88R12302 MCF-F

By:  Thierry H.B. No. 3022

A BILL TO BE ENTITLED

AN ACT

relating to prohibited delivery sales of e-cigarettes.

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

SECTION 1.  The heading to Subchapter R, Chapter 161, Health and Safety Code, is amended to read as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND PROHIBITED DELIVERY SALES OF E-CIGARETTES

SECTION 2.  Sections 161.451(1) and (3), Health and Safety Code, are amended to read as follows:

(1)  "Delivery sale" means a sale of cigarettes [~~or e-cigarettes~~] to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes [~~or e-cigarettes~~] are delivered by use of the mails or another delivery service. A sale of cigarettes [~~or e-cigarettes~~] is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes [~~or e-cigarettes~~] not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(3)  "Shipping container" means a container in which cigarettes [~~or e-cigarettes~~] are shipped in connection with a delivery sale.

SECTION 3.  Section 161.452(a), Health and Safety Code, is amended to read as follows:

(a)  A person may not make a delivery sale of cigarettes [~~or e-cigarettes~~] to an individual who is under the age prescribed by Section 161.082.

SECTION 4.  Subchapter R, Chapter 161, Health and Safety Code, is amended by adding Section 161.4521 to read as follows:

Sec. 161.4521.  PROHIBITED DELIVERY SALES OF E-CIGARETTES. A person may not:

(1)  take an order for the delivery sale of e-cigarettes to an individual in this state; or

(2)  deliver through the mail or another delivery service to an individual in this state e-cigarettes purchased through a delivery sale.

SECTION 5.  Sections 161.456(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a)  A person may not make a delivery sale or ship cigarettes [~~or e-cigarettes~~] in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1)  the person's name and trade name; and

(2)  the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b)  Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes [~~or e-cigarettes~~] in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1)  the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2)  the brand or brands of the cigarettes [~~or e-cigarettes~~] that were sold; and

(3)  the quantity of cigarettes [~~or e-cigarettes~~] that were sold.

(e)  A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette [~~or e-cigarette~~] in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

SECTION 6.  Section 161.461(a), Health and Safety Code, is amended to read as follows:

(a)  Cigarettes [~~or e-cigarettes~~] sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

SECTION 7.  The following provisions of the Health and Safety Code are repealed:

(1)  Section 161.452(c);

(2)  Sections 161.453(c) and (d); and

(3)  Section 161.454(b).

SECTION 8.  The changes in law made by this Act to Subchapter R, Chapter 161, Health and Safety Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 9.  This Act takes effect September 1, 2023.