 161.301(a), Health and Safety Code, is
 6-41 amended to read as follows:

6-42 (a) The commissioner shall develop and implement a public
 6-43 awareness campaign designed to reduce the ~~[tobacco]~~ use by minors
 6-44 in this state of tobacco and e-cigarettes as defined by Section
 6-45 161.081. The campaign may use advertisements or similar media to
 6-46 provide educational information about tobacco and e-cigarette use.

6-47 SECTION 30. Section 161.302(a), Health and Safety Code, is
 6-48 amended to read as follows:

6-49 (a) The entity administering Section 161.301 shall also
 6-50 develop and implement a grant program to support youth groups that
 6-51 include as a part of the group's program components related to
 6-52 reduction of ~~[tobacco]~~ use by the group's members of tobacco and
 6-53 e-cigarettes as defined by Section 161.081.

6-54 SECTION 31. The heading to Subchapter R, Chapter 161,
 6-55 Health and Safety Code, is amended to read as follows:

6-56 SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

6-57 SECTION 32. Section 161.451, Health and Safety Code, is
 6-58 amended by amending Subdivisions (1) and (3) and adding Subdivision
 6-59 (2-a) to read as follows:

6-60 (1) "Delivery sale" means a sale of cigarettes or
 6-61 e-cigarettes to a consumer in this state in which the purchaser
 6-62 submits the order for the sale by means of a telephonic or other
 6-63 method of voice transmission, by using the mails or any other
 6-64 delivery service, or through the Internet or another on-line
 6-65 service, or the cigarettes or e-cigarettes are delivered by use of
 6-66 the mails or another delivery service. A sale of cigarettes or
 6-67 e-cigarettes is a delivery sale regardless of whether the seller is
 6-68 located within or without this state. A sale of cigarettes or
 6-69 e-cigarettes not for personal consumption to a person who is a

7-1 wholesale dealer or a retail dealer is not a delivery sale.

7-2 (2-a) "E-cigarette" has the meaning assigned by
7-3 Section 161.081.

7-4 (3) "Shipping container" means a container in which
7-5 cigarettes or e-cigarettes are shipped in connection with a
7-6 delivery sale.

7-7 SECTION 33. Section 161.452, Health and Safety Code, is
7-8 amended to read as follows:

7-9 Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A
7-10 person may not make a delivery sale of cigarettes or e-cigarettes to
7-11 an individual who is under the age prescribed by Section 161.082.

7-12 (b) A person taking a delivery sale order shall comply with:

7-13 (1) the age verification requirements prescribed by
7-14 Section 161.453;

7-15 (2) the disclosure requirements prescribed by Section
7-16 161.454;

7-17 (3) the shipping requirements prescribed by Section
7-18 161.455;

7-19 (4) the registration and reporting requirements
7-20 prescribed by Section 161.456, if applicable;

7-21 (5) the tax collection requirements prescribed by
7-22 Section 161.457, if applicable; and

7-23 (6) each law of this state that generally applies to
7-24 sales of cigarettes or e-cigarettes that occur entirely within this
7-25 state, if applicable, including a law:

7-26 (A) imposing a tax; or

7-27 (B) prescribing a permitting or tax-stamping
7-28 requirement.

7-29 SECTION 34. Section 161.453(a), Health and Safety Code, is
7-30 amended to read as follows:

7-31 (a) A person may not mail or ship cigarettes or e-cigarettes
7-32 in connection with a delivery sale order unless before mailing or
7-33 shipping the cigarettes or e-cigarettes the person accepting the
7-34 delivery sale order first:

7-35 (1) obtains from the prospective customer a
7-36 certification that includes:

7-37 (A) reliable confirmation that the purchaser is
7-38 at least 18 years of age; and

7-39 (B) a statement signed by the prospective
7-40 purchaser in writing and under penalty of law:

7-41 (i) certifying the prospective purchaser's
7-42 address and date of birth;

7-43 (ii) confirming that the prospective
7-44 purchaser understands that signing another person's name to the
7-45 certification is illegal, that sales of cigarettes or e-cigarettes
7-46 to an individual under the age prescribed by Section 161.082 are
7-47 illegal under state law, and that the purchase of cigarettes or
7-48 e-cigarettes by an individual under that age is illegal under state
7-49 law; and

7-50 (iii) confirming that the prospective
7-51 purchaser wants to receive mailings from an e-cigarette or [a]
7-52 tobacco company;

7-53 (2) makes a good faith effort to verify the
7-54 information contained in the certification provided by the
7-55 prospective purchaser under Subdivision (1) against a commercially
7-56 available database or obtains a photocopy or other image of a
7-57 government-issued identification bearing a photograph of the
7-58 prospective purchaser and stating the date of birth or age of the
7-59 prospective purchaser;

7-60 (3) sends to the prospective purchaser, by e-mail or
7-61 other means, a notice that complies with Section 161.454; and

7-62 (4) for an order made over the Internet or as a result
7-63 of an advertisement, receives payment for the delivery sale from
7-64 the prospective purchaser by a credit or debit card that has been
7-65 issued in the purchaser's name or by check.

7-66 SECTION 35. Section 161.454, Health and Safety Code, is
7-67 amended to read as follows:

7-68 Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required
7-69 by Section 161.453(a)(3) must include a prominent and clearly

8-1 legible statement that:

8-2 (1) cigarette and e-cigarette sales to individuals who
8-3 are below the age prescribed by Section 161.082 are illegal under
8-4 state law;

8-5 (2) sales of cigarettes and e-cigarettes are
8-6 restricted to those individuals who provide verifiable proof of age
8-7 in accordance with Section 161.453; and

8-8 (3) cigarette sales are taxable under Chapter 154, Tax
8-9 Code, and an explanation of how that tax has been or is to be paid
8-10 with respect to the delivery sale.

8-11 SECTION 36. Section 161.455, Health and Safety Code, is
8-12 amended to read as follows:

8-13 Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who
8-14 mails or ships cigarettes or e-cigarettes in connection with a
8-15 delivery sale order shall:

8-16 (1) include as part of the shipping documents a clear
8-17 and conspicuous statement: "CIGARETTES AND E-CIGARETTES: TEXAS
8-18 LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND
8-19 REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

8-20 (2) use a method of mailing or shipping that obligates
8-21 the delivery service to require:

8-22 (A) the purchaser placing the delivery sale
8-23 order, or an adult who is at least 18 years of age and who resides at
8-24 the purchaser's address, to sign to accept delivery of the shipping
8-25 container; and

8-26 (B) the person signing to accept delivery of the
8-27 shipping container to provide proof, in the form of a
8-28 government-issued identification bearing a photograph that the
8-29 person is:

8-30 (i) the addressee or an adult who is at
8-31 least 18 years of age and who resides at the purchaser's address;
8-32 and

8-33 (ii) at least 18 years of age if the person
8-34 appears to be younger than 27 years of age; and

8-35 (3) provide to the delivery service retained to make
8-36 the delivery evidence of full compliance with Section 161.457.

8-37 (b) A person taking a delivery sale order who delivers the
8-38 cigarettes or e-cigarettes without using a third-party delivery
8-39 service shall comply with the requirements prescribed by this
8-40 subchapter that apply to a delivery service.

8-41 SECTION 37. Section 48.01, Penal Code, is amended by
8-42 amending Subsections (a), (c), (d), and (e) and adding Subsection
8-43 (a-1) to read as follows:

8-44 (a) In this section, "e-cigarette" has the meaning assigned
8-45 by Section 161.081, Health and Safety Code.

8-46 (a-1) A person commits an offense if the person [he] is in
8-47 possession of a burning tobacco product, [or] smokes tobacco, or
8-48 operates an e-cigarette in a facility of a public primary or
8-49 secondary school or an elevator, enclosed theater or movie house,
8-50 library, museum, hospital, transit system bus, [or] intrastate bus,
8-51 [as defined by Section 541.201, Transportation Code,] plane, or
8-52 train which is a public place.

8-53 (c) All conveyances and public places set out in Subsection
8-54 (a-1) [~~(a)~~ of Section 48.01] shall be equipped with facilities for
8-55 extinguishment of smoking materials and it shall be a defense to
8-56 prosecution under this section if the conveyance or public place
8-57 within which the offense takes place is not so equipped.

8-58 (d) It is an exception to the application of Subsection
8-59 (a-1) [~~(a)~~] if the person is in possession of the burning tobacco
8-60 product, [or] smokes tobacco, or operates the e-cigarette
8-61 exclusively within an area designated for smoking tobacco or
8-62 operating an e-cigarette or as a participant in an authorized
8-63 theatrical performance.

8-64 (e) An area designated for smoking tobacco or operating an
8-65 e-cigarette on a transit system bus or intrastate plane or train
8-66 must also include the area occupied by the operator of the transit
8-67 system bus, plane, or train.

8-68 SECTION 38. Sections 161.082(a) and 161.252(a), Health and
8-69 Safety Code, as amended by this Act, and Section 48.01, Penal Code,

9-1 as amended by this Act, apply only to an offense committed on or
9-2 after October 1, 2015. An offense committed before that date is
9-3 governed by the law in effect on the date the offense was committed,
9-4 and the former law is continued in effect for that purpose. For
9-5 purposes of this section, an offense was committed before October
9-6 1, 2015, if any element of the offense occurred before that date.

9-7 SECTION 39. (a) The comptroller of public accounts shall
9-8 develop the sign described by Section [161.084](#), Health and Safety
9-9 Code, as amended by this Act, and make the sign available to the
9-10 public not later than September 15, 2015.

9-11 (b) This section takes effect September 1, 2015.

9-12 SECTION 40. Except as otherwise provided by this Act, this
9-13 Act takes effect October 1, 2015.

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