

By: Johnson

S.B. No. 216

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of, and taxes imposed on the sale or use
3 of, cigarettes, tobacco products, and e-cigarettes; imposing
4 taxes; requiring a permit; imposing a fee; providing administrative
5 penalties.

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

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

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

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

23 (B) a component, part, or accessory for the
24 device, regardless of whether the component, part, or accessory is

1 sold separately from the device.

2 (2) "Permit holder" has the meaning assigned by
3 Section 154.001, ~~[or]~~ 155.001, or 164.0001, Tax Code, as
4 applicable.

5 (4) "Retailer" means a person who engages in the
6 practice of selling cigarettes, e-cigarettes, or tobacco products
7 to consumers and includes the owner of a coin-operated cigarette,
8 e-cigarette, or tobacco product vending machine. The term includes
9 a retailer as that term is defined by Section 154.001, ~~[or]~~ 155.001,
10 or 164.0001, Tax Code, as applicable.

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

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

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

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

23 (b) If the comptroller finds, after notice and an
24 opportunity for a hearing as provided by Chapter 2001, Government
25 Code, that a permit holder has violated this subchapter or
26 Subchapter K at a place of business for which a permit is issued,
27 the comptroller may suspend the permit for that place of business

1 and administratively assess a fine as follows:

2 (1) if the permit holder has not been found to have
3 violated this subchapter or Subchapter K at that place of business
4 during the 24-month period preceding the violation, the comptroller
5 may require the permit holder to pay a fine in an amount not to
6 exceed \$1,000;

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

12 (3) if the permit holder has been found to have
13 violated this subchapter or Subchapter K at that place of business
14 at least twice during the 24-month period preceding the violation,
15 the comptroller may:

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

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

20 (c) Except as provided by Subsection (e), if the permit
21 holder has been found to have violated this subchapter or
22 Subchapter K on four or more previous and separate occasions at the
23 same place of business during the 24-month period preceding the
24 violation, the comptroller shall revoke the permit issued under
25 Chapter 154, 155, or 164, Tax Code, as applicable. If the permit
26 holder does not hold a permit under Chapter 154, 155, or 164, Tax
27 Code, the comptroller shall revoke the permit issued under Section

1 151.201, Tax Code.

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

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

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

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

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

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

19 (f) The comptroller may adopt rules to implement this
20 section.

21 SECTION 4. Section 111.00455(b), Tax Code, is amended to
22 read as follows:

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

25 (1) a show cause hearing or any hearing not related to
26 the collection, receipt, administration, or enforcement of the
27 amount of a tax or fee imposed, or the penalty or interest

1 associated with that amount, except for a hearing under Section
2 151.157(f), 151.1575(c), or 151.712(g) of this code or Section
3 161.0901, Health and Safety Code [~~154.1142, or 155.0592~~];

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

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

7 (A) Chapters 72-75, Property Code;

8 (B) forfeiture of a right to do business;

9 (C) a certificate of authority;

10 (D) articles of incorporation;

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

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

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

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

20 SECTION 5. Section 154.1135(b), Tax Code, is amended to
21 read as follows:

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

24 SECTION 6. Section 154.121(b), Tax Code, is amended to read
25 as follows:

26 (b) Revenue from the sale of retailer's permits shall be
27 deposited to the general revenue fund and may be appropriated only

1 as provided by this section. The money may be appropriated first to
2 the comptroller for administering:

3 (1) permitting [administration of licensing] of
4 retailers under this chapter and Chapters [or Chapter] 155 and 164;
5 and

6 (2) disciplinary actions taken under Section
7 161.0901, Health and Safety Code.

8 SECTION 7. Section 155.050(b), Tax Code, is amended to read
9 as follows:

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

12 SECTION 8. Section 155.058(b), Tax Code, is amended to read
13 as follows:

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

18 (1) permitting [administration of licensing] of
19 retailers under this chapter and Chapters [or Chapter] 154 and 164;
20 and

21 (2) disciplinary actions taken under Section
22 161.0901, Health and Safety Code.

23 SECTION 9. Subtitle E, Title 2, Tax Code, is amended by
24 adding Chapter 164 to read as follows:

25 CHAPTER 164. TAX ON E-CIGARETTES

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 164.0001. DEFINITIONS. In this chapter:

1 (1) "E-cigarette" has the meaning assigned by Section
2 161.081, Health and Safety Code.

3 (2) "Marketplace" has the meaning assigned by Section
4 151.0242.

5 (3) "Permit holder" means a person who obtains a
6 permit under Section 164.0102.

7 (4) "Retailer" means a person who engages in the
8 business of selling e-cigarettes to consumers, including a person
9 who sells e-cigarettes to consumers through a marketplace.

10 Sec. 164.0002. INAPPLICABILITY TO CERTAIN PRODUCTS. This
11 chapter does not apply to a product described by Section 161.0815,
12 Health and Safety Code.

13 Sec. 164.0003. RULES. The comptroller may adopt rules to
14 implement this chapter, including rules exempting a person who
15 sells e-cigarettes to consumers through a marketplace from the
16 requirements of this chapter.

17 SUBCHAPTER B. IMPOSITION AND ADMINISTRATION OF E-CIGARETTE SALES
18 AND USE TAXES

19 Sec. 164.0051. E-CIGARETTE SALES TAX. (a) A tax is imposed
20 on each sale of an e-cigarette in this state, including a sale made
21 through a marketplace, except that the tax does not apply to a sale
22 unless the tax imposed under Subchapter C, Chapter 151, applies to
23 the sale.

24 (b) The tax under this section is imposed at the rate
25 determined under Section 164.0053.

26 (c) The tax imposed under this section is in addition to the
27 tax imposed under Subchapter C, Chapter 151.

1 Sec. 164.0052. E-CIGARETTE USE TAX. (a) A tax is imposed
2 on the storage, use, or other consumption in this state of an
3 e-cigarette purchased from a retailer for storage, use, or other
4 consumption in this state, except that the tax does not apply to the
5 storage, use, or other consumption unless the tax imposed under
6 Subchapter D, Chapter 151, applies to the storage, use, or other
7 consumption.

8 (b) The tax under this section is imposed at the rate
9 determined under Section 164.0053.

10 (c) The tax imposed under this section is in addition to the
11 tax imposed under Subchapter D, Chapter 151.

12 Sec. 164.0053. TAX RATE. (a) In this section:

13 (1) "Cigarette" means a roll for smoking described by
14 Section 154.001(2) weighing three pounds or less per thousand.

15 (2) "Federal excise tax rate on cigarettes" means the
16 tax rate imposed on cigarettes under 26 U.S.C Section 5701(b)(1).

17 (3) "First sale" has the meaning assigned by Section
18 154.001.

19 (4) "State excise tax rate on cigarettes" means the
20 tax rate imposed on cigarettes under Section 154.021(b)(1).

21 (b) The rate of the taxes imposed under this chapter in a
22 calendar year is the rate the comptroller computes and publishes in
23 the Texas Register not later than December 1 of the preceding
24 calendar year as required by Subsection (c).

25 (c) As soon as practicable after the end of each state
26 fiscal year but not later than December 1 of each year, the
27 comptroller shall:

1 (1) determine the tax rate to be imposed under this
2 chapter in the subsequent calendar year that is proportionate to
3 the state excise tax rate imposed on cigarettes in this state during
4 the preceding state fiscal year by:

5 (A) determining the estimated mean price of 1,000
6 cigarettes on first sale in this state during the preceding state
7 fiscal year, including the amount of the federal excise tax imposed
8 on cigarettes and excluding the amount of the state excise tax
9 imposed on cigarettes, using available data and generally accepted
10 statistical methods in making that determination as necessary;

11 (B) dividing the state excise tax rate on
12 cigarettes by the estimated mean price of 1,000 cigarettes on first
13 sale in this state as determined under Paragraph (A); and

14 (C) converting the amount computed under
15 Paragraph (B) into a percentage and rounding that percentage down
16 to the nearest quarter percentage point; and

17 (2) publish the tax rate determined under Subdivision
18 (1) in the Texas Register.

19 Sec. 164.0054. APPLICATION OF OTHER PROVISIONS OF CODE.

20 (a) Except as provided by this chapter:

21 (1) the taxes imposed under this chapter are
22 administered, imposed, collected, and enforced in the same manner
23 as the taxes under Chapter 151 are administered, imposed,
24 collected, and enforced; and

25 (2) the provisions of Chapter 151 applicable to the
26 sales tax imposed under Subchapter C, Chapter 151, and the use tax
27 imposed under Subchapter D, Chapter 151, apply to the sales and use

1 taxes imposed under this chapter.

2 (b) A change in law relating to the taxation of the sale or
3 use of an e-cigarette under Chapter 151 also applies to the sales or
4 use tax imposed under this chapter.

5 Sec. 164.0055. REPORTS. (a) A person required to file a
6 report under Section 151.403 who is also required to collect or pay
7 a tax under this chapter shall file with the comptroller a report
8 stating:

9 (1) for e-cigarette sales tax purposes, the amount of
10 total receipts from e-cigarettes sold by the retailer during the
11 reporting period, if the person is a retailer;

12 (2) for e-cigarette use tax purposes, the amount of
13 total receipts from e-cigarettes sold by the retailer during the
14 reporting period for storage, use, or other consumption in this
15 state, if the person is a retailer described by Section 151.403(b);

16 (3) the amount of the total sales prices of
17 e-cigarettes subject to the e-cigarette use tax that were acquired
18 during the reporting period for storage, use, or other consumption
19 in this state, if the person is a purchaser who did not pay the tax
20 to a retailer;

21 (4) the amount of the taxes due under this chapter for
22 the reporting period; and

23 (5) any other information the comptroller requires.

24 (b) The report required by this section for a reporting
25 period is due on the same date the tax payment for the period is due.

26 Sec. 164.0056. RECORDS. (a) A person required to file a
27 report under Section 151.403 who is also required to collect or pay

1 a tax under this chapter shall keep a complete record of:

2 (1) all gross receipts from each sale to which this
3 chapter applies occurring during each reporting period, along with
4 documentation relating to those receipts;

5 (2) all purchases of e-cigarettes, including the
6 constituent parts of e-cigarettes, from every source during each
7 reporting period, along with documentation relating to those
8 purchases;

9 (3) all sales and use taxes, and any money represented
10 to be sales or use tax, collected under this chapter during each
11 reporting period; and

12 (4) any other information the comptroller requires.

13 (b) A person shall keep the records required by Subsection
14 (a) for the period required by Section 151.025(b).

15 SUBCHAPTER C. E-CIGARETTE RETAILER PERMITS

16 Sec. 164.0101. PERMITS REQUIRED. (a) A person may not
17 engage in business as a retailer in this state unless the person has
18 been issued a permit from the comptroller. A person shall obtain a
19 permit for each place of business the person owns or operates at
20 which sales of e-cigarettes are made.

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

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

26 (d) The comptroller may require each corporation,
27 association, joint venture, syndicate, partnership, or

1 proprietorship to provide:

2 (1) financial information regarding the applicant;

3 and

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

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

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

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

15 Sec. 164.0102. ISSUANCE OF PERMIT. (a) The comptroller
16 shall issue a permit to an applicant if the comptroller:

17 (1) has received an application and fee, if required;

18 (2) does not reject the application and deny the
19 permit under Section 164.0103; and

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

22 (b) The permit shall be issued for a designated place of
23 business, except as provided by Section 164.0106.

24 (c) The permits are nonassignable.

25 (d) The permit must indicate the type of permit that it is
26 and authorize the sale of e-cigarettes in this state. The permit
27 must show that it is revocable and shall be forfeited or suspended

1 if the conditions of issuance, provisions of this chapter, or rules
2 of the comptroller are violated.

3 Sec. 164.0103. DENIAL OF PERMIT. The comptroller may
4 reject an application and deny a permit if the comptroller finds,
5 after notice and opportunity for hearing, any of the following:

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

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

13 (A) has failed to disclose any information
14 required by Sections 164.0101(c), (d), and (e), including previous
15 business experience, financial condition of the applicant, present
16 or previous business affiliations, previous employment, and any
17 conviction of a felony, or has made a false statement in the
18 application; or

19 (B) has previously violated provisions of this
20 chapter.

21 Sec. 164.0104. PERMIT YEAR; FEES. (a) A permit required
22 by this chapter expires on the last day of May of each even-numbered
23 year.

24 (b) An application for a permit required by this chapter
25 must be accompanied by a fee of:

26 (1) one-half of the amount of the fee for a retailer's
27 permit required by Section 154.111(b) if the applicant holds a

1 valid retailer's permit under Section 154.101, 154.102, or 155.041;
2 or

3 (2) the amount of the fee for a retailer's permit
4 required by Section 154.111(b).

5 (c) For a new or renewal permit required by Section
6 164.0101, the comptroller shall prorate the fee according to the
7 number of months remaining during the calendar year that the permit
8 is to be in effect.

9 (d) A person who does not obtain a permit each year in a
10 timely manner must pay a late fee of \$50 in addition to the
11 application fee for the permit.

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

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

20 Sec. 164.0105. PAYMENT FOR PERMITS. (a) An applicant for a
21 permit required by Section 164.0101 shall send the required fee
22 with the application.

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

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

1 Sec. 164.0106. DISPLAY OF PERMIT. (a) A permit holder
2 shall keep the permit on public display at the place of business for
3 which the permit was issued.

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

6 Sec. 164.0107. REVENUE. Revenue from the sale of
7 retailer's permits shall be deposited to the general revenue fund
8 and may be appropriated only as provided by this section. The money
9 may be appropriated first to the comptroller for administering:

10 (1) permitting of retailers under this chapter and
11 Chapters 154 and 155; and

12 (2) disciplinary actions taken under Section
13 161.0901, Health and Safety Code.

14 Sec. 164.0108. FINAL SUSPENSION OR REVOCATION OF PERMIT.

15 (a) The comptroller may revoke or suspend a permit holder's permit
16 if the comptroller finds, after notice and hearing as provided by
17 this section, that the permit holder violated this chapter or a rule
18 adopted under this chapter.

19 (b) If the comptroller intends to suspend or revoke a
20 permit, the comptroller shall provide the permit holder with
21 written notice that includes a statement:

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

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

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

27 (c) The comptroller shall deliver the written notice by

1 personal service or by mail to the permit holder's mailing address
2 as it appears in the comptroller's records. Service by mail is
3 complete when the notice is deposited with the United States Postal
4 Service.

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

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

10 (f) A person whose permit is suspended or revoked may not
11 sell, offer for sale, or distribute e-cigarettes from the place of
12 business to which the permit applied until a new permit is granted
13 or the suspension is removed.

14 Sec. 164.0109. SUMMARY SUSPENSION OF PERMIT. (a) The
15 comptroller may suspend a permit holder's permit without notice or
16 a hearing for the permit holder's failure to comply with this
17 chapter or a rule adopted under this chapter if the permit holder's
18 continued operation constitutes an immediate and substantial
19 threat to the collection of taxes imposed by this chapter and
20 attributable to the permit holder's operation.

21 (b) If the comptroller summarily suspends a permit holder's
22 permit, proceedings for a preliminary hearing before the
23 comptroller or the comptroller's representative must be initiated
24 simultaneously with the summary suspension. The preliminary
25 hearing shall be set for a date not later than the 10th day after the
26 date of the summary suspension, unless the parties agree to a later
27 date.

1 (c) At the preliminary hearing, the permit holder must show
2 cause why the permit should not remain suspended pending a final
3 hearing on suspension or revocation.

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

6 (e) To initiate a proceeding to suspend summarily a permit
7 holder's permit, the comptroller shall serve notice on the permit
8 holder informing the permit holder of the right to a preliminary
9 hearing before the comptroller or the comptroller's representative
10 and of the time and place of the preliminary hearing. The notice
11 must be personally served on the permit holder or an officer,
12 employee, or agent of the permit holder or sent by certified or
13 registered mail, return receipt requested, to the permit holder's
14 mailing address as it appears in the comptroller's records. The
15 notice must state the alleged violations that constitute the
16 grounds for summary suspension. The suspension is effective at the
17 time the notice is served. If notice is served in person, the
18 permit holder shall immediately surrender the permit to the
19 comptroller. If notice is served by mail, the permit holder shall
20 immediately return the permit to the comptroller.

21 (f) Section 164.0108, governing hearings for final
22 suspension or revocation of a permit under this subchapter, governs
23 a final administrative hearing.

24 Sec. 164.0110. HEARINGS. Unless otherwise provided by this
25 chapter, the comptroller shall conduct all hearings required by
26 this subchapter in accordance with Chapter 2001, Government Code.
27 The comptroller may designate one or more representatives to

1 conduct the hearings and may prescribe the rules of procedure
2 governing the hearings.

3 SUBCHAPTER D. DISPOSITION OF PROCEEDS

4 Sec. 164.0151. DEPOSIT AND USE OF PROCEEDS. The
5 comptroller shall deposit the proceeds from taxes imposed under
6 this chapter as follows:

7 (1) 25 percent to the credit of an account in the
8 general revenue fund that may be appropriated only to the
9 Department of State Health Services for the purposes of tobacco and
10 e-cigarette use prevention, control, and enforcement; and

11 (2) the remainder to the credit of the general revenue
12 fund.

13 SECTION 10. The following provisions of the Tax Code are
14 repealed:

- 15 (1) Section 154.1142;
- 16 (2) Section 154.1143;
- 17 (3) Section 155.0592; and
- 18 (4) Section 155.0593.

19 SECTION 11. Section 161.0901, Health and Safety Code, as
20 added by this Act, applies only to a violation that occurs on or
21 after the effective date of this Act. A violation that occurs
22 before the effective date of this Act is governed by the law in
23 effect on the date the violation occurred, and the former law is
24 continued in effect for that purpose.

25 SECTION 12. (a) Notwithstanding Sections 164.0051 and
26 164.0052, Tax Code, as added by this Act, the taxes imposed under
27 those sections apply only to a sale, storage, use, or other

1 consumption of e-cigarettes that occurs on or after January 1,
2 2022.

3 (b) The comptroller of public accounts shall determine and
4 publish the initial tax rate for the taxes imposed under Sections
5 164.0051 and 164.0052, Tax Code, as added by this Act, in the manner
6 required by Section 164.0053, Tax Code, as added by this Act, not
7 later than December 1, 2021. The initial tax rate applies beginning
8 January 1, 2022.

9 SECTION 13. (a) Notwithstanding Section 164.0101, Tax
10 Code, as added by this Act, a person is not required to hold a permit
11 under that section to engage in business as a retailer of
12 e-cigarettes in this state until January 1, 2022.

13 (b) The comptroller of public accounts shall prescribe the
14 form and content of an application for a permit under Section
15 164.0101, Tax Code, as added by this Act, and begin accepting
16 applications for the permit not later than October 1, 2021.

17 SECTION 14. This Act takes effect September 1, 2021.