

BILL ANALYSIS

Senate Research Center

S.B. 21
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Each day, more than 300 kids under the age of 18 become regular, daily smokers and almost one-third will eventually die from smoking. National data shows that about 95 percent of adult smokers begin smoking before they turn 21, and a substantial number of smokers start even younger.

The current minimum legal age (MLA) to purchase tobacco is 18, which means that certain current public school students are eligible to purchase tobacco products, e-cigarettes, and cigarettes legally, while others are not. This means that students that are of-age are under intense pressure to purchase cigarettes, e-cigarettes, and tobacco products for their younger peers.

S.B. 21 seeks to raise the MLA of purchase for cigarettes, e-cigarettes, and tobacco products from 18 years of age to 21. Raising the MLA to 21 for this offense would help keep cigarettes, e-cigarettes, and tobacco products out of Texas public schools by creating more "social distance" between younger high school students and of-age purchasers. By raising the age, S.B. 21 seeks to reduce early addiction to tobacco and nicotine products. (Original Author's/Sponsor's Statement of Intent)

S.B. 21 amends current law relating to the distribution, possession, purchase, consumption, and receipt of cigarettes, e-cigarettes, and tobacco products.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.081, Health and Safety Code, by adding Subdivision (1-b) to define "minor" as a person under 21 years of age.

SECTION 2. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0815, as follows:

Sec. 161.0815. NONAPPLICABILITY. Provides that this subchapter (Distribution of Cigarettes, E-Cigarettes, or Tobacco Products) does not apply to a product that is approved by the United States Food and Drug Administration (FDA) for use in the treatment of nicotine or smoking addiction and that is labeled with a "Drug Facts" panel in accordance with regulations of the FDA.

SECTION 3. Amends the heading to Section 161.082, Health and Safety Code, to read as follows:

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

SECTION 4. Amends Sections 161.082, Health and Safety Code, by amending Subsections (a) and (e) and adding Subsection (f), as follows:

- (a) Provides that 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 21 years of age, rather than 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 21 years of age, rather than younger than 18 years of age.
- (e) Provides that 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 21 years of age or older, rather than 18 years of age or older, and was issued by a governmental agency.
- (f) Provides that it is an exception to the application of Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold is at least 18 years of age and presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

SECTION 5. Amends the heading to Section 161.083, Health and Safety Code, to read as follows:

Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 30 YEARS OF AGE.

SECTION 6. Amends Sections 161.083(a), (b), and (c), Health and Safety Code, as follows:

- (a) Prohibits a person from selling, giving, or causing to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 30 years of age, rather than selling, giving, or causing to be sold a cigarette or tobacco product to someone who is than younger than 27 years of age, unless the person to whom the product was sold or given presents an apparently valid proof of identification. Deletes existing text relating to a federal regulation.
- (b) Requires a retailer to adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a), rather than a violation of Subsections (a) and (a-1) (relating to the sale of e-cigarettes).
- (c) Provides that a proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a), rather than Subsections (a) and (a-1).

SECTION 7. Amends Section 161.084, Health and Safety Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

- (b) Requires the sign required to be posted by each person who sells cigarettes, e-cigarettes, or tobacco products to include a certain statement and sets forth the required language for the statement.
 - (b-1) Requires the sign described by Subsection (b), immediately following the statement described by that subsection, to include a statement that the prohibitions described in the preceding statement do not apply to a person who was born on or before August 31, 2001.
 - (b-2) Provides that this subsection and Subsection (b-1) expire September 1, 2022.

SECTION 8. Amends Sections 161.085(a) and (b), Health and Safety Code, as follows:

(a) Requires each retailer to 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 21 years of age, rather than 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) makes no changes to this subdivision.

(b) Requires the notice required by this section (Notification of Employees and Agents), rather than by Subsection (a), to be provided within 72 hours of the date an individual begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products, rather than sales of e-cigarettes or tobacco products. Requires the individual to signify that the individual has received the notice required by this section, rather than by Subsection (a), by signing a form with certain statements.

SECTION 9. Amends Section 161.086(b), Health and Safety Code, as follows:

(b) Provides that Subsection (a) (relating to vending machines and other forms of direct access to cigarettes, e-cigarettes, and tobacco products) does not apply to:

(1) a facility or business that is not open to persons younger than 21 years of age, rather than younger than 18 years of age, at any time;

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

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

SECTION 10. Amends Section 161.087, Health and Safety Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1), as follows:

(a) Prohibits a person from distributing, rather than prohibiting a person from distributing to persons younger than 18 years of age:

(1) makes no changes to this subdivision; or

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

(a-1) Prohibits a person from distributing to persons younger than 21 years of age a coupon or other item that the recipient is authorized to use to receive a discounted cigarette, e-cigarette, or tobacco product.

(b) Creates subdivisions within this subsection from existing text and prohibits a person, including a permit holder, except as provided by Subsection (c), from accepting or redeeming, offering to accept or redeem, or hiring a person to accept or redeem:

(1) makes conforming and nonsubstantive changes to this subdivision; or

(2) a coupon or other item that the recipient is authorized to use to receive a discounted cigarette, e-cigarette, or tobacco product if the recipient is younger than 21 years of age, rather than younger than 18 years of age.

(b-1) Creates this subsection from existing text. Provides that a coupon or other item that a recipient described by Subsection (b) is authorized to use to receive a discounted cigarette, e-cigarette, or tobacco product is prohibited from being redeemable through mail or courier delivery, rather than providing that a coupon or other item that such a recipient is authorized to use to receive a free or discounted cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product is prohibited from being redeemable through mail or courier delivery.

(c) Provides that Subsections (a)(2), (a-1), (b), and (b-1), rather than Subsections (a)(2) and (b), do not apply to a transaction between permit holders unless the transaction is a retail sale.

SECTION 11. Amends Sections 161.088(b) and (d), Health and Safety Code, as follows:

(b) Authorizes the comptroller of public accounts of the State of Texas (comptroller) to make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R (Delivery Sales of Cigarettes and E-Cigarettes) 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 21 years of age, rather than younger than 18 years of age.

(d) Requires the use of a person younger than 21 years of age, rather than younger than 18 years of age, to act as a minor decoy to test compliance with this subchapter and Subchapter R to be conducted in a fashion that promotes fairness. Authorizes a person to be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) makes no changes to this subdivision;

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than 21 years of age, rather than younger than 17 years of age; and

(3)–(5) makes no changes to these subdivisions.

SECTION 12. Amends Section 161.089, Health and Safety Code, as follows:

Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Creates this subsection from existing text. Provides an exception under Subsection (b) to the provision that this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement meets certain criteria.

(b) Prohibits a political subdivision from adopting or enforcing an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter.

SECTION 13. Amends Section 161.251, Health and Safety Code, by adding Subdivision (1-b) to define "minor" as a person under 21 years of age.

SECTION 14. Amends Section 161.252, Health and Safety Code, as follows:

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) Provides that an individual who is younger than 21 years of age, rather than younger than 18 years of age, commits an offense if the individual:

(1) makes no changes to this subdivision; or

(2) falsely represents himself or herself to be 21 years of age or older, rather than 18 years of age or older, by displaying certain proof of age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.

(b) Provides that it is an exception to the application of this section that the individual younger than 21 years of age, rather than younger than 18 years of age, possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product, rather than possession or receipt of the e-cigarette or tobacco product, is required in the performance of the employee's duties as an employee. Deletes existing text creating an exception to the application of this section for such possession in the presence of an adult parent, a guardian, or a spouse of the individual and makes nonsubstantive changes.

(c) Provides that it is an exception to the application of this section that the individual younger than 21 years of age, rather than younger than 18 years of age, is participating in an inspection or test of compliance in accordance with Section 161.088 (Enforcement; Unannounced Inspections).

(c-1) Provides that it is an exception to the application of this section that the individual younger than 21 years of age is at least 18 years of age and presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) Provides that an offense under this section is punishable by a fine not to exceed \$100, rather than not to exceed \$250.

(e) Requires the court, on conviction of an individual under this section, to give notice to the individual that the individual is authorized to apply to the court to have the individual's conviction expunged as provided by Section 161.255 (Expungement of Conviction) on or after the individual's 21st birthday.

SECTION 15. Amends Section 161.255(a), Health and Safety Code, as follows:

(a) Authorizes an individual convicted of an offense under Section 161.252 to apply to the court to have the conviction expunged on or after the individual's 21st birthday, rather than apply to the court to have the conviction expunged. Requires the court, rather than requiring the court 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, to order the conviction and certain other documents relating to the offense to be expunged from the individual's record and prohibits the conviction from being shown or made known for any purpose.

SECTION 16. Amends Section 161.256, Health and Safety Code, to delete existing text authorizing a justice court or municipal court to exercise jurisdiction over any matter in which a court under this subchapter (E-Cigarette and Tobacco Use by Minors) is authorized to order the suspension or denial of a driver's license or permit and to make nonsubstantive changes.

SECTION 17. Amends Sections 161.452(b) and (c), Health and Safety Code, as follows:

(b) Requires a person taking a delivery sale order of cigarettes to comply with:

(1) and (2) makes no changes to these subdivisions;

(3) creates this subdivision from existing text of Subdivision (4), deletes existing text relating to the shipping requirements prescribed by Section 161.455 (Shipping Requirements), and renumbers subsequent subdivisions accordingly; and

(4) and (5) makes no further changes to these subdivisions.

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

(1) and (2) makes no changes to these subdivisions;

(3) creates this subdivision from existing text of Subdivision (4), deletes existing text relating to the shipping requirements prescribed by Section 161.455, and renumbers subsequent subdivisions accordingly; and

(4) makes no further changes to this subdivision.

SECTION 18. Amends Sections 161.453(a) and (c), Health and Safety Code, as follows:

(a) Prohibits a person from mailing or shipping 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 21 years of age, rather than at least 18 years of age; and

(B) makes no changes to this paragraph; and

(2)–(4) makes no changes to these subdivisions.

(c) Makes a conforming change to this subsection.

SECTION 19. Repealer: Section 161.083(a-1) (relating to prohibiting a person from selling, giving, or causing 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), Health and Safety Code.

Repealer: Section 161.254 (Driver's License Suspension or Denial), Health and Safety Code.

Repealer: Section 161.455 (Shipping Requirements), Health and Safety Code.

SECTION 20. (a) Makes application of Subchapters H, N, and R, Chapter 161, Health and Safety Code, as amended by this Act, prospective. Provides that, for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date.

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

(c) Provides that Subchapters H, N, and R, Chapter 161, Health and Safety Code, as amended by this Act, regarding the prohibitions on purchasing or attempting to purchase cigarettes, e-cigarettes, or tobacco products do not apply to a person who was born on or before August 31, 2001.

SECTION 21. Makes application of the repeal by this Act of Section 161.254, Health and Safety Code, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of the repeal if any element of the offense occurred before that date.

SECTION 22. Effective date: September 1, 2019.