

Chapter 500

S.B. No. 21

1 AN ACT

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

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

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

7 (1-b) "Minor" means a person under 21 years of age.

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

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

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

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

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

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

22 SECTION 4. Section 161.082, Health and Safety Code, is
23 amended by amending Subsections (a) and (e) and adding Subsection
24 (f) to read as follows:

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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 the application of 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; and

22 (2) presented at the time of purchase a valid military
23 identification card of the United States military forces or the
24 state military forces.

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

27 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO

1 PRODUCTS TO PERSONS YOUNGER THAN 30 [~~27~~] YEARS OF AGE.

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

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

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

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

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

19 (b) The sign must include the statement:

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

1 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
2 PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE
3 PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A
4 PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY
5 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 ON THE PURCHASE OR ATTEMPT TO PURCHASE
10 DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO WAS BORN ON OR BEFORE
11 AUGUST 31, 2001.

12 (b-2) This subsection and Subsection (b-1) expire September
13 1, 2022.

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

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

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

23 (2) requires each person who sells cigarettes,
24 e-cigarettes, or tobacco products at retail or by vending machine
25 to post a warning notice as provided by Section 161.084, requires
26 each employee to ensure that the appropriate sign is always
27 properly displayed while that employee is exercising the employee's

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1 duties, and provides that a violation of Section 161.084 is a Class
2 C misdemeanor.

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

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

- 13 (b) Subsection (a) does not apply to:
 - 14 (1) a facility or business that is not open to persons
15 younger than 21 [~~18~~] years of age at any time;
 - 16 (2) that part of a facility or business that is a
17 humidor or other enclosure designed to store cigars in a
18 climate-controlled environment and that is not open to persons
19 younger than 21 years of age at any time; or
 - 20 (3) a premises for which a person holds a package store
21 permit issued under the Alcoholic Beverage Code and that is not open
22 to persons younger than 21 years of age at any time.

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

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

1 (1) a free sample of a cigarette, e-cigarette, or
2 tobacco product; or

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

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

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

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

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

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

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

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1 SECTION 11. Sections 161.088(b) and (d), Health and Safety
2 Code, are amended to read as follows:

3 (b) The comptroller may make block grants to counties and
4 municipalities to be used by local law enforcement agencies to
5 enforce this subchapter and Subchapter R in a manner that can
6 reasonably be expected to reduce the extent to which cigarettes,
7 e-cigarettes, and tobacco products are sold or distributed,
8 including by delivery sale, to persons who are younger than 21 [~~18~~]
9 years of age. At least annually, random unannounced inspections
10 shall be conducted at various locations where cigarettes,
11 e-cigarettes, and tobacco products are sold or distributed,
12 including by delivery sale, to ensure compliance with this
13 subchapter and Subchapter R. The comptroller shall rely, to the
14 fullest extent possible, on local law enforcement agencies to
15 enforce this subchapter and Subchapter R.

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

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

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

27 (3) the minor decoy has an appearance that would cause

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1 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco
2 products to request identification and proof of age;

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

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

11 SECTION 12. Section 161.089, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Except as
14 provided by Subsection (b), this [~~This~~] subchapter does not preempt
15 a local regulation of the sale, distribution, or use of cigarettes
16 or tobacco products or affect the authority of a political
17 subdivision to adopt or enforce an ordinance or requirement
18 relating to the sale, distribution, or use of cigarettes or tobacco
19 products if the regulation, ordinance, or requirement:

20 (1) is compatible with and equal to or more stringent
21 than a requirement prescribed by this subchapter; or

22 (2) relates to an issue that is not specifically
23 addressed by this subchapter or Chapter 154 or 155, Tax Code.

24 (b) A political subdivision may not adopt or enforce an
25 ordinance or requirement relating to the lawful age to sell,
26 distribute, or use cigarettes, e-cigarettes, or tobacco products
27 that is more stringent than a requirement prescribed by this

1 subchapter.

2 SECTION 13. Section 161.251, Health and Safety Code, is
3 amended by adding Subdivision (1-b) to read as follows:

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

5 SECTION 14. Section 161.252, Health and Safety Code, is
6 amended to read as follows:

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

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

13 (2) falsely represents himself or herself to be 21
14 [~~18~~] years of age or older by displaying proof of age that is false,
15 fraudulent, or not actually proof of the individual's own age in
16 order to obtain possession of, purchase, or receive a cigarette,
17 e-cigarette, or tobacco product.

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

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

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

27 (c) It is an exception to the application of this section

1 that the individual younger than 21 [~~18~~] years of age is
2 participating in an inspection or test of compliance in accordance
3 with Section 161.088.

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

6 (1) is at least 18 years of age; and

7 (2) presents at the time of purchase a valid military
8 identification card of the United States military forces or the
9 state military forces.

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

12 (e) On conviction of an individual under this section, the
13 court shall give notice to the individual that the individual may
14 apply to the court to have the individual's conviction expunged as
15 provided by Section 161.255 on or after the individual's 21st
16 birthday.

17 SECTION 15. Section 161.255(a), Health and Safety Code, is
18 amended to read as follows:

19 (a) An individual convicted of an offense under Section
20 161.252 may apply to the court to have the conviction expunged on or
21 after the individual's 21st birthday. ~~The [If the court finds that~~
22 ~~the individual satisfactorily completed the e-cigarette and~~
23 ~~tobacco awareness program or e-cigarette- and tobacco-related~~
24 ~~community service ordered by the court, the]~~ court shall order the
25 conviction and any complaint, verdict, sentence, or other document
26 relating to the offense to be expunged from the individual's record
27 and the conviction may not be shown or made known for any purpose.

1 SECTION 16. Section 161.256, Health and Safety Code, is
2 amended to read as follows:

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

6 [(1)] impose a requirement that a defendant attend an
7 e-cigarette and tobacco awareness program or perform e-cigarette-
8 and tobacco-related community service[+or

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

11 SECTION 17. Sections 161.452(b) and (c), Health and Safety
12 Code, are amended to read as follows:

13 (b) A person taking a delivery sale order of 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;

23 (4) [(5)] the tax collection requirements prescribed
24 by Section 161.457; and

25 (5) [(6)] each law of this state that generally
26 applies to sales of cigarettes that occur entirely within this
27 state, including a law:

- 1 (A) imposing a tax; or
- 2 (B) prescribing a permitting or tax-stamping
- 3 requirement.

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

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

8 (2) the disclosure requirements prescribed by Section
 9 161.454;

10 (3) ~~[the shipping requirements prescribed by Section~~
 11 ~~161.455,~~

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

14 (4) ~~[(5)]~~ each law of this state that generally
 15 applies to sales of e-cigarettes that occur entirely within this
 16 state.

17 SECTION 18. Sections 161.453(a) and (c), Health and Safety
 18 Code, are amended to read as follows:

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

22 (1) obtains from the prospective customer a
 23 certification that includes:

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

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

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

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

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

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

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

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

24 (c) A person may not mail or ship e-cigarettes in connection
25 with a delivery sale order unless before accepting a delivery sale
26 order the person verifies that the prospective purchaser is at
27 least 21 [~~18~~] years of age through a commercially available

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1 database or aggregate of databases that is regularly used for the
2 purpose of age and identity verification. After the order is
3 accepted, the person must use a method of mailing or shipping that
4 requires an adult signature.

5 SECTION 19. Sections 161.083(a-1), 161.254, and 161.455,
6 Health and Safety Code, are repealed.

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

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

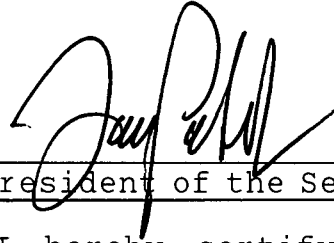
16 (c) The changes in law made by this Act to Subchapters H, N,
17 and R, Chapter 161, Health and Safety Code, regarding the
18 prohibitions on purchasing or attempting to purchase cigarettes,
19 e-cigarettes, or tobacco products do not apply to a person who was
20 born on or before August 31, 2001.

21 SECTION 21. The repeal by this Act of Section 161.254,
22 Health and Safety Code, does not apply to an offense committed under
23 that section before the effective date of the repeal. An offense
24 committed before the effective date of the repeal is governed by the
25 law as it existed on the date the offense was committed, and the
26 former law is continued in effect for that purpose. For purposes of
27 this section, an offense was committed before the effective date of

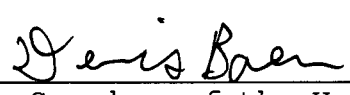
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1 the repeal if any element of the offense occurred before that date.

2 SECTION 22. This Act takes effect September 1, 2019._____

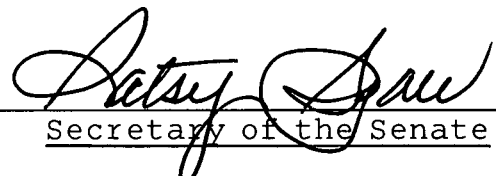


President of the Senate



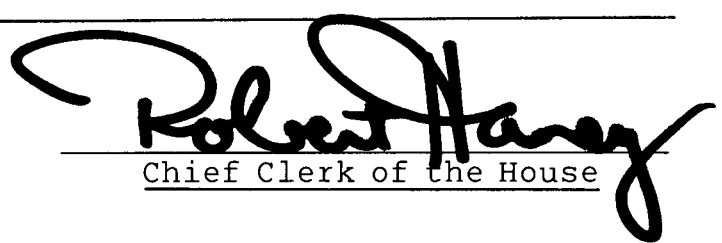
Speaker of the House

I hereby certify that S.B. No. 21 passed the Senate on April 9, 2019, by the following vote: Yeas 20, Nays 11; and that the Senate concurred in House amendments on May 21, 2019, by the following vote: Yeas 27, Nays 4._____



Secretary of the Senate

I hereby certify that S.B. No. 21 passed the House, with amendments, on May 15, 2019, by the following vote: Yeas 110, Nays 36, two present not voting._____

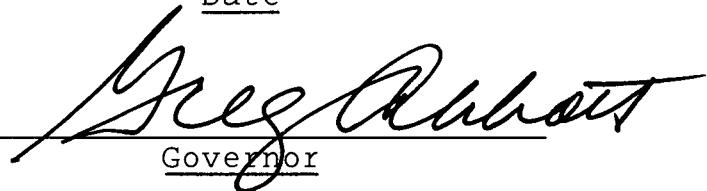


Chief Clerk of the House

Approved:

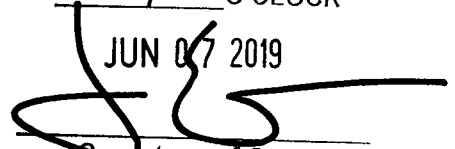
6-6-2019

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 pm O'CLOCK

JUN 07 2019


Secretary of State