

By: Estes

S.B. No. 1618

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain nicotine products other than cigarettes or
3 tobacco products, including the sale or marketing of nicotine
4 products to minors, the possession or use of those nicotine
5 products by minors, and to delivery sales of those nicotine
6 products; creating an offense.

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

8 SECTION 1. Chapter 161, Health and Safety Code, is amended
9 by adding Subchapters W and X to read as follows:

10 SUBCHAPTER W. CERTAIN NICOTINE PRODUCTS OTHER THAN CIGARETTES OR

TOBACCO PRODUCTS

12 Sec. 161.651. DEFINITIONS. In this subchapter:

20 (A) an electronic cigarette or any other device
21 that uses a mechanical heating element, battery, or electronic
22 circuit to deliver nicotine to the individual inhaling from the
23 device; or

24 (B) any substance used to fill or refill an

1 electronic cigarette or other device described by Paragraph (A).

2 (3) "Retail sale" means a transfer of possession from
3 a retailer to a consumer in connection with a purchase, sale, or
4 exchange for value of a nicotine product.

5 (4) "Retailer" means a person who engages in the
6 practice of selling nicotine products to consumers and includes the
7 owner of a coin-operated or card-operated vending machine that
8 provides a consumer access to a nicotine product.

9 (5) "Tobacco product" has the meaning assigned by
10 Section 155.001, Tax Code.

11 Sec. 161.652. SALE OF NICOTINE PRODUCTS TO PERSONS
12 YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED.

13 (a) A person commits an offense if the person, with criminal
14 negligence:

15 (1) sells, gives, or causes to be sold or given a
16 nicotine product to someone who is younger than 18 years of age; or
17 (2) sells, gives, or causes to be sold or given a
18 nicotine product to another person who intends to deliver it to
19 someone who is younger than 18 years of age.

20 (b) If an offense under this section occurs in connection
21 with a sale by an employee of the owner of a store in which nicotine
22 products are sold at retail, the employee is criminally responsible
23 for the offense and is subject to prosecution.

24 (c) An offense under this section is a Class C misdemeanor.

25 (d) It is a defense to prosecution under Subsection (a)(1)
26 that the person to whom the nicotine product was sold or given
27 presented to the defendant apparently valid proof of

1 identification.

2 (e) A proof of identification satisfies the requirements of
3 Subsection (d) if it contains a physical description and photograph
4 consistent with the person's appearance, purports to establish that
5 the person is 18 years of age or older, and was issued by a
6 governmental agency. The proof of identification may include a
7 driver's license issued by this state or another state, a passport,
8 or an identification card issued by a state or the federal
9 government.

10 Sec. 161.653. USE OF CERTAIN ELECTRONICALLY READABLE
11 INFORMATION WHEN ESTABLISHING PROOF OF AGE. (a) In this section,
12 "transaction scan device" means a device capable of deciphering
13 electronically readable information on a driver's license,
14 commercial driver's license, or identification certificate.

15 (b) A person may access electronically readable information
16 on a driver's license, commercial driver's license, or
17 identification certificate for the purpose of complying with
18 Section 161.652.

19 (c) Information accessed under this section may not be sold
20 or otherwise disseminated to a third party for any purpose,
21 including any marketing, advertising, or promotional
22 activities. The information may be obtained by court order or on
23 proper request by the comptroller, a law enforcement officer, or a
24 law enforcement agency.

25 (d) A person who violates this section commits an
26 offense. An offense under this section is a Class A misdemeanor.

27 (e) It is an affirmative defense to prosecution under

1 Section 161.652 that:

2 (1) a transaction scan device identified a license or
3 certificate as valid and the defendant accessed the information and
4 relied on the results in good faith; or

5 (2) if the defendant is the owner of a store in which
6 nicotine products are sold at retail, the offense under Section
7 161.652 occurs in connection with a sale by an employee of the
8 owner, and the owner had provided the employee with:

9 (A) a transaction scan device in working
10 condition; and

11 (B) adequate training in the use of the
12 transaction scan device.

13 Sec. 165.654. SALE OF NICOTINE PRODUCTS TO PERSONS YOUNGER
14 THAN 27 YEARS OF AGE. (a) A person may not sell, give, or cause to
15 be sold or given a nicotine product to someone who is younger than
16 27 years of age unless the person to whom the nicotine product was
17 sold or given presents an apparently valid proof of identification.

18 (b) A retailer shall adequately supervise and train the
19 retailer's agents and employees to prevent a violation of
20 Subsection (a).

21 (c) A proof of identification described by Section
22 161.652(e) satisfies the requirements of Subsection (a).

23 Sec. 161.655. WARNING NOTICE. (a) Each person who sells
24 nicotine products at retail or by vending machine shall post a sign
25 in a location that is conspicuous to all employees and customers and
26 that is close to the place at which the nicotine products may be
27 purchased.

1 (b) The sign must include the statement:

2 PURCHASING OR ATTEMPTING TO PURCHASE NICOTINE PRODUCTS BY A
3 MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION
4 OF NICOTINE PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED
5 BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE
6 OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE
7 TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone
8 number).

9 (c) The comptroller by rule shall determine the design and
10 size of the sign.

11 (d) The comptroller on request shall provide the sign at
12 cost to any person who sells nicotine products. The comptroller may
13 provide the sign at cost to distributors of nicotine products or
14 wholesale dealers of nicotine products in this state for
15 distribution to persons who sell nicotine products. A distributor
16 or wholesale dealer may not charge for distributing a sign under
17 this subsection.

18 (e) A person commits an offense if the person fails to
19 display a sign as prescribed by this section. An offense under this
20 subsection is a Class C misdemeanor.

21 (f) The comptroller may accept gifts or grants from any
22 public or private source to perform the comptroller's duties under
23 this section.

24 Sec. 161.656. NOTIFICATION OF EMPLOYEES AND AGENTS. (a)
25 Each retailer shall notify each individual employed by that
26 retailer who is to be engaged in retail sales of nicotine products
27 that state law:

1 (1) prohibits the sale or distribution of nicotine
2 products to any person who is younger than 18 years of age as
3 provided by Section 161.652 and that a violation of that section is
4 a Class C misdemeanor; and

5 (2) requires each person who sells nicotine products
6 at retail or by vending machine to post a warning notice as provided
7 by Section 161.655, requires each employee to ensure that the
8 appropriate sign is always properly displayed while that employee
9 is exercising the employee's duties, and provides that a violation
10 of Section 161.655 is a Class C misdemeanor.

11 (b) The notice required by Subsection (a) must be provided
12 within 72 hours of the date an individual begins to engage in retail
13 sales of nicotine products. The individual shall signify that the
14 individual has received the notice required by Subsection (a) by
15 signing a form stating that the law has been fully explained, that
16 the individual understands the law, and that the individual, as a
17 condition of employment, agrees to comply with the law.

18 (c) Each form signed by an individual under this section
19 shall indicate the date of the signature and the current address and
20 social security number of the individual. The retailer shall
21 retain the form signed by each individual employed as a retail sales
22 clerk until the 60th day after the date the individual has left the
23 employer's employ.

24 (d) A retailer required by this section to notify employees
25 commits an offense if the retailer fails, on demand of a peace
26 officer or an agent of the comptroller, to provide the forms
27 prescribed by this section. An offense under this section is a

1 Class C misdemeanor.

2 (e) It is a defense to prosecution under Subsection (d) to
3 show proof that the employee did complete, sign, and date the forms
4 required by Subsections (b) and (c). Proof must be shown to the
5 comptroller or an agent of the comptroller not later than the
6 seventh day after the date of a demand under Subsection (d).

7 Sec. 161.657. VENDOR ASSISTED SALES REQUIRED; VENDING
8 MACHINES. (a) Except as provided by Subsection (b), a retailer or
9 other person may not:

10 (1) offer nicotine products for sale in a manner that
11 permits a customer direct access to the nicotine products; or
12 (2) install or maintain a vending machine containing
13 nicotine products.

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

15 (1) a facility or business that is not open to persons
16 younger than 18 years of age at any time; or
17 (2) a premises for which a person holds a package store
18 permit issued under the Alcoholic Beverage Code.

19 (c) The comptroller or a peace officer may, with or without
20 a warrant, seize, seal, or disable a vending machine installed or
21 maintained in violation of this section. Property seized under
22 this subsection is subject to forfeiture to the state in accordance
23 with law.

24 (d) A person commits an offense if the person violates
25 Subsection (a). An offense under this subsection is a Class C
26 misdemeanor.

27 Sec. 161.658. DISTRIBUTION OF NICOTINE PRODUCTS TO MINORS.

1 (a) A person may not knowingly distribute to persons younger than
2 18 years of age:

3 (1) a free sample of a nicotine product; or
4 (2) a coupon or other item that the recipient may use
5 to receive a free or discounted nicotine product or a sample
6 nicotine product.

7 (b) A person may not accept or redeem, offer to accept or
8 redeem, or hire a person to accept or redeem a coupon or other item
9 that the recipient may use to receive a free or discounted nicotine
10 product or a sample nicotine product if the recipient is younger
11 than 18 years of age. A coupon or other item that such a recipient
12 may use to receive a free or discounted nicotine product or a sample
13 nicotine product may not be redeemable through mail or courier
14 delivery.

15 (c) A person commits an offense if the person violates this
16 section. An offense under this subsection is a Class C misdemeanor.

17 Sec. 161.659. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a)
18 The comptroller shall enforce this subchapter in partnership with
19 local law enforcement agencies and with their cooperation. Except
20 as expressly authorized by law, the comptroller may not adopt any
21 rules governing the subject matter of this subchapter.

22 (b) The comptroller may make block grants to counties and
23 municipalities to be used by local law enforcement agencies to
24 enforce this subchapter in a manner that can reasonably be expected
25 to reduce the extent to which nicotine products are sold or
26 distributed to persons who are younger than 18 years of age. At
27 least annually, random unannounced inspections shall be conducted

1 at various locations where nicotine products are sold or
2 distributed to ensure compliance with this subchapter. The
3 comptroller shall rely, to the fullest extent possible, on local
4 law enforcement agencies to enforce this subchapter.

5 (c) To facilitate the effective administration and
6 enforcement of this subchapter, the comptroller may enter into
7 interagency contracts with other state agencies, and those agencies
8 may assist the comptroller in the administration and enforcement of
9 this subchapter.

10 (d) The use of a person younger than 18 years of age to act
11 as a minor decoy to test compliance with this subchapter shall be
12 conducted in a fashion that promotes fairness. A person may be
13 enlisted by the comptroller or a local law enforcement agency to act
14 as a minor decoy only if the following requirements are met:

15 (1) written parental consent is obtained for the use
16 of a person younger than 18 years of age to act as a minor decoy to
17 test compliance with this subchapter;

18 (2) at the time of the inspection, the minor decoy is
19 younger than 17 years of age;

20 (3) the minor decoy has an appearance that would cause
21 a reasonably prudent seller of nicotine products to request
22 identification and proof of age;

23 (4) the minor decoy carries either the minor's own
24 identification showing the minor's correct date of birth or carries
25 no identification, and a minor decoy who carries identification
26 presents it on request to any seller of nicotine products; and

27 (5) the minor decoy answers truthfully any questions

1 about the minor's age.

2 Sec. 161.660. CERTAIN OUTDOOR SIGNS. (a) In this section:

3 (1) "Church" means a facility that is owned by a
4 religious organization and that is used primarily for religious
5 services;

6 (2) "School" means a private or public elementary or
7 secondary school; and

8 (3) "Sign" means an outdoor medium, including a
9 structure, display, light device, figure, painting, drawing,
10 message, plaque, poster, or billboard, that is:

11 (A) used to advertise or inform; and

12 (B) visible from the main-traveled way of a
13 street or highway.

14 (b) Except as provided by this section, a sign containing an
15 advertisement for nicotine products may not be located closer than
16 1,000 feet to a church or school.

17 (c) The measurement of the distance between the sign
18 containing an advertisement for nicotine products and an
19 institution listed in Subsection (b) is from the nearest property
20 line of the institution to a point on a street or highway closest to
21 the sign, along street lines and in direct lines across
22 intersections.

23 (d) This section does not apply to a sign located on the
24 premises of a business establishment or on the premises of the
25 business or retail center in which the business establishment is
26 located that contains the name of the business establishment and
27 describes the type of business conducted.

1 (e) A person commits an offense if the person places or
2 authorizes the placement of a sign in violation of this section. An
3 offense under this subsection is a Class C misdemeanor.

4 Sec. 161.661. POSSESSION, PURCHASE, CONSUMPTION, OR
5 RECEIPT OF NICOTINE PRODUCTS BY MINORS PROHIBITED. (a) An
6 individual who is younger than 18 years of age commits an offense if
7 the individual:

8 (1) possesses, purchases, consumes, or accepts a
9 nicotine product; or

10 (2) falsely represents himself or herself to be 18
11 years of age or older by displaying proof of age that is false,
12 fraudulent, or not actually proof of the individual's own age in
13 order to obtain possession of, purchase, or receive a nicotine
14 product.

15 (b) It is an exception to the application of this section
16 that the individual younger than 18 years of age possessed the
17 nicotine product in the presence of:

18 (1) an adult parent, a guardian, or an adult spouse of
19 the individual; or

20 (2) an employer of the individual, if possession or
21 receipt of the nicotine product is required in the performance of
22 the employee's duties as an employee.

23 (c) It is an exception to the application of this section
24 that the individual younger than 18 years of age is participating in
25 an inspection or test of compliance in accordance with Section
26 161.659.

27 (d) An offense under this section is punishable by:

1 (1) a fine not to exceed \$250; or
2 (2) an appropriate and commensurate term of community
3 service.

4 Sec. 161.662. PACKAGING REQUIREMENTS. (a) Each nicotine
5 product sold in a retail sale in this state must be packaged in
6 child-resistant packaging. The department may adopt rules to
7 implement this subsection. Any adopted rules must be consistent
8 with federal law.

9 (b) Each nicotine product sold in a retail sale in this
10 state must list the product's ingredients on the packaging of the
11 product, including information regarding the nicotine yield of the
12 nicotine product. The department may adopt rules to implement this
13 subsection. Any adopted rules must be consistent with federal law.

14 SUBCHAPTER X. DELIVERY SALES OF CERTAIN NICOTINE PRODUCTS OTHER
15 THAN CIGARETTES OR TOBACCO PRODUCTS

16 Sec. 161.701. DEFINITIONS. In this subchapter:

17 (1) "Delivery sale" means a sale of a nicotine product
18 to a consumer in this state in which the purchaser submits the order
19 for the sale by means of a telephonic or other method of voice
20 transmission, by using the mails or any other delivery service, or
21 through the Internet or another on-line service, or the nicotine
22 product is delivered by use of the mails or another delivery
23 service. A sale of a nicotine product is a delivery sale regardless
24 of whether the seller is located within or without this state. A
25 sale of a nicotine product not for personal consumption to a person
26 who is a wholesale dealer or a retail dealer is not a delivery sale.

27 (2) "Delivery service" means a person, including the

S.B. No. 1618

1 United States Postal Service, that is engaged in the commercial
2 delivery of letters, packages, or other containers.

3 (3) "Nicotine product" has the meaning assigned by
4 Section 161.651.

5 (4) "Shipping container" means a container in which a
6 nicotine product is shipped in connection with a delivery sale.

7 (5) "Shipping documents" means a bill of lading,
8 airbill, United States Postal Service form, or any other document
9 used to evidence the undertaking by a delivery service to deliver
10 letters, packages, or other containers.

11 Sec. 161.702. REQUIREMENTS FOR DELIVERY SALES. (a) A
12 person may not make a delivery sale of a nicotine product to an
13 individual who is under the age prescribed by Section 161.652.

14 (b) A person taking a delivery sale order shall comply with:
15 (1) the age verification requirements prescribed by
16 Section 161.703;

17 (2) the disclosure requirements prescribed by Section
18 161.704;

19 (3) the shipping requirement prescribed by Section
20 161.705; and

21 (4) each law of this state that generally applies to
22 sales of a nicotine product that occurs entirely within this state.

23 Sec. 161.703. AGE VERIFICATION REQUIREMENT. (a) A person
24 may not mail or ship a nicotine product in connection with a
25 delivery sale order unless before mailing or shipping the nicotine
26 product the person accepting the delivery sale order first:

27 (1) obtains from the prospective customer a

1 certification that includes:

2 (A) reliable confirmation that the purchaser is
3 at least 18 years of age; and

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

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

8 (ii) confirming that the prospective
9 purchaser understands that signing another person's name to the
10 certification is illegal, that sales of a nicotine product to an
11 individual under the age prescribed by Section 161.652 are illegal
12 under state law, and that the purchase of a nicotine product by an
13 individual under that age is illegal under state law; and

14 (iii) confirming that the prospective
15 purchaser wants to receive mailings from a company that sells
16 nicotine products;

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

24 (3) sends to the prospective purchaser, by e-mail or
25 other means, a notice that complies with Section 161.704; and

26 (4) for an order made over the Internet or as a result
27 of an advertisement, receives payment for the delivery sale from

1 the prospective purchaser by a credit or debit card that has been
2 issued in the purchaser's name or by check.

3 (b) A person taking a delivery sale order may request that a
4 prospective purchaser provide the purchaser's e-mail address.

5 Sec. 161.704. DISCLOSURE REQUIREMENTS. The notice required
6 by Section 161.703(a)(3) must include a prominent and clearly
7 legible statement that:

8 (1) nicotine product sales to individuals who are
9 below the age prescribed by Section 161.652 are illegal under state
10 law;

11 (2) sales of nicotine products are restricted to those
12 individuals who provide verifiable proof of age in accordance with
13 Section 161.703.

14 Sec. 161.705. SHIPPING REQUIREMENT. A person who mails or
15 ships a nicotine product in connection with a delivery sale order
16 shall include as part of the shipping documents the following clear
17 and conspicuous statement: "NICOTINE PRODUCT: TEXAS LAW PROHIBITS
18 SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE."

19 Sec. 161.706. GENERAL OFFENSES. (a) A person commits an
20 offense if the person violates a provision of this subchapter for
21 which a criminal penalty is not otherwise provided.

22 (b) An offense under Subsection (a) is a Class C
23 misdemeanor.

24 (c) If it is shown on the trial of a person that the person
25 has previously been convicted of an offense under this section, the
26 offense is a Class B misdemeanor.

27 Sec. 161.707. KNOWING VIOLATION. (a) A person who

S.B. No. 1618

1 knowingly violates a provision of this subchapter or who knowingly
2 submits a certification under Section 161.703(a)(1) in another
3 person's name commits an offense.

4 (b) An offense under this section is a Class A misdemeanor.

5 Sec. 161.708. FORFEITURE. (a) A nicotine product sold or
6 that a person attempted to sell in a delivery sale that does not
7 comply with this subchapter is forfeited to the state and shall be
8 destroyed.

9 (b) A fixture, equipment, or other material or personal
10 property on the premises of a person who, with the intent to defraud
11 this state, fails to comply with this subchapter is forfeited to the
12 state.

13 Sec. 161.709. ENFORCEMENT. The attorney general or the
14 attorney general's designee may bring an action in a court of this
15 state to prevent or restrain a violation of this subchapter by any
16 person or by a person controlling such a person.

17 SECTION 2. EFFECTIVE DATE. This Act takes effect on
18 September 1, 2015