

BILL ANALYSIS

Senate Research Center
87R2051 SRA-D

S.B. 248
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Finance
3/24/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Surveys indicate minors are able to easily obtain e-cigarettes through brick-and-mortar retailers despite the new legal purchase age—in 2019, 27.5 percent of high school students and 10.5 percent of middle school students reported current e-cigarette use. In addition to developing a harmful addiction, minors using e-cigarettes are more likely to smoke cigarettes later in life and may be exposed to potentially fatal diseases such as E-cigarette or Vaping Product Use-Associated Lung Injury (EVALI).

Current statutory tools for enforcing the purchase age of e-cigarettes and tobacco are outdated and ineffective. E-cigarette retailers are not required to obtain a permit like tobacco retailers, so there is no comprehensive list of retail locations to guide enforcement efforts. Additionally, the system used by the Comptroller of Public Accounts of the State of Texas (comptroller) to penalize permitted retailers that sell tobacco to minors is ineffective—tight timelines and lax penalties mean retailers typically escape accountability.

S.B. 248 updates these statutes to increase compliance, dissuade underage sales, and harmonize regulations between e-cigarettes and tobacco.

Under S.B. 248, e-cigarette retailers are required to obtain a similar permit to traditional tobacco retailers. Existing retailer underage sales penalties for cigarettes and tobacco products are consolidated with other tobacco laws in Chapter 161, Health and Safety Code. E-cigarette retailers are included in the reorganized statute. The accrual schedule and severity of penalties are enhanced to increase accountability for retailers and simplify administration for the comptroller. The bill also adds e-cigarettes to laws limiting tobacco advertising. At the request of comptroller staff, several minor revisions are also made to cigarette and tobacco product tax statutes to simplify administration.

As proposed, S.B. 248 amends current law relating to the regulation of cigarettes, tobacco products, and e-cigarettes and the administration of taxes imposed on the sale or use of certain of those products; requires a permit; imposes a fee; and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 147.0003, Health and Safety Code) and SECTION 4 (Section 161.0901, Health and Safety) of this bill.

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is rescinded in in SECTION 14 (Sections 154.1143 and 155.0593, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 2, Health and Safety Code, by adding Chapter 147, as follows:

CHAPTER 147. E-CIGARETTE RETAILER PERMITS

Sec. 147.0001. DEFINITIONS. Defines "e-cigarette," "e-cigarette retailer," "marketplace," and "permit holder."

Sec. 147.0002. INAPPLICABILITY TO CERTAIN PRODUCTS. Provides that this chapter does not apply to a product described by Section 161.0815 (Nonapplicability).

Sec. 147.0003. RULES. Authorizes the Comptroller of Public Accounts of the State of Texas (comptroller) to adopt rules to implement this chapter, including rules exempting a person who sells e-cigarettes to consumers through a marketplace from the requirements of this chapter.

Sec. 147.0004. E-CIGARETTE RETAILER PERMIT REQUIRED. (a) Prohibits a person from engaging in business as an e-cigarette retailer in this state unless the person has been issued a permit from the comptroller. Requires a person to obtain a permit for each place of business the person owns or operates at which sales of e-cigarettes are made.

(b) Requires the comptroller to prescribe the form and content of an application for a permit and provide the form on request.

(c) Requires the applicant to accurately complete all information required by the application and provide the comptroller with additional information the comptroller considers necessary.

(d) Authorizes the comptroller to require each corporation, association, joint venture, syndicate, partnership, or proprietorship to provide financial information regarding the applicant and the identity of each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, or managing employee.

(e) Requires each applicant that applies for a permit to sell e-cigarettes from a vehicle to provide the make, model, vehicle identification number, registration number, and any other information concerning the vehicle the comptroller requires.

(f) Provides that all financial information provided under this section is confidential and not subject to Chapter 552 (Public Information), Government Code.

(g) Provides that permits for engaging in business as an e-cigarette retailer are governed exclusively by the provisions of the Health and Safety Code.

Sec. 147.0005. ISSUANCE OF PERMIT. (a) Requires the comptroller to issue a permit to an applicant if the comptroller has received an application and fee, does not reject the application and deny the permit under Section 147.0006, and determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

(b) Requires that the permit be issued for a designated place of business, except as provided by Section 147.0009.

(c) Provides that the permits are nonassignable.

(d) Provides that the permit must indicate the type of permit and authorize the sale of e-cigarettes in Texas. Provides that the permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated.

Sec. 147.0006. DENIAL OF PERMIT. Authorizes the comptroller to reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing, any of the following:

(1) the premises where business will be conducted are not adequate to protect the e-cigarettes; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any information required by Sections 147.0004(c), (d), and (e), including previous business experience, financial condition of the applicant, present or previous business affiliations, previous employment, and any conviction of a felony, or has made a false statement in the application; or

(B) has previously violated provisions of this chapter.

Sec. 147.0007. PERMIT PERIOD; FEES. (a) Provides that a permit required by this chapter expires on the last day of May of each even-numbered year.

(b) Requires that an application for a permit required by this chapter be accompanied by a fee of:

(1) one-half of the amount of the fee for a retailer's permit required by Section 154.111(b) (relating to fees accompanying cigarette retailer permit applications), Tax Code, if the applicant holds a valid retailer's permit under Sections 154.101 (Permits), 154.102 (Combination Permit), or 155.041 (Permits), Tax Code; or

(2) the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code.

(c) Requires the comptroller, for a new or renewal permit required by Section 147.0004, to prorate the fee according to the number of months remaining during the period that the permit is to be in effect.

(d) Requires a person who does not obtain a renewal permit in a timely manner to pay a late fee of \$50 in addition to the application fee for the permit.

(e) Authorizes the comptroller, if on the date of issuance a permit will expire within three months, to collect the prorated permit fee or the fee for the current period and, with the consent of the permit holder, to collect the fee for the next permit period and issue a permit or permits for both periods, as applicable.

(f) Provides that a person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

Sec. 147.0008. PAYMENT FOR PERMITS. (a) Requires an applicant for a permit required by Section 147.0004 to send the required fee with the application.

(b) Requires that the payment be made in cash or by money order, check, or credit card.

(c) Prohibits the comptroller from issuing a permit in exchange for a check until after the comptroller receives full payment on the check.

Sec. 147.0009. DISPLAY OF PERMIT. (a) Requires a permit holder to keep the permit on public display at the place of business for which the permit was issued.

- (b) Requires a permit holder who has a permit assigned to a vehicle to post the permit in a conspicuous place on the vehicle.

Sec. 147.0010. REVENUE. Provides that revenue from the sale of e-cigarette retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. Provides that the money may be appropriated first to the comptroller for administering permitting of retailers under this chapter and Chapters 154 (Cigarette Tax) and 155 (Cigars and Tobacco Products Tax), Tax Code, and administering disciplinary actions taken under Section 161.0901.

Sec. 147.0011. FINAL SUSPENSION OR REVOCATION OF PERMIT. (a) Authorizes the comptroller to revoke or suspend a permit holder's permit if the comptroller finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or a rule adopted under this chapter.

- (b) Requires the comptroller, if the comptroller intends to suspend or revoke a permit, to provide the permit holder with written notice that includes a statement of the reason for the intended revocation or suspension, that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation, and of the date, time, and place of the hearing.

- (c) Requires the comptroller to deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears in the comptroller's records. Provides that service by mail is complete when the notice is deposited with the United States Postal Service.

- (d) Requires the comptroller to give the permit holder notice before the 10th day before the final hearing.

- (e) Authorizes a permit holder to appeal the comptroller's decision to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

- (f) Prohibits a person whose permit is suspended or revoked from selling, offering for sale, or distributing e-cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

Sec. 147.0012. SUMMARY SUSPENSION OF PERMIT. (a) Authorizes the comptroller to suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this chapter or a rule adopted under this chapter if the permit holder's continued operation constitutes an immediate and substantial threat.

- (b) Requires that proceedings for a preliminary hearing before the comptroller or the comptroller's representative, if the comptroller summarily suspends a permit holder's permit, be initiated simultaneously with the summary suspension. Requires that the preliminary hearing be set for a date not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

- (c) Requires the permit holder, at the preliminary hearing, to show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

- (d) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a summary suspension under this section.

- (e) Requires the comptroller, to initiate a proceeding to suspend summarily a permit holder's permit, to serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. Require that the notice be personally served on the permit holder or an officer,

employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. Requires that the notice state the alleged violations that constitute the grounds for summary suspension. Provides that the suspension is effective at the time the notice is served. Requires the permit holder, if notice is served in person, to immediately surrender the permit to the comptroller. Requires the permit holder, if notice is served by mail, to immediately return the permit to the comptroller.

(f) Provides that Section 147.0011, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing.

Sec. 147.0013. HEARINGS. Requires the comptroller, unless otherwise provided by this chapter, to conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code. Authorizes the comptroller to designate one or more representatives to conduct the hearings and to prescribe the rules of procedure governing the hearings.

SECTION 2. Amends Sections 161.081(1-a), (2), and (4), Health and Safety Code, to redefine "e-cigarette," "permit holder," and "retailer" for purposes of Subchapter H (Distribution of Cigarettes, E-cigarettes, or Tobacco Products).

SECTION 3. Amends Section 161.083(d), Health and Safety Code, to provide that, notwithstanding any other provision of law, a violation of Section 161.083 (Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger than 30 Years of Age) is not a violation of Subchapter H (Distribution of Cigarettes, E-Cigarettes, or Tobacco Products) for purposes of Section 161.0901, rather than for purposes of Sections 154.1142 (Disciplinary Action for Certain Violations) or 155.0592 (Disciplinary Action for Certain Violations), Tax Code.

SECTION 4. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0901, as follows:

Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) Provides that a retailer is subject to disciplinary action as provided by this section if an agent or employee of the retailer commits an offense under Subchapter H or Subchapter K.

(b) Authorizes the comptroller, if the comptroller finds, after notice and an opportunity for a hearing as provided by Chapter 2001, Government Code, that a permit holder has violated Subchapter H or Subchapter K at a place of business for which a permit is issued, to suspend the permit for that place of business and administratively assess a fine as follows:

(1) if the permit holder has not been found to have violated Subchapter H or Subchapter K at that place of business during the 24-month period preceding the violation, the comptroller is authorized to require the permit holder to pay a fine in an amount not to exceed \$1,000;

(2) if the permit holder has been found to have violated Subchapter H or Subchapter K at that place of business once during the 24-month period preceding the violation, the comptroller is authorized to require the permit holder to pay a fine in an amount not to exceed \$2,000; and

(3) if the permit holder has been found to have violated Subchapter H or Subchapter K at that place of business at least twice during the 24-month period preceding the violation, the comptroller is authorized to require the permit holder to pay a fine in an amount not to exceed \$3,000 and to suspend the permit for that place of business for not more than five days.

(c) Requires the comptroller, if the permit holder has been found to have violated Subchapter H or Subchapter K on four or more previous and separate occasions at

the same place of business during the 24-month period preceding the violation, except as provided by Subsection (e), to revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as applicable. Requires the comptroller, if the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, to revoke the permit issued under Section 151.201 (Sales Tax Permits), Tax Code.

(d) Prohibits a permit holder whose permit has been revoked under this section from applying for a permit for the same place of business before the expiration of six months after the effective date of the revocation.

(e) Authorizes the comptroller, for purposes of this section, to suspend a permit but prohibits revoking the permit under Subsection (c) if the comptroller finds that:

(1) the employer has not violated Subchapter H or Subchapter K more than seven times at the place of business for which the permit is issued in the 48-month period preceding the violation in question;

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

(3) the employees have actually attended a comptroller-approved seller training program; and

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

(f) Authorizes the comptroller to adopt rules to implement this section.

SECTION 5. Amends the heading to Subchapter K, Chapter 161, Health and Safety Code, to read as follows:

**SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, E-CIGARETTE, OR
TOBACCO PRODUCT ADVERTISING; FEE**

SECTION 6. Amends Section 161.121, Health and Safety Code, by adding Subdivision (2-a) to define "e-cigarette" for Subchapter K.

SECTION 7. Amends Sections 161.122(a), (b), and (e), Health and Safety Code, to make conforming changes.

SECTION 8. Amends Section 161.123(a), Health and Safety Code, to make a conforming change.

SECTION 9. Amends Section 111.00455(b), Tax Code, to create an exception under Section 161.0901, Health and Safety Code, and to make conforming and nonsubstantive changes.

SECTION 10. Amends Section 154.1135(b), Tax Code, to include credit card as an acceptable form of payment for certain permits and to make nonsubstantive changes.

SECTION 11. Amends Section 154.121(b), Tax Code, as follows:

(b) Authorizes the revenue from the sale of certain retailer's permits that is required to be deposited to the general revenue fund to be appropriated first to the comptroller for administering permitting of retailers under certain provisions, including Chapter 147, Health and Safety Code, and disciplinary actions taken under Section 161.0901, Health and Safety Code. Makes nonsubstantive changes.

SECTION 12. Amends Section 155.050(b), Tax Code, to include a credit card as an acceptable form of payment for certain permits and to make nonsubstantive changes.

SECTION 13. Amends Section 155.058(b), Tax Code, as follows:

(b) Authorizes the revenue from the sale of certain retailer's permits that is required to be deposited to the general revenue fund to be appropriated first to the comptroller for administering permitting of retailers under certain provisions, including Chapter 147, Health and Safety Code, and disciplinary actions taken under Section 161.0901, Health and Safety Code. Makes nonsubstantive changes.

SECTION 14. (a) Repealer: Section 161.124 (Use of Advertising Fee), Health and Safety Code.

(b)(1) Repealer: Section 154.1142 (Disciplinary Action for Certain Violations), Tax Code.

(2) Repealer: Section 154.1143 (Actions of Employee), Tax Code.

(3) Repealer: Section 155.0592 (Disciplinary Action for Certain Violations), Tax Code.

(4) Repealer: Section 155.0593 (Actions of Employee), Tax Code.

SECTION 15. Makes application of Section 161.0901, Health and Safety Code, as added by this Act, prospective.

SECTION 16. (a) Provides that, notwithstanding Section 147.0004, Health and Safety Code, as added by this Act, a person is not required to hold a permit under that section to engage in business as a retailer of e-cigarettes in this state until January 1, 2022.

(b) Requires the comptroller to prescribe the form and content of an application for a permit under Section 147.0004, Health and Safety Code, as added by this Act, and begin accepting applications for the permit not later than October 1, 2021.

SECTION 17. Effective date: September 1, 2021.