

By: Zerwas

H.B. No. 1908

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the distribution, possession, purchase, consumption,
3 and receipt of cigarettes, e-cigarettes, and tobacco products;
4 providing penalties.

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

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

8 (1-b) "Minor" means a person under 21 years of age.

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

11 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
12 PRODUCTS TO PERSONS YOUNGER THAN 21 [~~18~~] YEARS OF AGE PROHIBITED;
13 PROOF OF AGE REQUIRED.

14 SECTION 3. Sections 161.082(a) and (e), Health and Safety
15 Code, are amended to read as follows:

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

18 (1) sells, gives, or causes to be sold or given a
19 cigarette, e-cigarette, or tobacco product to someone who is
20 younger than 21 [~~18~~] years of age; or

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

1 (e) A proof of identification satisfies the requirements of
2 Subsection (d) if it contains a physical description and photograph
3 consistent with the person's appearance, purports to establish that
4 the person is 21 [~~18~~] years of age or older, and was issued by a
5 governmental agency. The proof of identification may include a
6 driver's license issued by this state or another state, a passport,
7 or an identification card issued by a state or the federal
8 government.

9 SECTION 4. The heading to Section 161.083, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
12 PRODUCTS TO PERSONS YOUNGER THAN 30 [~~27~~] YEARS OF AGE.

13 SECTION 5. Sections 161.083(a), (b), and (c), Health and
14 Safety Code, are amended to read as follows:

15 (a) A [~~Pursuant to federal regulation under 21 C.F.R.~~
16 ~~Section 1140.14(b), a~~] person may not sell, give, or cause to be
17 sold or given a cigarette, e-cigarette, or tobacco product to
18 someone who is younger than 30 [~~27~~] years of age unless the person
19 to whom the cigarette, e-cigarette, or tobacco product was sold or
20 given presents an apparently valid proof of identification.

21 (b) A retailer shall adequately supervise and train the
22 retailer's agents and employees to prevent a violation of
23 Subsection [~~Subsections~~] (a) [~~and (a-1)~~].

24 (c) A proof of identification described by Section
25 161.082(e) satisfies the requirements of Subsection [~~Subsections~~]
26 (a) [~~and (a-1)~~].

27 SECTION 6. Section 161.084(b), Health and Safety Code, is

1 amended to read as follows:

2 (b) The sign must include the statement:

3 PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES,
4 E-CIGARETTES, OR TOBACCO PRODUCTS BY A MINOR UNDER 21 [~~18~~] YEARS OF
5 AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES,
6 E-CIGARETTES, OR TOBACCO PRODUCTS TO A MINOR UNDER 21 [~~18~~] YEARS OF
7 AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR,
8 INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE
9 REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert
10 toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE.
11 SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR
12 WITH LOW BIRTH WEIGHT.

13 SECTION 7. Sections [161.085](#)(a) and (b), Health and Safety
14 Code, are amended to read as follows:

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

18 (1) prohibits the sale or distribution of cigarettes,
19 e-cigarettes, or tobacco products to any person who is younger than
20 21 [~~18~~] years of age as provided by Section [161.082](#) and that a
21 violation of that section is a Class C misdemeanor; and

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

1 C misdemeanor.

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

10 SECTION 8. Section 161.086(b), Health and Safety Code, is
11 amended to read as follows:

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

13 (1) a facility or business that is not open to persons
14 younger than 21 [~~18~~] years of age at any time;

15 (2) that part of a facility or business that is a
16 humidor or other enclosure designed to store cigars in a
17 climate-controlled environment and that is not open to persons
18 younger than 21 years of age at any time; or

19 (3) a premises for which a person holds a package store
20 permit issued under the Alcoholic Beverage Code and that is not open
21 to persons younger than 21 years of age at any time.

22 SECTION 9. Section 161.087, Health and Safety Code, is
23 amended by amending Subsections (a), (b), and (c) and adding
24 Subsections (a-1) and (b-1) to read as follows:

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

27 (1) a free sample of a cigarette, e-cigarette, or

1 tobacco product; or

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

6 (a-1) A person may not distribute to persons younger than 21
7 years of age a coupon or other item that the recipient may use to
8 receive a discounted cigarette, e-cigarette, or tobacco product.

9 (b) Except as provided by Subsection (c), a person,
10 including a permit holder, may not accept or redeem, offer to accept
11 or redeem, or hire a person to accept or redeem:

12 (1) a coupon or other item that the recipient may use
13 to receive a free [~~or discounted~~] cigarette, e-cigarette, or
14 tobacco product or a sample cigarette, e-cigarette, or tobacco
15 product; or

16 (2) a coupon or other item that the recipient may use
17 to receive a discounted cigarette, e-cigarette, or tobacco product
18 if the recipient is younger than 21 [~~18~~] years of age.

19 (b-1) A coupon or other item that [such] a recipient
20 described by Subsection (b) may use to receive a [free or]
21 discounted cigarette, e-cigarette, or tobacco product [or a sample
22 cigarette, e-cigarette, or tobacco product] may not be redeemable
23 through mail or courier delivery.

24 (c) Subsections (a)(2), (a-1), [and] (b), and (b-1) do not
25 apply to a transaction between permit holders unless the
26 transaction is a retail sale.

27 SECTION 10. Sections 161.088(b) and (d), Health and Safety

1 Code, are amended to read as follows:

2 (b) The comptroller may make block grants to counties and
3 municipalities to be used by local law enforcement agencies to
4 enforce this subchapter and Subchapter R in a manner that can
5 reasonably be expected to reduce the extent to which cigarettes,
6 e-cigarettes, and tobacco products are sold or distributed,
7 including by delivery sale, to persons who are younger than 21 [~~18~~]
8 years of age. At least annually, random unannounced inspections
9 shall be conducted at various locations where cigarettes,
10 e-cigarettes, and tobacco products are sold or distributed,
11 including by delivery sale, to ensure compliance with this
12 subchapter and Subchapter R. The comptroller shall rely, to the
13 fullest extent possible, on local law enforcement agencies to
14 enforce this subchapter and Subchapter R.

15 (d) The use of a person younger than 21 [~~18~~] years of age to
16 act as a minor decoy to test compliance with this subchapter and
17 Subchapter R shall be conducted in a fashion that promotes
18 fairness. A person may be enlisted by the comptroller or a local
19 law enforcement agency to act as a minor decoy only if the following
20 requirements are met:

21 (1) written parental consent is obtained for the use
22 of a person younger than 18 years of age to act as a minor decoy to
23 test compliance with this subchapter and Subchapter R;

24 (2) at the time of the inspection, order, or delivery,
25 the minor decoy is younger than 21 [~~17~~] years of age;

26 (3) the minor decoy has an appearance that would cause
27 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco

1 products to request identification and proof of age;

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

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

10 SECTION 11. Section [161.251](#), Health and Safety Code, is
11 amended by adding Subdivision (1-b) to read as follows:

12 (1-b) "Minor" means a person under 21 years of age.

13 SECTION 12. Sections [161.252](#)(a), (b), and (c), Health and
14 Safety Code, are amended to read as follows:

15 (a) An individual who is younger than 21 [~~18~~] years of age
16 commits an offense if the individual:

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

19 (2) falsely represents himself or herself to be 21
20 [~~18~~] years of age or older by displaying proof of age that is false,
21 fraudulent, or not actually proof of the individual's own age in
22 order to obtain possession of, purchase, or receive a cigarette,
23 e-cigarette, or tobacco product.

24 (b) It is an exception to the application of this section
25 that the individual younger than 21 [~~18~~] years of age possessed the
26 cigarette, e-cigarette, or tobacco product in the presence of [+

27 [~~(1) an adult parent, a guardian, or a spouse of the~~

1 ~~individual, or~~

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

6 (c) It is an exception to the application of this section
7 that the individual younger than 21 ~~[18]~~ years of age is
8 participating in an inspection or test of compliance in accordance
9 with Section [161.088](#).

10 SECTION 13. Sections [161.452](#)(b) and (c), Health and Safety
11 Code, are amended to read as follows:

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

14 (1) the age verification requirements prescribed by
15 Section [161.453](#);

16 (2) the disclosure requirements prescribed by Section
17 [161.454](#);

18 (3) ~~[the shipping requirements prescribed by Section~~
19 ~~[161.455](#),~~

20 ~~[(4)]~~ the registration and reporting requirements
21 prescribed by Section [161.456](#);

22 (4) ~~[(5)]~~ the tax collection requirements prescribed
23 by Section [161.457](#); and

24 (5) ~~[(6)]~~ each law of this state that generally
25 applies to sales of cigarettes that occur entirely within this
26 state, including a law:

27 (A) imposing a tax; or

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

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

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

7 (2) the disclosure requirements prescribed by Section
8 161.454;

9 (3) ~~the shipping requirements prescribed by Section~~
10 ~~161.455;~~

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

13 (4) ~~(5)~~ each law of this state that generally
14 applies to sales of e-cigarettes that occur entirely within this
15 state.

16 SECTION 14. Sections 161.453(a) and (c), Health and Safety
17 Code, are amended to read as follows:

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

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

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

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

27 (i) certifying the prospective purchaser's

1 address and date of birth;

2 (ii) confirming that the prospective
3 purchaser understands that signing another person's name to the
4 certification is illegal, that sales of cigarettes to an individual
5 under the age prescribed by Section 161.082 are illegal under state
6 law, and that the purchase of cigarettes by an individual under that
7 age is illegal under state law; and

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

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

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

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

23 (c) A person may not mail or ship e-cigarettes in connection
24 with a delivery sale order unless before accepting a delivery sale
25 order the person verifies that the prospective purchaser is at
26 least 21 [~~18~~] years of age through a commercially available
27 database or aggregate of databases that is regularly used for the

1 purpose of age and identity verification. After the order is
2 accepted, the person must use a method of mailing or shipping that
3 requires an adult signature.

4 SECTION 15. Sections 161.083(a-1) and 161.455, Health and
5 Safety Code, are repealed.

6 SECTION 16. (a) The changes in law made by this Act to
7 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
8 only to an offense committed on or after the effective date of this
9 Act. For purposes of this section, an offense is committed before
10 the effective date of this Act if any element of the offense occurs
11 before that date.

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

15 SECTION 17. This Act takes effect September 1, 2017.