

By: Alvarado

S.B. No. 920

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prohibited sale of flavored cigarettes, e-
3 cigarettes, and tobacco products and administrative penalties for
4 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 161.0901, Health and Safety Code, is
2 amended to read as follows:

3 (a) A retailer is subject to disciplinary action as provided
4 by this section if an agent or employee of the retailer commits an
5 offense under this subchapter, Subchapter I, or Subchapter K.

6 (b) If the comptroller finds, after notice and an opportunity
7 for a hearing as provided by Chapter 2001, Government Code, that a
8 permit holder has violated this subchapter, Subchapter I, or
9 Subchapter K at a place of business for which a permit is issued,
10 the comptroller may suspend the permit for that place of business
11 and administratively assess a fine as follows:

12 (1) for the first violation of this subchapter,
13 Subchapter I, or Subchapter K during the 24-month period preceding
14 the violation at that place of business, the comptroller may
15 require the permit holder to pay a fine in an amount not to exceed
16 \$1,000;

17 (2) for the second violation of this subchapter,
18 Subchapter I, or Subchapter K during the 24-month period preceding
19 the most recent violation at that place of business, the
20 comptroller may require the permit holder to pay a fine in an amount
21 not to exceed \$2,000; and

22 (3) for the third violation of this subchapter,
23 Subchapter I, or Subchapter K during the 24-month period preceding
24 the most recent violation at that place of business, the
25 comptroller may:

26 (A) require the permit holder to pay a fine in an
27 amount not to exceed \$3,000; and

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

3 (c) Except as provided by Subsection (e), for the fourth or a
4 subsequent violation of this subchapter, Subchapter I, or
5 Subchapter K during the 24-month period preceding the most recent
6 violation at that place of business, the comptroller shall revoke
7 the permit issued under Chapter 147 of this code or Chapter 154 or
8 155, Tax Code, as applicable. If the permit holder does not hold a
9 permit under Chapter 147 of this code or Chapter 154 or 155, Tax
10 Code, the comptroller shall revoke the permit issued under Section
11 151.201, Tax Code.

12 (e) For purposes of this section, the comptroller may
13 suspend a permit for a place of business but may not revoke the
14 permit under Subsection (c) if the comptroller finds that:

15 (1) the permit holder has not violated this subchapter,
16 Subchapter I, or Subchapter K more than seven times at the place of
17 business in the 48-month period preceding the violation in
18 question;

19 SECTION 3. Chapter 161, Health and Safety Code, is amended
20 by adding Subchapter I to read as follows:

21 SUBCHAPTER I. FLAVORED CIGARETTES, E-CIGARETTES, AND TOBACCO

22 PRODUCTS

23 Sec. 161.095 DEFINITIONS. In this subchapter:

24 (1) "Cigarette" has the meaning assigned by Section
25 154.001, Tax Code.

26 (2) "E-cigarette" has the meaning assigned by Section
27 161.081.

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

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

8 (1) an alcoholic beverage;

9 (2) candy or dessert;

10 (3) chocolate, cocoa, or vanilla;

11 (4) fruit;

12 (5) an herb or spice;

13 (6) honey;

14 (7) menthol; or

15 (8) mint or wintergreen.

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

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

22 (2) uses text or images on the labeling or packaging of the
23 cigarette, e-cigarette, or tobacco product to indicate the product
24 imparts a taste or smell other than the taste or smell of tobacco;

25 or

26 (3) takes other action directed at consumers that would
27 reasonably be expected to cause consumers to believe the cigarette,

1 e-cigarette, or tobacco product imparts a taste or smell other than
2 the taste or smell of tobacco.

3 SECTION 4. Section [161.0901](#), Health and Safety Code, as
4 amended by this Act, applies only to a violation that occurs on or
5 after the effective date of this Act. A violation that occurs
6 before the effective date of this Act is governed by the law in
7 effect on the date the violation occurred, and the former law is
8 continued in effect for that purpose.

9 SECTION 5. This Act takes effect September 1, 2023.