

BILL ANALYSIS

Senate Research Center

H.B. 3139
By: Wilson (Lucio)
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Engrossed

DIGEST AND PURPOSE

Legislative proposals have been introduced at the state and federal level to govern the sale of tobacco by use of the telephone or other methods of voice transmission, through mail order sales or over the Internet. H.B. 3139 requires compliance with all applicable laws, including the collection of state excise taxes, when cigarettes are sold to a consumer in this state by mail, by telephone or over the Internet. This bill prohibits cigarettes from being delivered to an individual for personal consumption without age verification and confirmation of the payment of state excise taxes, establishes disclosure, shipping, and registration and reporting requirements. H.B. 3139 defines a violation of and provides for the enforcement of the subchapter, including provisions for civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 161, Health and Safety Code, by adding Subchapter R, as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES

Sec. 161.451. DEFINITIONS. Defines "delivery sale," "delivery service," "shipping container," and "shipping documents."

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) Prohibits a person from making a delivery sale of cigarettes to an individual who is under the age prescribed by Section 161.082 (Sale of Cigarettes or Tobacco Products to Persons).

(b) Requires a person taking a delivery sale order to comply with certain laws and regulations.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) Prohibits a person from mailing or shipping cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first fulfills certain criteria.

(b) Authorizes a person taking a delivery sale order to request that a prospective purchaser provide the purchaser's e-mail address.

Sec. 161.454. DISCLOSURE REQUIREMENTS. Requires the notice required by Section 161.453(a)(3) to include a prominent and clearly legible statement that cigarette sales to individuals who are below the age prescribed by Section 161.082 (Sale of Cigarettes or Tobacco Products to Persons) are illegal under state law, sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453, and cigarette sales are taxable under Chapter 154 (Cigarette Tax), Tax Code, and an explanation of how that tax has been or is to be paid with respect to the

delivery sale.

Sec. 161.455. SHIPPING REQUIREMENTS. (a) Requires a person who mails or ships cigarettes in connection with a delivery sale order to include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES" and to use a method of mailing or shipping that obligates the delivery service to require the purchaser and the person signing to accept delivery of the shipping container to fulfill certain criteria.

(b) Requires a person taking a delivery sale order who delivers the cigarettes without using a third-party delivery service to comply with the requirements prescribed by this subchapter that apply to a delivery service.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) Prohibits a person from making a delivery sale or shipping cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes the person's name and trade name, and 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) Requires each person who has made a delivery sale or shipped or delivered cigarettes in connection with a delivery sale during the previous month, not later than the 10th day of each month, to file with the comptroller a memorandum or a copy of the invoice that provides certain information for each delivery sale.

(c) Provides that a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

Sec. 161.457. COLLECTION OF TAXES. Requires a person who makes a delivery sale to collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. Provides that a person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Sec. 161.458. GENERAL OFFENSES. (a) Provides that a person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) Provides that an offense under Subsection (a) is a Class C misdemeanor.

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

Sec. 161.459. KNOWING VIOLATION. (a) Provides that a person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) Provides that an offense under this section is a felony of the third degree.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. Requires a person who fails to pay a tax imposed in connection with a delivery sale to pay to the state a civil penalty in an amount equal to five times the amount of the tax due. Provides that the penalty provided by this section is in addition to any other penalty provided by law.

Sec. 161.461. FORFEITURE. (a) Provides that 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 are required to be destroyed.

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

Sec. 161.462. ENFORCEMENT. Authorizes the attorney general or the attorney general's designee to bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

SECTION 2. Effective date: September 1, 2003.