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S.B. No. 648

A BILL TO BE ENTITLED

AN ACT

relating to the distribution, possession, purchase, consumption,
and receipt of cigarettes and tobacco products; providing
penalties.

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

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

(1-a) "Minor" means a person under 19 years of age.

SECTION 2. The heading to Section 161.082, Health and
Safety Code, is amended to read as follows:

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO
PERSONS YOUNGER THAN 19 ~~[18]~~ YEARS OF AGE PROHIBITED; PROOF OF AGE
REQUIRED.

SECTION 3. Sections 161.082(a) and (e), 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 or tobacco product to someone who is younger than 19 ~~[18]~~
years of age; or

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

(e) A proof of identification satisfies the requirements of

Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 19 [~~18~~] years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

SECTION 4. Section 161.084(b), Health and Safety Code, is amended to read as follows:

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 19 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 19 [~~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.

SECTION 5. 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 or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 19 [~~18~~] years of age as provided by Section 161.082 and that a violation of that

1 section is a Class C misdemeanor; and

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

8 (b) The notice required by this section [~~Subsection (a)~~]
9 must be provided within 72 hours of the date an individual begins to
10 engage in retail sales of cigarettes or tobacco products. The
11 individual shall signify that the individual has received the
12 notice required by this section [~~Subsection (a)~~] by signing a form
13 stating that the law has been fully explained, that the individual
14 understands the law, and that the individual, as a condition of
15 employment, agrees to comply with the law.

16 SECTION 6. Section 161.086(b), Health and Safety Code, is
17 amended to read as follows:

18 (b) Subsection (a) does not apply to:

19 (1) a facility or business that is not open to persons
20 younger than 19 [~~18~~] years of age at any time;

21 (2) that part of a facility or business that is a
22 humidor or other enclosure designed to store cigars in a
23 climate-controlled environment; or

24 (3) a premises for which a person holds a package store
25 permit issued under the Alcoholic Beverage Code.

26 SECTION 7. Sections 161.087(a) and (b), Health and Safety
27 Code, are amended to read as follows:

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

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

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

(b) Except as provided by Subsection (c), 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 or tobacco product or a sample cigarette or tobacco product if the recipient is younger than 19 [~~18~~] years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product may not be redeemable through mail or courier delivery.

SECTION 8. 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 in a manner that can reasonably be expected to reduce the extent to which cigarettes and tobacco products are sold or distributed to persons who are younger than 19 [~~18~~] years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes and tobacco products are sold or distributed to ensure compliance with this subchapter. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this

1 subchapter.

2 (d) The use of a person younger than 19 [~~18~~] years of age to
3 act as a minor decoy to test compliance with this subchapter shall
4 be 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 18 [~~17~~] years of age;

12 (3) the minor decoy has an appearance that would cause
13 a reasonably prudent seller of cigarettes or tobacco products to
14 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 or tobacco
19 products; and

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

22 SECTION 9. Section [161.251](#), Health and Safety Code, is
23 amended by adding Subdivision (1-a) to read as follows:

24 (1-a) "Minor" means a person under 19 years of age.

25 SECTION 10. Sections [161.252](#)(a), (b), and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) An individual who is younger than 19 [~~18~~] years of age

1 commits an offense if the individual:

2 (1) possesses, purchases, consumes, or accepts a
3 cigarette or tobacco product; or

4 (2) falsely represents himself or herself to be 19
5 [~~18~~] years of age or older by displaying proof of age that is false,
6 fraudulent, or not actually proof of the individual's own age in
7 order to obtain possession of, purchase, or receive a cigarette or
8 tobacco product.

9 (b) It is an exception to the application of this section
10 that the individual younger than 19 [~~18~~] years of age possessed the
11 cigarette or tobacco product in the presence of:

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

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

17 (c) It is an exception to the application of this section
18 that the individual younger than 19 [~~18~~] years of age is
19 participating in an inspection or test of compliance in accordance
20 with Section [161.088](#).

21 SECTION 11. Section [161.452](#)(b), Health and Safety Code, is
22 amended to read as follows:

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

24 (1) the age verification requirements prescribed by
25 Section [161.453](#);

26 (2) the disclosure requirements prescribed by Section
27 [161.454](#);

(3) ~~[the shipping requirements prescribed by Section 161.455,~~

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

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

(5) ~~(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.

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

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 13. Section 161.455, Health and Safety Code, is
21 repealed.

22 SECTION 14. (a) The changes in law made by this Act to
23 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
24 only to an offense committed on or after the effective date of this
25 Act. For purposes of this section, an offense is committed before
26 the effective date of this Act if any element of the offense occurs
27 before that date.

1 (b) An offense committed before the effective date of this
2 Act is covered by the law in effect when the offense was committed,
3 and the former law is continued in effect for that purpose.

4 SECTION 15. This Act takes effect September 1, 2015.