

By: Zerwas

H.B. No. 749

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

(a) 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 [~~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 [~~18~~] years of age.

(e) 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 [~~18~~] years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

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

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

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

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

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

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

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

(b) The sign must include the statement:

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

PREMATURE OR WITH LOW BIRTH WEIGHT.

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

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

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

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

(a) Each retailer shall 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 ~~[18]~~ years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

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

(b) The notice required by this section ~~[Subsection (a)]~~ must

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

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

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

(1) a facility or business that is not open to persons younger than 21 [~~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. Section 161.087, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1) to read as follows:

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

(1) a free sample of a cigarette, e-cigarette, or

tobacco product; or

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

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

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

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

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

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

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

SECTION 11. Sections 161.088(b) and (d), Health and Safety

Code, are amended to read as follows:

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R 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 [~~18~~] years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

(d) The use of a person younger than 21 [~~18~~] years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R shall be conducted in a fashion that promotes fairness. A person may 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) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R;

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

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

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

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

SECTION 12. Section 161.251, 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 13. Sections 161.252(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) An individual who is younger than 21 [~~18~~] years of age commits an offense if the individual:

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

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

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

~~[(1) an adult parent, a guardian, or a spouse of the individual; or~~

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

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

SECTION 14. Sections 161.452(b) and (c), Health and Safety Code, are amended to read as follows:

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

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) ~~[the shipping requirements prescribed by Section 161.455;~~

~~[(4)]~~ the registration and reporting requirements prescribed by Section 161.456;

(4) ~~[(+5)]~~ the tax collection requirements prescribed by Section 161.457; and

(5) ~~[(+6)]~~ each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

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

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) ~~[the shipping requirements prescribed by Section 161.455;~~

~~[(+4)]~~ the registration and reporting requirements prescribed by Section 161.456; and

(4) ~~[(+5)]~~ each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

SECTION 15. Sections 161.453(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A person may not mail or ship 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 [~~18~~] years of age; and

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

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

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

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

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

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

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

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

SECTION 16. Sections 161.083(a-1) and 161.455, Health and Safety Code, are repealed.

SECTION 17. (a) The changes in law made by this Act to Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply only to an offense committed on or after the effective date of this Act. 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) 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) The changes in law made by this Act to Subchapters H, N, and R, Chapter 161, Health and Safety Code, do not apply to a

person who was born on or before August 31, 2001.

SECTION 18. This Act takes effect September 1, 2019.

