

By: Zerwas, Thompson of Harris, Sheffield,
Anchia, Oliverson, et al.

H.B. No. 749

Substitute the following for H.B. No. 749:

By: Thompson of Harris

C.S.H.B. No. 749

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 imposing a civil penalty.

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. Subchapter H, Chapter 161, Health and Safety
10 Code, is amended by adding Section 161.0815 to read as follows:

11 Sec. 161.0815. NONAPPLICABILITY. This subchapter does not
12 apply to a product that is:

13 (1) approved by the United States Food and Drug
14 Administration for use in the treatment of nicotine or smoking
15 addiction; and

16 (2) labeled with a "Drug Facts" panel in accordance
17 with regulations of the United States Food and Drug Administration.

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

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

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

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

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

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

10 (e) A proof of identification satisfies the requirements of
11 Subsection (d) if it contains a physical description and photograph
12 consistent with the person's appearance, purports to establish that
13 the person is 21 [~~18~~] years of age or older, and was issued by a
14 governmental agency. The proof of identification may include a
15 driver's license issued by this state or another state, a passport,
16 or an identification card issued by a state or the federal
17 government.

18 SECTION 5. The heading to Section 161.083, Health and
19 Safety Code, is amended to read as follows:

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

22 SECTION 6. Sections 161.083(a), (b), and (c), Health and
23 Safety Code, are amended to read as follows:

24 (a) A [~~Pursuant to federal regulation under 21 C.F.R.~~
25 ~~Section 1140.14(b), a~~] person may not sell, give, or cause to be
26 sold or given a cigarette, e-cigarette, or tobacco product to
27 someone who is younger than 30 [~~27~~] years of age unless the person

1 to whom the cigarette, e-cigarette, or tobacco product was sold or
2 given presents an apparently valid proof of identification.

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

6 (c) A proof of identification described by Section
7 161.082(e) satisfies the requirements of Subsection [~~Subsections~~]
8 (a) [~~and (a-1)~~].

9 SECTION 7. Section 161.084, Health and Safety Code, is
10 amended by amending Subsection (b) and adding Subsections (b-1) and
11 (b-2) to read as follows:

12 (b) The sign must include the statement:

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

23 (b-1) Immediately following the statement described by
24 Subsection (b), the sign described by that subsection must include
25 the statement:

26 THE PROHIBITIONS DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO
27 WAS BORN ON OR BEFORE AUGUST 31, 2001.

1 (b-2) This subsection and Subsection (b-1) expire September
2 1, 2022.

3 SECTION 8. Sections 161.085(a) and (b), Health and Safety
4 Code, are amended to read as follows:

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

8 (1) prohibits the sale or distribution of cigarettes,
9 e-cigarettes, or tobacco products to any person who is younger than
10 21 [~~18~~] years of age as provided by Section 161.082 and that a
11 violation of that section is a Class C misdemeanor; and

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

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

27 SECTION 9. Section 161.086(b), Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

12 SECTION 10. Section 161.087, Health and Safety Code, is
13 amended by amending Subsections (a), (b), and (c) and adding
14 Subsections (a-1) and (b-1) to read as follows:

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

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

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

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

26 (b) Except as provided by Subsection (c), a person,
27 including a permit holder, may not accept or redeem, offer to accept

1 or redeem, or hire a person to accept or redeem;

2 (1) 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; or

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

9 (b-1) A coupon or other item that [~~such~~] a recipient
10 described by Subsection (b) may use to receive a [~~free or~~]
11 discounted cigarette, e-cigarette, or tobacco product [~~or a sample~~
12 ~~cigarette, e-cigarette, or tobacco product~~] may not be redeemable
13 through mail or courier delivery.

14 (c) Subsections (a)(2), (a-1), [~~and~~] (b), and (b-1) do not
15 apply to a transaction between permit holders unless the
16 transaction is a retail sale.

17 SECTION 11. Sections 161.088(b) and (d), Health and Safety
18 Code, are amended to read as follows:

19 (b) The comptroller may make block grants to counties and
20 municipalities to be used by local law enforcement agencies to
21 enforce this subchapter and Subchapter R in a manner that can
22 reasonably be expected to reduce the extent to which cigarettes,
23 e-cigarettes, and tobacco products are sold or distributed,
24 including by delivery sale, to persons who are younger than 21 [~~18~~]
25 years of age. At least annually, random unannounced inspections
26 shall be conducted at various locations where cigarettes,
27 e-cigarettes, and tobacco products are sold or distributed,

1 including by delivery sale, to ensure compliance with this
2 subchapter and Subchapter R. The comptroller shall rely, to the
3 fullest extent possible, on local law enforcement agencies to
4 enforce this subchapter and Subchapter R.

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

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

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

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

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

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

27 SECTION 12. Section [161.251](#), Health and Safety Code, is

1 amended by adding Subdivision (1-b) to read as follows:

2 (1-b) "Minor" means a person under 21 years of age.

3 SECTION 13. Subchapter N, Chapter 161, Health and Safety
4 Code, is amended by adding Section 161.2515 to read as follows:

5 Sec. 161.2515. POSSESSION, PURCHASE, CONSUMPTION, OR
6 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS;
7 CIVIL PENALTY. (a) Except as provided by Subsection (b), an
8 individual younger than 21 years of age is subject to a civil
9 penalty not to exceed \$250 if the individual:

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

12 (2) falsely represents that the individual is 21 years
13 of age or older by displaying proof of age that is false,
14 fraudulent, or not actually proof of the individual's own age in
15 order to obtain possession of, purchase, or receive a cigarette,
16 e-cigarette, or tobacco product.

17 (b) An individual younger than 21 years of age is not
18 subject to a civil penalty under this section if the individual is:

19 (1) in the presence of an employer of the individual,
20 if possession or receipt of the cigarette, e-cigarette, or tobacco
21 product is required in the performance of the employee's duties as
22 an employee; or

23 (2) participating in an inspection or test of
24 compliance in accordance with Section 161.088.

25 (c) The county or municipality in which the violation occurs
26 may sue to collect a civil penalty. A civil penalty collected under
27 this subsection may be retained by the county or municipality. The

1 county or municipality may also recover the reasonable costs of
2 investigation, reasonable attorney's fees, and reasonable witness
3 and deposition fees incurred by the county or municipality in the
4 civil action.

5 SECTION 14. Sections 161.253(a), (c), (e), (f), and (g),
6 Health and Safety Code, are amended to read as follows:

7 (a) After determining an individual is liable for a civil
8 penalty [~~On conviction of an individual for an offense~~] under
9 Section 161.2515 [~~161.252~~], the court shall order [~~suspend~~
10 ~~execution of sentence and shall require~~] the individual [~~defendant~~]
11 to attend an e-cigarette and tobacco awareness program approved by
12 the commissioner. The court may order [~~require~~] the parent or
13 guardian of the individual [~~defendant~~] to attend the e-cigarette
14 and tobacco awareness program with the defendant.

15 (c) If the individual [~~defendant~~] resides in a rural area of
16 this state or another area of this state in which access to an
17 e-cigarette and tobacco awareness program is not readily available,
18 the court shall order [~~require~~] the individual [~~defendant~~] to
19 perform eight to 12 hours of e-cigarette- and tobacco-related
20 community service instead of attending the e-cigarette and tobacco
21 awareness program.

22 (e) Not later than the 90th day after the date an individual
23 is found liable for a civil penalty [~~of a conviction~~] under Section
24 161.2515 [~~161.252~~], the individual [~~defendant~~] shall present to the
25 court, in the manner required by the court, evidence of
26 satisfactory completion of the e-cigarette and tobacco awareness
27 program or the e-cigarette- and tobacco-related community service.

1 (f) On receipt of the evidence required under Subsection
2 (e), the court shall:

3 (1) if the individual [~~defendant~~] has been found
4 liable for a civil penalty [~~previously convicted of an offense~~]
5 under Section 161.2515 [~~161.252~~], order the individual to pay the
6 penalty [~~execute the sentence~~], and at the discretion of the court,
7 reduce the amount of the penalty [~~fine~~] imposed to not less than
8 half the amount [~~fine~~] previously imposed by the court; or

9 (2) if the individual [~~defendant~~] has not been
10 previously found liable for a civil penalty [~~convicted of an~~
11 ~~offense~~] under Section 161.2515 [~~161.252~~], [~~discharge the~~
12 ~~defendant and~~] dismiss the civil action [~~complaint or information~~]
13 against the individual [~~defendant~~].

14 (g) If the court dismisses the civil action [~~discharges the~~
15 ~~defendant~~] under Subsection (f)(2), the individual [~~defendant~~] is
16 released from all liability [~~penalties and disabilities~~] resulting
17 from the civil penalty [~~offense~~] except that the individual
18 [~~defendant~~] is considered to have been found liable for the civil
19 penalty [~~convicted of the offense~~] if the individual [~~defendant~~] is
20 subsequently found liable for a civil penalty [~~convicted of an~~
21 ~~offense~~] under Section 161.2515 [~~161.252 committed~~] after the
22 dismissal under Subsection (f)(2).

23 SECTION 15. Sections 161.452(b) and (c), Health and Safety
24 Code, are amended to read as follows:

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

27 (1) the age verification requirements prescribed by

1 Section 161.453;

2 (2) the disclosure requirements prescribed by Section

3 161.454;

4 (3) ~~the shipping requirements prescribed by Section~~

5 ~~161.455;~~

6 ~~(4)~~ the registration and reporting requirements

7 prescribed by Section 161.456;

8 (4) ~~(5)~~ the tax collection requirements prescribed

9 by Section 161.457; and

10 (5) ~~(6)~~ each law of this state that generally

11 applies to sales of cigarettes that occur entirely within this

12 state, including a law:

13 (A) imposing a tax; or

14 (B) prescribing a permitting or tax-stamping

15 requirement.

16 (c) A person taking a delivery sale order of e-cigarettes

17 shall comply with:

18 (1) the age verification requirements prescribed by

19 Section 161.453;

20 (2) the disclosure requirements prescribed by Section

21 161.454;

22 (3) ~~the shipping requirements prescribed by Section~~

23 ~~161.455;~~

24 ~~(4)~~ the registration and reporting requirements

25 prescribed by Section 161.456; and

26 (4) ~~(5)~~ each law of this state that generally

27 applies to sales of e-cigarettes that occur entirely within this

1 state.

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

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

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

9 (A) reliable confirmation that the purchaser is
10 at least 21 [~~18~~] years of age; and

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

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

15 (ii) confirming that the prospective
16 purchaser understands that signing another person's name to the
17 certification is illegal, that sales of cigarettes to an individual
18 under the age prescribed by Section 161.082 are illegal under state
19 law, and that the purchase of cigarettes by an individual under that
20 age is illegal under state law; and

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

23 (2) makes a good faith effort to verify the
24 information contained in the certification provided by the
25 prospective purchaser under Subdivision (1) against a commercially
26 available database or obtains a photocopy or other image of a
27 government-issued identification bearing a photograph of the

1 prospective purchaser and stating the date of birth or age of the
2 prospective purchaser;

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

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

9 (c) A person may not mail or ship e-cigarettes in connection
10 with a delivery sale order unless before accepting a delivery sale
11 order the person verifies that the prospective purchaser is at
12 least 21 [~~18~~] years of age through a commercially available
13 database or aggregate of databases that is regularly used for the
14 purpose of age and identity verification. After the order is
15 accepted, the person must use a method of mailing or shipping that
16 requires an adult signature.

17 SECTION 17. Sections 161.083(a-1), 161.252, 161.254,
18 161.255, 161.256, 161.257, and 161.455, Health and Safety Code, are
19 repealed.

20 SECTION 18. (a) The changes in law made by this Act to
21 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
22 only to an offense committed on or after the effective date of this
23 Act. For purposes of this section, an offense is committed before
24 the effective date of this Act if any element of the offense
25 occurred before that date.

26 (b) An offense committed before the effective date of this
27 Act is covered by the law in effect when the offense was committed,

1 and the former law is continued in effect for that purpose.

2 (c) The changes in law made by this Act to Subchapters H, N,
3 and R, Chapter 161, Health and Safety Code, do not apply to a person
4 who was born on or before August 31, 2001.

5 SECTION 19. The repeal by this Act of Sections 161.252,
6 161.254, 161.255, 161.256, and 161.257, Health and Safety Code,
7 does not apply to an offense committed under those sections before
8 the effective date of the repeal. An offense committed before the
9 effective date of the repeal is governed by the law as it existed on
10 the date the offense was committed, and the former law is continued
11 in effect for that purpose. For purposes of this section, an
12 offense was committed before the effective date of the repeal if any
13 element of the offense occurred before that date.

14 SECTION 20. This Act takes effect September 1, 2019.