87R2051 SRA-D

By:  Johnson S.B. No. 248

A BILL TO BE ENTITLED

AN ACT

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; requiring a permit; imposing a fee; providing administrative penalties.

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

SECTION 1.  Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 147 to read as follows:

CHAPTER 147. E-CIGARETTE RETAILER PERMITS

Sec. 147.0001.  DEFINITIONS. In this chapter:

(1)  "E-cigarette" has the meaning assigned by Section 161.081.

(2)  "E-cigarette retailer" means a person who engages in the business of selling e-cigarettes to consumers, including a person who sells e-cigarettes to consumers through a marketplace.

(3)  "Marketplace" has the meaning assigned by Section 151.0242, Tax Code.

(4)  "Permit holder" means a person who obtains a permit under Section 147.0005.

Sec. 147.0002.  INAPPLICABILITY TO CERTAIN PRODUCTS. This chapter does not apply to a product described by Section 161.0815.

Sec. 147.0003.  RULES. The comptroller may 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) A person may not engage in business as an e-cigarette retailer in this state unless the person has been issued a permit from the comptroller. A person shall obtain a permit for each place of business the person owns or operates at which sales of e-cigarettes are made.

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

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

(d)  The comptroller may require each corporation, association, joint venture, syndicate, partnership, or proprietorship to provide:

(1)  financial information regarding the applicant; and

(2)  the identity of each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, or managing employee.

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

(f)  All financial information provided under this section is confidential and not subject to Chapter 552, Government Code.

(g)  Permits for engaging in business as an e-cigarette retailer are governed exclusively by the provisions of this code.

Sec. 147.0005.  ISSUANCE OF PERMIT. (a) The comptroller shall issue a permit to an applicant if the comptroller:

(1)  has received an application and fee;

(2)  does not reject the application and deny the permit under Section 147.0006; and

(3)  determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

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

(c)  The permits are nonassignable.

(d)  The permit must indicate the type of permit and authorize the sale of e-cigarettes in this state. 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. The comptroller may 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) A permit required by this chapter expires on the last day of May of each even-numbered year.

(b)  An application for a permit required by this chapter must 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), Tax Code, if the applicant holds a valid retailer's permit under Section 154.101, 154.102, or 155.041, Tax Code; or

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

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

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

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

(f)  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) An applicant for a permit required by Section 147.0004 shall send the required fee with the application.

(b)  The payment must be made in cash or by money order, check, or credit card.

(c)  The comptroller may not issue a permit in exchange for a check until after the comptroller receives full payment on the check.

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

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

Sec. 147.0010.  REVENUE. 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. The money may be appropriated first to the comptroller for administering:

(1)  permitting of retailers under this chapter and Chapters 154 and 155, Tax Code; and

(2)  disciplinary actions taken under Section 161.0901.

Sec. 147.0011.  FINAL SUSPENSION OR REVOCATION OF PERMIT. (a) The comptroller may 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)  If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(1)  of the reason for the intended revocation or suspension;

(2)  that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation; and

(3)  of the date, time, and place of the hearing.

(c)  The comptroller shall 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. Service by mail is complete when the notice is deposited with the United States Postal Service.

(d)  The comptroller shall give the permit holder notice before the 10th day before the final hearing.

(e)  A permit holder may 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)  A person whose permit is suspended or revoked may not sell, offer for sale, or distribute 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) The comptroller may 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)  If the comptroller summarily suspends a permit holder's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall 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)  At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d)  Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e)  To initiate a proceeding to suspend summarily a permit holder's permit, the comptroller shall 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. The notice must 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. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller.

(f)  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. Unless otherwise provided by this chapter, the comptroller shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code. The comptroller may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

SECTION 2.  Sections 161.081(1-a), (2), and (4), Health and Safety Code, are amended to read as follows:

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

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

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

(2)  "Permit holder" has the meaning assigned by Section 147.0001 of this code or Section 154.001 or 155.001, Tax Code, as applicable.

(4)  "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as [~~that term is~~] defined by Section 154.001 or 155.001, Tax Code, and an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable.

SECTION 3.  Section 161.083(d), Health and Safety Code, is amended to read as follows:

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

SECTION 4.  Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0901 to read as follows:

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

(b)  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 this subchapter or Subchapter K at a place of business for which a permit is issued, the comptroller may 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 this subchapter or Subchapter K at that place of business during the 24-month period preceding the violation, the comptroller may 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 this subchapter or Subchapter K at that place of business once during the 24-month period preceding the violation, the comptroller may 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 this subchapter or Subchapter K at that place of business at least twice during the 24-month period preceding the violation, the comptroller may:

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

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

(c)  Except as provided by Subsection (e), if the permit holder has been found to have violated this subchapter 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, the comptroller shall revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as applicable. If the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, the comptroller shall revoke the permit issued under Section 151.201, Tax Code.

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

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

(1)  the employer has not violated this subchapter 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)  The comptroller may adopt rules to implement this section.

SECTION 5.  The heading to Subchapter K, Chapter 161, Health and Safety Code, is amended to read as follows:

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

SECTION 6.  Section 161.121, Health and Safety Code, is amended by adding Subdivision (2-a) to read as follows:

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

SECTION 7.  Sections 161.122(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a)  Except as provided by this section, a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products may not be located closer than 1,000 feet to a church or school.

(b)  The measurement of the distance between the sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(e)  Subsection (a) does not apply to a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

SECTION 8.  Section 161.123(a), Health and Safety Code, is amended to read as follows:

(a)  A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes, e-cigarettes, and tobacco products in this state.

SECTION 9.  Section 111.00455(b), Tax Code, is amended to read as follows:

(b)  The following are not contested cases under Subsection (a) and Section 2003.101, Government Code:

(1)  a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section 151.157(f), 151.1575(c), or 151.712(g) of this code or Section 161.0901, Health and Safety Code[~~, 154.1142, or 155.0592~~];

(2)  a property value study hearing under Subchapter M, Chapter 403, Government Code;

(3)  a hearing in which the issue relates to:

(A)  Chapters 72-75, Property Code;

(B)  forfeiture of a right to do business;

(C)  a certificate of authority;

(D)  articles of incorporation;

(E)  a penalty imposed under Section 151.703(d);

(F)  the refusal or failure to settle under Section 111.101; or

(G)  a request for or revocation of an exemption from taxation; and

(4)  any other hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount.

SECTION 10.  Section 154.1135(b), Tax Code, is amended to read as follows:

(b)  The payment must be made in cash or by money order, [~~or~~] check, or credit card.

SECTION 11.  Section 154.121(b), Tax Code, is amended to read as follows:

(b)  Revenue from the sale of retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. The money may be appropriated first to the comptroller for administering:

(1)  permitting [~~administration of licensing~~] of retailers under this chapter, Chapter [~~or Chapter~~] 155 of this code, and Chapter 147, Health and Safety Code; and

(2)  disciplinary actions taken under Section 161.0901, Health and Safety Code.

SECTION 12.  Section 155.050(b), Tax Code, is amended to read as follows:

(b)  The payment must be made in cash or by money order, [~~or~~] check, or credit card.

SECTION 13.  Section 155.058(b), Tax Code, is amended to read as follows:

(b)  Revenue from the sale of retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. The money may be appropriated first to the comptroller for administering:

(1)  permitting [~~administration of licensing~~] of retailers under this chapter, Chapter [~~or Chapter~~] 154 of this code, and Chapter 147, Health and Safety Code; and

(2)  disciplinary actions taken under Section 161.0901, Health and Safety Code.

SECTION 14.  (a) Section 161.124, Health and Safety Code, is repealed.

(b)  The following provisions of the Tax Code are repealed:

(1)  Section 154.1142;

(2)  Section 154.1143;

(3)  Section 155.0592; and

(4)  Section 155.0593.

SECTION 15.  Section 161.0901, Health and Safety Code, as added by this Act, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 16.  (a) 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)  The comptroller of public accounts shall 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.  This Act takes effect September 1, 2021.