

1-1 By: Huffman, et al. S.B. No. 21
 1-2 (In the Senate - Filed February 25, 2019; March 1, 2019,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 April 2, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 4; April 2, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11		X		
1-12		X		
1-13		X		
1-14		X		
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 21 By: Huffman

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the distribution, possession, purchase, consumption,
 1-22 and receipt of cigarettes, e-cigarettes, and tobacco products.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 161.081, Health and Safety Code, is
 1-25 amended by adding Subdivision (1-b) to read as follows:

1-26 (1-b) "Minor" means a person under 21 years of age.

1-27 SECTION 2. Subchapter H, Chapter 161, Health and Safety
 1-28 Code, is amended by adding Section 161.0815 to read as follows:

1-29 Sec. 161.0815. NONAPPLICABILITY. This subchapter does not
 1-30 apply to a product that is:

1-31 (1) approved by the United States Food and Drug
 1-32 Administration for use in the treatment of nicotine or smoking
 1-33 addiction; and

1-34 (2) labeled with a "Drug Facts" panel in accordance
 1-35 with regulations of the United States Food and Drug Administration.

1-36 SECTION 3. The heading to Section 161.082, Health and
 1-37 Safety Code, is amended to read as follows:

1-38 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
 1-39 PRODUCTS TO PERSONS YOUNGER THAN 21 [~~18~~] YEARS OF AGE PROHIBITED;
 1-40 PROOF OF AGE REQUIRED.

1-41 SECTION 4. Sections 161.082(a) and (e), Health and Safety
 1-42 Code, are amended to read as follows:

1-43 (a) A person commits an offense if the person, with criminal
 1-44 negligence:

1-45 (1) sells, gives, or causes to be sold or given a
 1-46 cigarette, e-cigarette, or tobacco product to someone who is
 1-47 younger than 21 [~~18~~] years of age; or

1-48 (2) sells, gives, or causes to be sold or given a
 1-49 cigarette, e-cigarette, or tobacco product to another person who
 1-50 intends to deliver it to someone who is younger than 21 [~~18~~]
 1-51 years of age.

1-52 (e) A proof of identification satisfies the requirements of
 1-53 Subsection (d) if it contains a physical description and photograph
 1-54 consistent with the person's appearance, purports to establish that
 1-55 the person is 21 [~~18~~] years of age or older, and was issued by a
 1-56 governmental agency. The proof of identification may include a
 1-57 driver's license issued by this state or another state, a passport,
 1-58 or an identification card issued by a state or the federal
 1-59 government.

1-60 SECTION 5. The heading to Section 161.083, Health and

2-1 Safety Code, is amended to read as follows:

2-2 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
2-3 PRODUCTS TO PERSONS YOUNGER THAN 30 [~~27~~] YEARS OF AGE.

2-4 SECTION 6. Sections 161.083(a), (b), and (c), Health and
2-5 Safety Code, are amended to read as follows:

2-6 (a) ~~A [Pursuant to federal regulation under 21 C.F.R.~~
2-7 ~~Section 1140.14(b), a]~~ person may not sell, give, or cause to be
2-8 sold or given a cigarette, e-cigarette, or tobacco product to
2-9 someone who is younger than 30 [~~27~~] years of age unless the person
2-10 to whom the cigarette, e-cigarette, or tobacco product was sold or
2-11 given presents an apparently valid proof of identification.

2-12 (b) A retailer shall adequately supervise and train the
2-13 retailer's agents and employees to prevent a violation of
2-14 Subsection [~~Subsections~~] (a) [~~and (a-1)~~].

2-15 (c) A proof of identification described by Section
2-16 161.082(e) satisfies the requirements of Subsection [~~Subsections~~]
2-17 (a) [~~and (a-1)~~].

2-18 SECTION 7. Section 161.084, Health and Safety Code, is
2-19 amended by amending Subsection (b) and adding Subsections (b-1) and
2-20 (b-2) to read as follows:

2-21 (b) The sign must include the statement:

2-22 PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES,
2-23 E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON [~~MINOR~~] UNDER 21 [~~18~~]
2-24 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES,
2-25 E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON [~~MINOR~~] UNDER 21 [~~18~~]
2-26 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C
2-27 MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.
2-28 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY
2-29 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
2-30 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
2-31 PREMATURE OR WITH LOW BIRTH WEIGHT.

2-32 (b-1) Immediately following the statement described by
2-33 Subsection (b), the sign described by that subsection must include
2-34 the statement:

2-35 THE PROHIBITIONS DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO
2-36 WAS BORN ON OR BEFORE AUGUST 31, 2001.

2-37 (b-2) This subsection and Subsection (b-1) expire September
2-38 1, 2022.

2-39 SECTION 8. Sections 161.085(a) and (b), Health and Safety
2-40 Code, are amended to read as follows:

2-41 (a) Each retailer shall notify each individual employed by
2-42 that retailer who is to be engaged in retail sales of cigarettes,
2-43 e-cigarettes, or tobacco products that state law:

2-44 (1) prohibits the sale or distribution of cigarettes,
2-45 e-cigarettes, or tobacco products to any person who is younger than
2-46 21 [~~18~~] years of age as provided by Section 161.082 and that a
2-47 violation of that section is a Class C misdemeanor; and

2-48 (2) requires each person who sells cigarettes,
2-49 e-cigarettes, or tobacco products at retail or by vending machine
2-50 to post a warning notice as provided by Section 161.084, requires
2-51 each employee to ensure that the appropriate sign is always
2-52 properly displayed while that employee is exercising the employee's
2-53 duties, and provides that a violation of Section 161.084 is a Class
2-54 C misdemeanor.

2-55 (b) The notice required by this section [~~Subsection (a)~~]
2-56 must be provided within 72 hours of the date an individual begins to
2-57 engage in retail sales of cigarettes, e-cigarettes, or tobacco
2-58 products. The individual shall signify that the individual has
2-59 received the notice required by this section [~~Subsection (a)~~]
2-60 by signing a form stating that the law has been fully explained, that
2-61 the individual understands the law, and that the individual, as a
2-62 condition of employment, agrees to comply with the law.

2-63 SECTION 9. Section 161.086(b), Health and Safety Code, is
2-64 amended to read as follows:

2-65 (b) Subsection (a) does not apply to:

2-66 (1) a facility or business that is not open to persons
2-67 younger than 21 [~~18~~] years of age at any time;

2-68 (2) that part of a facility or business that is a
2-69 humidor or other enclosure designed to store cigars in a

3-1 climate-controlled environment and that is not open to persons
 3-2 younger than 21 years of age at any time; or

3-3 (3) a premises for which a person holds a package store
 3-4 permit issued under the Alcoholic Beverage Code and that is not open
 3-5 to persons younger than 21 years of age at any time.

3-6 SECTION 10. Section 161.087, Health and Safety Code, is
 3-7 amended by amending Subsections (a), (b), and (c) and adding
 3-8 Subsections (a-1) and (b-1) to read as follows:

3-9 (a) A person may not distribute [~~to persons younger than 18~~
 3-10 ~~years of age~~]:

3-11 (1) a free sample of a cigarette, e-cigarette, or
 3-12 tobacco product; or

3-13 (2) a coupon or other item that the recipient may use
 3-14 to receive a free [~~or discounted~~] cigarette, e-cigarette, or
 3-15 tobacco product or a sample cigarette, e-cigarette, or tobacco
 3-16 product.

3-17 (a-1) A person may not distribute to persons younger than 21
 3-18 years of age a coupon or other item that the recipient may use to
 3-19 receive a discounted cigarette, e-cigarette, or tobacco product.

3-20 (b) Except as provided by Subsection (c), a person,
 3-21 including a permit holder, may not accept or redeem, offer to accept
 3-22 or redeem, or hire a person to accept or redeem:

3-23 (1) a coupon or other item that the recipient may use
 3-24 to receive a free [~~or discounted~~] cigarette, e-cigarette, or
 3-25 tobacco product or a sample cigarette, e-cigarette, or tobacco
 3-26 product; or

3-27 (2) a coupon or other item that the recipient may use
 3-28 to receive a discounted cigarette, e-cigarette, or tobacco product
 3-29 if the recipient is younger than 21 [~~18~~] years of age.

3-30 (b-1) A coupon or other item that [~~such~~] a recipient
 3-31 described by Subsection (b) may use to receive a [~~free or~~]
 3-32 discounted cigarette, e-cigarette, or tobacco product [~~or a sample~~
 3-33 ~~cigarette, e-cigarette, or tobacco product~~] may not be redeemable
 3-34 through mail or courier delivery.

3-35 (c) Subsections (a)(2), (a-1), [~~and~~] (b), and (b-1) do not
 3-36 apply to a transaction between permit holders unless the
 3-37 transaction is a retail sale.

3-38 SECTION 11. Sections 161.088(b) and (d), Health and Safety
 3-39 Code, are amended to read as follows:

3-40 (b) The comptroller may make block grants to counties and
 3-41 municipalities to be used by local law enforcement agencies to
 3-42 enforce this subchapter and Subchapter R in a manner that can
 3-43 reasonably be expected to reduce the extent to which cigarettes,
 3-44 e-cigarettes, and tobacco products are sold or distributed,
 3-45 including by delivery sale, to persons who are younger than 21 [~~18~~]
 3-46 years of age. At least annually, random unannounced inspections
 3-47 shall be conducted at various locations where cigarettes,
 3-48 e-cigarettes, and tobacco products are sold or distributed,
 3-49 including by delivery sale, to ensure compliance with this
 3-50 subchapter and Subchapter R. The comptroller shall rely, to the
 3-51 fullest extent possible, on local law enforcement agencies to
 3-52 enforce this subchapter and Subchapter R.

3-53 (d) The use of a person younger than 21 [~~18~~] years of age to
 3-54 act as a minor decoy to test compliance with this subchapter and
 3-55 Subchapter R shall be conducted in a fashion that promotes
 3-56 fairness. A person may be enlisted by the comptroller or a local
 3-57 law enforcement agency to act as a minor decoy only if the following
 3-58 requirements are met:

3-59 (1) written parental consent is obtained for the use
 3-60 of a person younger than 18 years of age to act as a minor decoy to
 3-61 test compliance with this subchapter and Subchapter R;

3-62 (2) at the time of the inspection, order, or delivery,
 3-63 the minor decoy is younger than 21 [~~17~~] years of age;

3-64 (3) the minor decoy has an appearance that would cause
 3-65 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco
 3-66 products to request identification and proof of age;

3-67 (4) the minor decoy carries either the minor's own
 3-68 identification showing the minor's correct date of birth or carries
 3-69 no identification, and a minor decoy who carries identification

4-1 presents it on request to any seller of or any person who delivers
4-2 cigarettes, e-cigarettes, or tobacco products; and
4-3 (5) the minor decoy answers truthfully any questions
4-4 about the minor's age at the time of the inspection, order, or
4-5 delivery.

4-6 SECTION 12. Section 161.251, Health and Safety Code, is
4-7 amended by adding Subdivision (1-b) to read as follows:

4-8 (1-b) "Minor" means a person under 21 years of age.

4-9 SECTION 13. Section 161.252, Health and Safety Code, is
4-10 amended to read as follows:

4-11 Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR
4-12 RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS
4-13 PROHIBITED. (a) An individual who is younger than 21 [~~18~~] years of
4-14 age commits an offense if the individual:

4-15 (1) possesses, purchases, consumes, or accepts a
4-16 cigarette, e-cigarette, or tobacco product; or

4-17 (2) falsely represents himself or herself to be 21
4-18 [~~18~~] years of age or older by displaying proof of age that is false,
4-19 fraudulent, or not actually proof of the individual's own age in
4-20 order to obtain possession of, purchase, or receive a cigarette,
4-21 e-cigarette, or tobacco product.

4-22 (b) It is an exception to the application of this section
4-23 that the individual younger than 21 [~~18~~] years of age possessed the
4-24 cigarette, e-cigarette, or tobacco product in the presence of [+

4-25 ~~(1) an adult parent, a guardian, or a spouse of the~~
4-26 ~~individual; or~~

4-27 ~~(2)] an employer of the individual, if possession or~~
4-28 receipt of the cigarette, e-cigarette, or tobacco product is
4-29 required in the performance of the employee's duties as an
4-30 employee.

4-31 (c) It is an exception to the application of this section
4-32 that the individual younger than 21 [~~18~~] years of age is
4-33 participating in an inspection or test of compliance in accordance
4-34 with Section 161.088.

4-35 (d) An offense under this section is punishable by a fine
4-36 not to exceed \$100 [~~\$250~~].

4-37 (e) On conviction of an individual under this section, the
4-38 court shall give notice to the individual that the individual may
4-39 apply to the court to have the individual's conviction expunged as
4-40 provided by Section 161.255 on or after the individual's 21st
4-41 birthday.

4-42 SECTION 14. Section 161.255(a), Health and Safety Code, is
4-43 amended to read as follows:

4-44 (a) An individual convicted of an offense under Section
4-45 161.252 may apply to the court to have the conviction expunged on or
4-46 after the individual's 21st birthday. ~~The [If the court finds that~~
4-47 ~~the individual satisfactorily completed the e-cigarette and~~
4-48 ~~tobacco awareness program or e-cigarette and tobacco-related~~
4-49 ~~community service ordered by the court, the]~~ court shall order the
4-50 conviction and any complaint, verdict, sentence, or other document
4-51 relating to the offense to be expunged from the individual's record
4-52 and the conviction may not be shown or made known for any purpose.

4-53 SECTION 15. Section 161.256, Health and Safety Code, is
4-54 amended to read as follows:

4-55 Sec. 161.256. JURISDICTION OF COURTS. A justice court or
4-56 municipal court may exercise jurisdiction over any matter in which
4-57 a court under this subchapter may [+

4-58 ~~(1)] impose a requirement that a defendant attend an~~
4-59 e-cigarette and tobacco awareness program or perform e-cigarette-
4-60 and tobacco-related community service [+ ~~or~~

4-61 ~~(2) order the suspension or denial of a driver's~~
4-62 ~~license or permit].~~

4-63 SECTION 16. Sections 161.452(b) and (c), Health and Safety
4-64 Code, are amended to read as follows:

4-65 (b) A person taking a delivery sale order of cigarettes
4-66 shall comply with:

4-67 (1) the age verification requirements prescribed by
4-68 Section 161.453;

4-69 (2) the disclosure requirements prescribed by Section

5-1 161.454;
5-2 (3) [~~the shipping requirements prescribed by Section~~
5-3 ~~161.455,~~
5-4 [~~(4)~~] the registration and reporting requirements
5-5 prescribed by Section 161.456;
5-6 (4) [~~(5)~~] the tax collection requirements prescribed
5-7 by Section 161.457; and
5-8 (5) [~~(6)~~] each law of this state that generally
5-9 applies to sales of cigarettes that occur entirely within this
5-10 state, including a law:
5-11 (A) imposing a tax; or
5-12 (B) prescribing a permitting or tax-stamping
5-13 requirement.
5-14 (c) A person taking a delivery sale order of e-cigarettes
5-15 shall comply with:
5-16 (1) the age verification requirements prescribed by
5-17 Section 161.453;
5-18 (2) the disclosure requirements prescribed by Section
5-19 161.454;
5-20 (3) [~~the shipping requirements prescribed by Section~~
5-21 ~~161.455,~~
5-22 [~~(4)~~] the registration and reporting requirements
5-23 prescribed by Section 161.456; and
5-24 (4) [~~(5)~~] each law of this state that generally
5-25 applies to sales of e-cigarettes that occur entirely within this
5-26 state.
5-27 SECTION 17. Sections 161.453(a) and (c), Health and Safety
5-28 Code, are amended to read as follows:
5-29 (a) A person may not mail or ship cigarettes in connection
5-30 with a delivery sale order unless before mailing or shipping the
5-31 cigarettes the person accepting the delivery sale order first:
5-32 (1) obtains from the prospective customer a
5-33 certification that includes:
5-34 (A) reliable confirmation that the purchaser is
5-35 at least 21 [~~18~~] years of age; and
5-36 (B) a statement signed by the prospective
5-37 purchaser in writing and under penalty of law:
5-38 (i) certifying the prospective purchaser's
5-39 address and date of birth;
5-40 (ii) confirming that the prospective
5-41 purchaser understands that signing another person's name to the
5-42 certification is illegal, that sales of cigarettes to an individual
5-43 under the age prescribed by Section 161.082 are illegal under state
5-44 law, and that the purchase of cigarettes by an individual under that
5-45 age is illegal under state law; and
5-46 (iii) confirming that the prospective
5-47 purchaser wants to receive mailings from a tobacco company;
5-48 (2) makes a good faith effort to verify the
5-49 information contained in the certification provided by the
5-50 prospective purchaser under Subdivision (1) against a commercially
5-51 available database or obtains a photocopy or other image of a
5-52 government-issued identification bearing a photograph of the
5-53 prospective purchaser and stating the date of birth or age of the
5-54 prospective purchaser;
5-55 (3) sends to the prospective purchaser, by e-mail or
5-56 other means, a notice that complies with Section 161.454; and
5-57 (4) for an order made over the Internet or as a result
5-58 of an advertisement, receives payment for the delivery sale from
5-59 the prospective purchaser by a credit or debit card that has been
5-60 issued in the purchaser's name or by check.
5-61 (c) A person may not mail or ship e-cigarettes in connection
5-62 with a delivery sale order unless before accepting a delivery sale
5-63 order the person verifies that the prospective purchaser is at
5-64 least 21 [~~18~~] years of age through a commercially available
5-65 database or aggregate of databases that is regularly used for the
5-66 purpose of age and identity verification. After the order is
5-67 accepted, the person must use a method of mailing or shipping that
5-68 requires an adult signature.
5-69 SECTION 18. Sections 161.083(a-1), 161.254, and 161.455,

6-1 Health and Safety Code, are repealed.

6-2 SECTION 19. (a) The changes in law made by this Act to
6-3 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
6-4 only to an offense committed on or after the effective date of this
6-5 Act. For purposes of this section, an offense is committed before
6-6 the effective date of this Act if any element of the offense
6-7 occurred before that date.

6-8 (b) An offense committed before the effective date of this
6-9 Act is covered by the law in effect when the offense was committed,
6-10 and the former law is continued in effect for that purpose.

6-11 (c) The changes in law made by this Act to Subchapters H, N,
6-12 and R, Chapter 161, Health and Safety Code, do not apply to a person
6-13 who was born on or before August 31, 2001.

6-14 SECTION 20. The repeal by this Act of Section 161.254,
6-15 Health and Safety Code, does not apply to an offense committed under
6-16 that section before the effective date of the repeal. An offense
6-17 committed before the effective date of the repeal is governed by the
6-18 law as it existed on the date the offense was committed, and the
6-19 former law is continued in effect for that purpose. For purposes of
6-20 this section, an offense was committed before the effective date of
6-21 the repeal if any element of the offense occurred before that date.

6-22 SECTION 21. This Act takes effect September 1, 2019.

6-23

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