

By: Huffman, et al.

S.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to the distribution, possession, purchase, consumption,
and receipt of cigarettes, e-cigarettes, and tobacco products.

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-b) to read as follows:

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

SECTION 2. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0815 to read as follows:

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

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

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

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

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

SECTION 4. Section 161.082, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsection (f) 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 (f) It is an exception to prosecution under Subsection
19 (a)(1) that the person to whom the cigarette, e-cigarette, or
20 tobacco product was sold:

21 (1) is at least 18 years of age;

22 (2) is on active duty in the United States military
23 forces or the state military forces; and

24 (3) presented at the time of purchase a valid military
25 identification card.

26 SECTION 5. The heading to Section [161.083](#), Health and
27 Safety Code, is amended to read as follows:

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

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

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

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

14 (c) A proof of identification described by Section
15 161.082(e) satisfies the requirements of Subsection [~~Subsections~~]
16 (a) [~~and (a-1)~~].

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

20 (b) The sign must include the statement:

21 PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES,
22 E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON [~~MINOR~~] UNDER 21 [~~18~~]
23 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES,
24 E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON [~~MINOR~~] UNDER 21 [~~18~~]
25 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C
26 MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.
27 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY

1 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
2 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
3 PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS DESCRIBED
4 ABOVE DO NOT APPLY TO A PERSON WHO IS ON ACTIVE DUTY IN THE UNITED
5 STATES MILITARY FORCES OR STATE MILITARY FORCES.

6 (b-1) Immediately following the statement described by
7 Subsection (b), the sign described by that subsection must include
8 the statement:

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

11 (b-2) This subsection and Subsection (b-1) expire September
12 1, 2022.

13 SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. Section [161.252](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
16 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS
17 PROHIBITED. (a) An individual who is younger than 21 [~~18~~] years of
18 age commits an offense if the individual:

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

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

26 (b) It is an exception to the application of this section
27 that the individual younger than 21 [~~18~~] years of age possessed the

1 cigarette, e-cigarette, or tobacco product in the presence of~~+~~
2 ~~[(1) an adult parent, a guardian, or a spouse of the~~
3 ~~individual; or~~

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

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

12 (c-1) It is an exception to the application of this section
13 that the individual younger than 21 years of age:

- 14 (1) is at least 18 years of age;
15 (2) is on active duty in the United States military
16 forces or the state military forces; and
17 (3) presents at the time of purchase a valid military
18 identification card.

19 (d) An offense under this section is punishable by a fine
20 not to exceed \$100 ~~[\$250]~~.

21 (e) On conviction of an individual under this section, the
22 court shall give notice to the individual that the individual may
23 apply to the court to have the individual's conviction expunged as
24 provided by Section [161.255](#) on or after the individual's 21st
25 birthday.

26 SECTION 14. Section [161.255](#)(a), Health and Safety Code, is
27 amended to read as follows:

1 (a) An individual convicted of an offense under Section
2 161.252 may apply to the court to have the conviction expunged on or
3 after the individual's 21st birthday. ~~The [If the court finds that~~
4 ~~the individual satisfactorily completed the e-cigarette and~~
5 ~~tobacco awareness program or e-cigarette- and tobacco-related~~
6 ~~community service ordered by the court, the]~~ court shall order the
7 conviction and any complaint, verdict, sentence, or other document
8 relating to the offense to be expunged from the individual's record
9 and the conviction may not be shown or made known for any purpose.

10 SECTION 15. Section 161.256, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 161.256. JURISDICTION OF COURTS. A justice court or
13 municipal court may exercise jurisdiction over any matter in which
14 a court under this subchapter may[+]

15 [~~(1)~~] impose a requirement that a defendant attend an
16 e-cigarette and tobacco awareness program or perform e-cigarette-
17 and tobacco-related community service[+, ~~or~~

18 [~~(2) order the suspension or denial of a driver's~~
19 ~~license or permit]~~.

20 SECTION 16. Sections 161.452(b) and (c), Health and Safety
21 Code, are amended to read as follows:

22 (b) A person taking a delivery sale order of cigarettes
23 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;

1 (3) [~~the shipping requirements prescribed by Section~~
2 ~~161.455,~~
3 ~~(4)~~] the registration and reporting requirements
4 prescribed by Section 161.456;
5 (4) [~~(5)~~] the tax collection requirements prescribed
6 by Section 161.457; and
7 (5) [~~(6)~~] each law of this state that generally
8 applies to sales of cigarettes that occur entirely within this
9 state, including a law:
10 (A) imposing a tax; or
11 (B) prescribing a permitting or tax-stamping
12 requirement.
13 (c) A person taking a delivery sale order of e-cigarettes
14 shall comply with:
15 (1) the age verification requirements prescribed by
16 Section 161.453;
17 (2) the disclosure requirements prescribed by Section
18 161.454;
19 (3) [~~the shipping requirements prescribed by Section~~
20 ~~161.455,~~
21 ~~(4)~~] the registration and reporting requirements
22 prescribed by Section 161.456; and
23 (4) [~~(5)~~] each law of this state that generally
24 applies to sales of e-cigarettes that occur entirely within this
25 state.
26 SECTION 17. Sections 161.453(a) and (c), Health and Safety
27 Code, are amended to read as follows:

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

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

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

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

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

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

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

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

27 (3) sends to the prospective purchaser, by e-mail or

1 other means, a notice that complies with Section 161.454; and

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

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

14 SECTION 18. Sections 161.083(a-1), 161.254, and 161.455,
15 Health and Safety Code, are repealed.

16 SECTION 19. (a) The changes in law made by this Act to
17 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
18 only to an offense committed on or after the effective date of this
19 Act. For purposes of this section, an offense is committed before
20 the effective date of this Act if any element of the offense
21 occurred before that date.

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

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

1 SECTION 20. The repeal by this Act of Section [161.254](#),
2 Health and Safety Code, does not apply to an offense committed under
3 that section before the effective date of the repeal. An offense
4 committed before the effective date of the repeal is governed by the
5 law as it existed on the date the offense was committed, and the
6 former law is continued in effect for that purpose. For purposes of
7 this section, an offense was committed before the effective date of
8 the repeal if any element of the offense occurred before that date.

9 SECTION 21. This Act takes effect September 1, 2019.