

By: Coleman

H.B. No. 3842

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prohibited sale of flavored cigarettes,  
3 e-cigarettes, and tobacco products and administrative penalties  
4 for the prohibited sales.

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

6 SECTION 1. Section 161.081(1-a), Health and Safety Code, is  
7 amended to read as follows:

8 (1-a) "E-cigarette" means an electronic cigarette or  
9 any other device that simulates smoking by using a mechanical  
10 heating element, battery, or electronic circuit to deliver nicotine  
11 or other substances to the individual inhaling from the device or a  
12 consumable liquid solution or other material aerosolized or  
13 vaporized during the use of an electronic cigarette or other device  
14 described by this subdivision, regardless of whether the liquid or  
15 other material contains nicotine. The term does not include a  
16 prescription medical device unrelated to the cessation of smoking.  
17 The term includes:

18 (A) a device described by this subdivision  
19 regardless of whether the device is manufactured, distributed, or  
20 sold as an e-cigarette, e-cigar, or e-pipe or under another product  
21 name or description; and

22 (B) a component, part, or accessory for the  
23 device, regardless of whether the component, part, or accessory is  
24 sold separately from the device.

1 SECTION 2. Section 161.083(d), Health and Safety Code, is  
2 amended to read as follows:

3 (d) Notwithstanding any other provision of law, a violation  
4 of this section is not a violation of this subchapter for purposes  
5 of Section 161.0901 [~~154.1142 or 155.0592, Tax Code~~].

6 SECTION 3. Subchapter H, Chapter 161, Health and Safety  
7 Code, is amended by adding Section 161.0901 to read as follows:

8 Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE AND  
9 TOBACCO PRODUCTS RETAILERS. (a) A retailer is subject to  
10 disciplinary action as provided by this section if an agent or  
11 employee of the retailer commits an offense under this subchapter,  
12 Subchapter I, or Subchapter K.

13 (b) If the comptroller finds, after notice and an  
14 opportunity for a hearing as provided by Chapter 2001, Government  
15 Code, that a permit holder violated this subchapter, Subchapter I,  
16 or Subchapter K at a place of business for which a permit is issued,  
17 the comptroller may suspend the permit for that place of business  
18 and assess an administrative penalty as follows:

19 (1) for a permit holder who has not been found to have  
20 violated this subchapter, Subchapter I, or Subchapter K at that  
21 place of business during the 24-month period preceding the  
22 violation, the comptroller may impose on the permit holder a fine in  
23 an amount not to exceed \$1,000;

24 (2) for a permit holder who has been found to have  
25 violated this subchapter, Subchapter I, or Subchapter K at that  
26 place of business once during the 24-month period preceding the  
27 violation, the comptroller may impose on the permit holder a fine in

1 an amount not to exceed \$2,000; and

2 (3) for a permit holder who has been found to have  
3 violated this subchapter, Subchapter I, or Subchapter K at that  
4 place of business at least twice during the 24-month period  
5 preceding the violation, the comptroller may:

6 (A) impose on the permit holder a fine in an  
7 amount not to exceed \$3,000; and

8 (B) suspend the permit for that place of business  
9 for not more than five days.

10 (c) Except as provided by Subsection (e), if the permit  
11 holder has been found to have violated this subchapter, Subchapter  
12 I, or Subchapter K on four or more previous and separate occasions  
13 at the same place of business during the 24-month period preceding  
14 the violation, the comptroller shall revoke the permit issued under  
15 Chapter 154 or 155, Tax Code, as applicable. If the permit holder  
16 does not hold a permit under Chapter 154 or 155, Tax Code, the  
17 comptroller shall revoke the permit issued under Section 151.201,  
18 Tax Code.

19 (d) A permit holder whose permit has been revoked under this  
20 section may not apply for a permit for the same place of business  
21 before the expiration of six months after the effective date of the  
22 revocation.

23 (e) For purposes of this section, the comptroller may  
24 suspend a permit but may not revoke the permit under Subsection (c)  
25 if the comptroller finds that:

26 (1) the employer has violated this subchapter,  
27 Subchapter I, or Subchapter K seven or fewer times at the place of

1 business for which the permit is issued in the 48-month period  
2 preceding the violation in question;

3 (2) the employer requires its employees to attend a  
4 comptroller-approved seller training program;

5 (3) the employees successfully complete the  
6 comptroller-approved seller training program; and

7 (4) the employer has not directly or indirectly  
8 encouraged the employees to violate the law.

9 (f) The comptroller may adopt rules to implement this  
10 section.

11 SECTION 4. Chapter 161, Health and Safety Code, is amended  
12 by adding Subchapter I to read as follows:

13 SUBCHAPTER I. FLAVORED CIGARETTES, E-CIGARETTES, AND TOBACCO  
14 PRODUCTS

15 Sec. 161.095. DEFINITIONS. In this subchapter:

16 (1) "Cigarette" has the meaning assigned by Section  
17 154.001, Tax Code.

18 (2) "E-cigarette" has the meaning assigned by Section  
19 161.081.

20 (3) "Tobacco product" has the meaning assigned by  
21 Section 155.001, Tax Code.

22 Sec. 161.096. SALE OF FLAVORED CIGARETTES, E-CIGARETTES, OR  
23 TOBACCO PRODUCTS PROHIBITED. (a) A person may not sell, give, or  
24 cause to be sold or given a cigarette, e-cigarette, or tobacco  
25 product with a distinguishable taste or aroma other than the taste  
26 or aroma of tobacco, including the aroma or taste of:

27 (1) an alcoholic beverage;

- 1           (2) candy or dessert;
- 2           (3) chocolate, cocoa, or vanilla;
- 3           (4) fruit;
- 4           (5) an herb or spice;
- 5           (6) honey;
- 6           (7) menthol; or
- 7           (8) mint or wintergreen.

8           (b) There is a rebuttable presumption that a cigarette,  
9 e-cigarette, or tobacco product has a distinguishable taste or  
10 aroma prohibited under Subsection (a) if a person:

11           (1) makes a public statement or claim that the  
12 cigarette, e-cigarette, or tobacco product imparts a taste or smell  
13 other than the taste or smell of tobacco;

14           (2) uses text or images on the labeling or packaging of  
15 the cigarette, e-cigarette, or tobacco product to indicate the  
16 product imparts a taste or smell other than the taste or smell of  
17 tobacco; or

18           (3) takes other action directed at consumers that  
19 would reasonably be expected to cause consumers to believe the  
20 cigarette, e-cigarette, or tobacco product imparts a taste or smell  
21 other than the taste or smell of tobacco.

22           SECTION 5. The following provisions of the Tax Code are  
23 repealed:

- 24           (1) Section [154.1142](#);
- 25           (2) Section [154.1143](#);
- 26           (3) Section [155.0592](#); and
- 27           (4) Section [155.0593](#).

1           SECTION 6. Section 161.0901, Health and Safety Code, as  
2 added by this Act, applies only to a violation that occurs on or  
3 after the effective date of this Act. A violation that occurs  
4 before the effective date of this Act is governed by the law in  
5 effect on the date the violation occurred, and the former law is  
6 continued in effect for that purpose.

7           SECTION 7. This Act takes effect September 1, 2021.