

By: Thierry

H.B. No. 3218

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of e-cigarettes; requiring an  
3 occupational permit; authorizing fees; authorizing administrative  
4 penalties.

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

6 SECTION 1. Subchapter H, Chapter 161, Health and Safety  
7 Code, is amended by adding Section 161.0873 to read as follows:

8 Sec. 161.0873. SALE OF E-CIGARETTES WITH FLAVORING. A  
9 person may sell, in accordance with this chapter, an e-cigarette  
10 that contains a food-grade additive or synthetic flavoring  
11 substance that adds flavor, provided the additive or substance is  
12 not prohibited by the United States Food and Drug Administration.

13 SECTION 2. Section 161.0875(a), Health and Safety Code, is  
14 amended to read as follows:

15 (a) A person may not sell or cause to be sold a container  
16 that contains liquid with nicotine and that is an accessory for an  
17 e-cigarette unless:

18 (1) the container:

19 (A) satisfies the child-resistant effectiveness  
20 standards under 16 C.F.R. Section 1700.15(b)(1) when tested in  
21 accordance with the method described by 16 C.F.R. Section 1700.20;  
22 or

23 (B) [~~(2) the container~~] is a cartridge that is  
24 prefilled and sealed by the manufacturer and is not intended to be

1 opened by a consumer;

2 (2) the container contains a tamper-evident feature:

3 (A) with at least one indicator or barrier to  
4 entry that, if breached or missing, can reasonably be expected to  
5 provide visible evidence of tampering to consumers; and

6 (B) that is designed to remain intact when  
7 handled in a reasonable manner during the manufacture,  
8 distribution, and retail display of the container; and

9 (3) the container's label contains a nicotine  
10 addictiveness warning statement described by 21 C.F.R. Section  
11 1143.3.

12 SECTION 3. Subchapter H, Chapter 161, Health and Safety  
13 Code, is amended by adding Section 161.0877 to read as follows:

14 Sec. 161.0877. SALE OF E-CIGARETTE CONTAINERS. A person  
15 may not sell or cause to be sold an e-cigarette container that:

16 (1) includes a cartoon-like fictional character that  
17 mimics characters primarily aimed at entertaining minors;

18 (2) imitates or mimics trademarks or trade dress of  
19 products that are or have been primarily marketed to minors;

20 (3) includes a symbol or celebrity image that is  
21 primarily used to market products to minors; or

22 (4) includes an image of an individual who appears to  
23 be younger than 27 years of age.

24 SECTION 4. Section 161.124, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 161.124. USE OF ADVERTISING FEE. (a) In this section,  
27 "e-cigarette" has the meaning assigned by Section 161.081.

1           **(b)** The comptroller shall deposit the fee collected under  
2 Section [161.123](#) to a special account in the state treasury called  
3 the tobacco and e-cigarette education and enforcement [~~education~~]  
4 fund.

5           **(c)** [~~(b)~~] Money in the account may be appropriated only for  
6 administration and enforcement of this section, enforcement of law  
7 relating to cigarettes, e-cigarettes, and tobacco products, and the  
8 education advertising campaign and grant program established under  
9 Subchapter O[~~, Chapter 161~~].

10           SECTION 5. Section [161.452\(c\)](#), Health and Safety Code, is  
11 amended to read as follows:

12           **(c)** A person taking a delivery sale order of e-cigarettes  
13 shall comply with:

14                   **(1)** the age verification requirements prescribed by  
15 Section [161.453](#);

16                   **(2)** the payment requirements prescribed by Section  
17 161.4535;

18                   **(3)** the disclosure requirements prescribed by Section  
19 [161.454](#);

20                   **(4)** [~~(3)~~] the shipping requirements prescribed by  
21 Section [161.455](#);

22                   **(5)** [~~(4)~~] the registration and reporting requirements  
23 prescribed by Section [161.456](#); and

24                   **(6)** [~~(5)~~] each law of this state that generally  
25 applies to sales of e-cigarettes that occur entirely within this  
26 state, including a permit requirement under Subchapter Z.

27           SECTION 6. Subchapter R, Chapter [161](#), Health and Safety

1 Code, is amended by adding Sections 161.4525 and 161.4535 to read as  
2 follows:

3 Sec. 161.4525. AUTHORIZED INFORMATION. A person taking a  
4 delivery sale order for e-cigarettes may request the prospective  
5 purchaser's e-mail address.

6 Sec. 161.4535. PAYMENT REQUIREMENT. A person may not make a  
7 delivery sale for e-cigarettes unless the person receives full  
8 payment for the order before the e-cigarettes are mailed or  
9 shipped. The payment must be in the form of:

10 (1) a check associated with a bank account in the  
11 prospective purchaser's name; or

12 (2) a credit or debit card issued in the prospective  
13 purchaser's name.

14 SECTION 7. Chapter 161, Health and Safety Code, is amended  
15 by adding Subchapter Z to read as follows:

16 SUBCHAPTER Z. PERMIT REQUIREMENTS FOR E-CIGARETTE MANUFACTURER,  
17 DISTRIBUTOR, AND RETAILER

18 Sec. 161.801. DEFINITIONS. In this subchapter:

19 (1) "Distributor" means a person who:

20 (A) distributes, sells, barter, or exchanges an  
21 e-cigarette in this state for the purpose of resale; or

22 (B) purchases an e-cigarette directly from a  
23 manufacturer or distributor for the purpose of resale in this  
24 state.

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

27 (3) "Manufacturer" means a person located in this

1 state who is engaged in manufacturing e-cigarettes.

2 (4) "Retailer" means a person, other than a  
3 manufacturer or distributor, who in the ordinary course of the  
4 person's business:

5 (A) acquires any form of an e-cigarette for the  
6 purpose of resale to the consumer; and

7 (B) transfers an e-cigarette to another person  
8 for money or other consideration.

9 Sec. 161.802. PERMIT REQUIRED. (a) A manufacturer or  
10 retailer may not sell an e-cigarette in this state unless the  
11 manufacturer or retailer holds a permit issued by the commission in  
12 accordance with this subchapter.

13 (b) A distributor may not distribute an e-cigarette in this  
14 state unless the distributor holds a permit issued by the  
15 commission in accordance with this subchapter.

16 (c) A person must hold a separate permit for each facility  
17 or location operated by the person for which a permit is required  
18 under this section.

19 Sec. 161.803. APPLICATION; FEE. (a) An applicant for a  
20 manufacturer, distributor, or retailer permit under this  
21 subchapter shall submit to the commission:

22 (1) an application on a form prescribed by commission  
23 rule that includes:

24 (A) the name, telephone number, and address of  
25 the applicant; and

26 (B) the name, telephone number, and address of  
27 the manufacturing facility, distribution facility, or retail

1 location, as applicable, in this state and the person responsible  
2 for the facility or location;

3 (2) a nonrefundable application fee in an amount not  
4 to exceed:

5 (A) \$1,000 for a manufacturer applicant;

6 (B) \$500 for a distributor applicant; or

7 (C) \$150 for a retailer applicant; and

8 (3) any other information the commission determines is  
9 necessary.

10 (b) The executive commissioner by rule shall set amounts for  
11 the application fees under this section. The amounts may not exceed  
12 the administrative costs incurred by the commission in implementing  
13 this subchapter.

14 (c) The commission shall deposit a fee received under this  
15 section to the credit of the tobacco and e-cigarette education and  
16 enforcement fund established under Section [161.124](#).

17 Sec. 161.804. ISSUANCE OR DENIAL. (a) The commission shall  
18 issue or deny issuance of a permit for an application submitted  
19 under Section 161.803 not later than the 60th day after the date the  
20 commission receives the completed application. The commission  
21 shall issue a permit to an applicant who the commission determines  
22 satisfies the requirements of this subchapter and rules adopted  
23 under this subchapter.

24 (b) If the commission denies issuance of a permit under  
25 Subsection (a), the commission shall provide written reasons for  
26 the denial to the applicant.

27 (c) An applicant whose initial application is denied may

1 reapply without submitting an application fee not later than the  
2 30th day after the date the initial application is denied.

3 Sec. 161.805. PERMIT EXPIRATION. A permit issued under  
4 this subchapter expires on:

5 (1) the fifth anniversary of the date the permit is  
6 issued for a manufacturer; or

7 (2) the first anniversary of the date the permit is  
8 issued for a distributor or retailer.

9 Sec. 161.806. TRANSFER. A permit holder may not transfer to  
10 another person a permit issued under Section 161.804 unless the  
11 commission approves the transfer. The commission shall approve a  
12 transfer if the transferee satisfies the requirements of this  
13 chapter and rules adopted under this chapter.

14 Sec. 161.807. UPDATED INFORMATION. If the information  
15 provided in the permit application submitted under Section 161.803  
16 changes, the permit holder shall provide written notice of the  
17 change in the form and manner prescribed by commission rule not  
18 later than the 10th business day after the date of the change.

19 Sec. 161.808. RECORD REQUIREMENTS. A permit holder shall  
20 retain all e-cigarette invoices for at least two years and make the  
21 invoices available to the commission on request.

22 Sec. 161.809. ENFORCEMENT. (a) The commission may revoke a  
23 permit of a permit holder who violates this chapter or a rule  
24 adopted under this chapter relating to e-cigarettes.

25 (b) The commission may impose an administrative penalty  
26 against:

27 (1) a permit holder who violates this subchapter or a

1 rule adopted under this subchapter in an amount not to exceed  
2 \$10,000 for each day a violation continues; or

3 (2) a person who violates Section 161.082 in the  
4 amount of:

5 (A) not less than \$1,000 for the first violation;

6 (B) not less than \$5,000 for the second  
7 violation; and

8 (C) \$10,000 for a subsequent violation.

9 (c) The commission shall deposit a penalty collected under  
10 this section to the credit of the tobacco and e-cigarette education  
11 and enforcement fund established under Section 161.124.

12 SECTION 8. As soon as practicable after the effective date  
13 of this Act, the executive commissioner of the Health and Human  
14 Services Commission shall adopt rules necessary to implement this  
15 Act.

16 SECTION 9. A manufacturer, distributor, or retailer subject  
17 to Subchapter Z, Chapter 161, Health and Safety Code, as added by  
18 this Act, is not required to comply with that subchapter until  
19 January 1, 2020.

20 SECTION 10. This Act takes effect September 1, 2019.