

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of and permits for the sale or delivery of cigarettes, tobacco products, and e-cigarettes; requiring permits; imposing fees; 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

SUBCHAPTER A. GENERAL PROVISIONS

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 147.0052.

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

Sec. 147.0003. 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

1 comptroller may designate one or more representatives to conduct
2 the hearings and may prescribe the rules of procedure governing the
3 hearings.

4 Sec. 147.0004. RULES. The comptroller may adopt rules to
5 implement this chapter, including rules exempting a person who
6 sells e-cigarettes to consumers through a marketplace from the
7 requirements of this chapter.

8 SUBCHAPTER B. PERMITS

9 Sec. 147.0051. E-CIGARETTE RETAILER PERMIT REQUIRED. (a)
10 A person may not engage in business as an e-cigarette retailer in
11 this state unless the person has been issued a permit from the
12 comptroller. A person shall obtain a permit for each place of
13 business the person owns or operates at which sales of e-cigarettes
14 are made.

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

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

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

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

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

1 Sec. 147.0052. ISSUANCE OF PERMIT. (a) The comptroller
2 shall issue a permit to an applicant if the comptroller:

3 (1) has received an application and fee;

4 (2) does not reject the application and deny the
5 permit under Section 147.0053; and

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

8 (b) The permit shall be issued for a designated place of
9 business, except as provided by Section 147.0056.

10 (c) The permits are nonassignable.

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

16 Sec. 147.0053. DENIAL OF PERMIT. The comptroller may
17 reject an application and deny a permit if the comptroller finds,
18 after notice and opportunity for hearing, any of the following:

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

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

26 (A) has failed to disclose any information
27 required by Sections 147.0051(c) and (d); or

1 (B) has previously violated provisions of this
2 chapter.

3 Sec. 147.0054. PERMIT PERIOD; FEES. (a) A permit required
4 by this chapter expires on the last day of May of each even-numbered
5 year.

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

8 (1) one-half of the amount of the fee for a retailer's
9 permit required by Section 154.111(b), Tax Code, if the applicant
10 holds a valid retailer's permit under Section 154.101, 154.102, or
11 155.041, Tax Code; or

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

14 (c) For a new or renewal permit required by Section
15 147.0051, the comptroller shall prorate the fee according to the
16 number of months remaining during the period that the permit is to
17 be in effect.

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

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

26 (f) A person issued a permit for a place of business that
27 permanently closes before the permit expiration date is not

1 entitled to a refund of the permit fee.

2 Sec. 147.0055. PAYMENT FOR PERMITS. (a) An applicant for a
3 permit required by Section 147.0051 shall send the required fee
4 with the application.

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

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

10 Sec. 147.0056. DISPLAY OF PERMIT. (a) A permit holder
11 shall keep the permit on public display at the place of business for
12 which the permit was issued.

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

15 Sec. 147.0057. REVENUE. Revenue from the sale of
16 e-cigarette retailer's permits shall be deposited to the general
17 revenue fund and may be appropriated only as provided by this
18 section. The money may be appropriated first to the comptroller for
19 administering:

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

22 (2) disciplinary actions taken under Section
23 161.0901.

24 SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

25 Sec. 147.0101. FINAL SUSPENSION OR REVOCATION OF PERMIT.

26 (a) The comptroller may revoke or suspend a permit holder's permit
27 if the comptroller finds, after notice and hearing as provided by

1 this section, that the permit holder violated this chapter or a rule
2 adopted under this chapter.

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

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

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

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

11 (c) The comptroller shall deliver the written notice by
12 personal service or by mail to the permit holder's mailing address
13 as it appears in the comptroller's records. Service by mail is
14 complete when the notice is deposited with the United States Postal
15 Service.

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

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

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

25 Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT. (a) The
26 comptroller may suspend a permit holder's permit without notice or
27 a hearing for the permit holder's failure to comply with this

1 chapter or a rule adopted under this chapter if the permit holder's
2 continued operation constitutes an immediate and substantial
3 threat.

4 (b) If the comptroller summarily suspends a permit holder's
5 permit, proceedings for a preliminary hearing before the
6 comptroller or the comptroller's representative must be initiated
7 simultaneously with the summary suspension. The preliminary
8 hearing shall be set for a date not later than the 10th day after the
9 date of the summary suspension, unless the parties agree to a later
10 date.

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

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

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

1 permit holder shall immediately surrender the permit to the
2 comptroller. If notice is served by mail, the permit holder shall
3 immediately return the permit to the comptroller.

4 (f) Section 147.0101, governing hearings for final
5 suspension or revocation of a permit under this chapter, governs a
6 final administrative hearing.

7 SECTION 2. 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
25 sold separately from the device.

26 (2) "Permit holder" has the meaning assigned by
27 Section 147.0001 of this code or Section 154.001 or 155.001, Tax

1 Code, as applicable.

2 (4) "Retailer" means a person who engages in the
3 practice of selling cigarettes, e-cigarettes, or tobacco products
4 to consumers and includes the owner of a coin-operated cigarette,
5 e-cigarette, or tobacco product vending machine. The term includes
6 a retailer as [~~that term is~~] defined by Section 154.001 or 155.001,
7 Tax Code, and an e-cigarette retailer as defined by Section
8 147.0001 of this code, as applicable.

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

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

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

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

21 (b) If the comptroller finds, after notice and an
22 opportunity for a hearing as provided by Chapter 2001, Government
23 Code, that a permit holder has violated this subchapter at a place
24 of business for which a permit is issued, the comptroller may
25 suspend the permit for that place of business and administratively
26 assess a fine as follows:

27 (1) if the permit holder has not been found to have

1 violated this subchapter at that place of business during the
2 24-month period preceding the violation, the comptroller may
3 require the permit holder to pay a fine in an amount not to exceed
4 \$1,000;

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

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

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

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

18 (c) Except as provided by Subsection (e), if the permit
19 holder has been found to have violated this subchapter on four or
20 more previous and separate occasions at the same place of business
21 during the 24-month period preceding the violation, the comptroller
22 shall revoke the permit issued under Chapter 147 of this code or
23 Chapter 154 or 155, Tax Code, as applicable. If the permit holder
24 does not hold a permit under Chapter 147 of this code or Chapter 154
25 or 155, Tax Code, the comptroller shall revoke the permit issued
26 under Section 151.201, Tax Code.

27 (d) A permit holder whose permit has been revoked under this

1 section may not apply for a permit for the same place of business
2 before the expiration of six months after the effective date of the
3 revocation.

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

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

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

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

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

16 (f) The comptroller may adopt rules to implement this
17 section.

18 SECTION 5. Section 111.00455(b), Tax Code, is amended to
19 read as follows:

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

22 (1) a show cause hearing or any hearing not related to
23 the collection, receipt, administration, or enforcement of the
24 amount of a tax or fee imposed, or the penalty or interest
25 associated with that amount, except for a hearing under Section
26 151.157(f), 151.1575(c), or 151.712(g) of this code or Section
27 161.0901, Health and Safety Code~~[, 154.1142, or 155.0592]~~;

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

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

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

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

6 (C) a certificate of authority;

7 (D) articles of incorporation;

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

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

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

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

17 SECTION 6. Section 154.1135(b), Tax Code, is amended to
18 read as follows:

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

21 SECTION 7. Section 154.121(b), Tax Code, is amended to read
22 as follows:

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

27 (1) permitting ~~[administration of licensing]~~ of

1 retailers under this chapter, Chapter [~~or Chapter~~] 155 of this
2 code, and Chapter 147, Health and Safety Code; and

3 (2) disciplinary actions taken under Section
4 161.0901, Health and Safety Code.

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

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

9 SECTION 9. Section 155.058(b), Tax Code, is amended to read
10 as follows:

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

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

18 (2) disciplinary actions taken under Section
19 161.0901, Health and Safety Code.

20 SECTION 10. Chapters 154 and 155, Tax Code, are amended to
21 read as follows:

22 Sec. 154.001. DEFINITIONS. In this chapter:

23 (1) "Bonded agent" means a person in this state who is
24 a third-party agent of a manufacturer outside this state and who
25 receives cigarettes in interstate commerce and stores the
26 cigarettes for distribution or delivery to distributors under
27 orders from the manufacturer.

1 (2) "Cigarette" means a roll for smoking:

2 (A) that is made of tobacco or tobacco mixed with
3 another ingredient and wrapped or covered with a material other
4 than tobacco; and

5 (B) that is not a cigar.

6 (3) "Commercial business location" means the entire
7 premises occupied by a permit applicant or a person required to hold
8 a permit under this chapter.

9 (4) "Common carrier" means a motor carrier registered
10 under Chapter 643, Transportation Code, or a motor carrier
11 operating under a certificate issued by the Interstate Commerce
12 Commission or a successor agency to the Interstate Commerce
13 Commission.

14 (5) "Consumer" means a person who possesses cigarettes
15 for personal consumption.

16 (6) "Counterfeit stamp" means a sticker, label, print,
17 tag, or token that is used or is intended to be used to simulate a
18 stamp and that is not authorized or issued by the comptroller.

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

20 (A) is authorized to purchase for the purpose of
21 making a first sale in this state cigarettes in unstamped packages
22 from manufacturers who distribute cigarettes in this state and to
23 stamp cigarette packages;

24 (B) ships, transports, imports into this state,
25 acquires, or possesses cigarettes and makes a first sale of the
26 cigarettes in this state;

27 (C) manufactures or produces cigarettes; or

1 (D) is an importer.

2 (7-a) "Engage in business" means, in relation to
3 cigarettes, engaging by a person, either directly or through a
4 representative, in any of the following activities:

5 (A) selling cigarettes in or into this state;

6 (B) using a warehouse or another location to
7 store cigarettes; or

8 (C) otherwise conducting through a physical
9 presence cigarette-related business in this state.

10 (8) "Export warehouse" means a person in this state
11 who receives cigarettes in unstamped packages from manufacturers
12 and stores the cigarettes for the purpose of making sales to
13 authorized persons for resale, use, or consumption outside the
14 United States.

15 (9) "First sale" means, except as otherwise provided
16 by this chapter:

17 (A) the first transfer of possession in
18 connection with a purchase, sale, or any exchange for value of
19 cigarettes in or into this state, which:

20 (i) includes the sale of cigarettes by:

21 (a) a distributor in or outside this
22 state to a distributor, wholesaler, or retailer in this state; and

23 (b) a manufacturer in this state who
24 transfers the cigarettes in this state; and

25 (ii) does not include:

26 (a) the sale of cigarettes by a
27 manufacturer outside this state to a distributor in this state;

1 [~~or~~]

2 (b) the transfer of cigarettes from a
3 manufacturer outside this state to a bonded agent in this state; or

4 (c) the sale of cigarettes from a
5 manufacturer, bonded agent, distributor, or importer to an
6 interstate warehouse in this state;

7 (B) the first use or consumption of cigarettes in
8 this state; or

9 (C) the loss of cigarettes in this state whether
10 through negligence, theft, or other unaccountable loss.

11 (10) "Importer" means a person who ships, transports,
12 or imports into this state cigarettes manufactured or produced
13 outside the United States for the purpose of making a first sale in
14 this state.

15 (11) "Individual package of cigarettes" means a
16 package that contains at least 20 cigarettes.

17 (11-a) "Interstate warehouse" means a person in this
18 state who receives unstamped cigarettes from a manufacturer, bonded
19 agent, importer, or distributor and stores the cigarettes
20 exclusively for an interstate warehouse transaction.

21 (11-b) "Interstate warehouse transaction" means the
22 sale or delivery from an interstate warehouse to a person in another
23 state who is licensed or permitted by the other state to affix that
24 state's cigarette stamps or otherwise pay the state's excise tax on
25 cigarettes as may be required.

26 (12) "Manufacturer" means a person who manufactures,
27 fabricates, or assembles cigarettes, or causes or arranges for the

1 manufacture, fabrication, or assembly of cigarettes, for sale or
2 distribution.

3 (13) "Manufacturer's representative" means a person
4 employed by a manufacturer to sell or distribute the manufacturer's
5 stamped cigarette packages.

6 (14) "Permit holder" means a bonded agent, interstate
7 warehouse, distributor, wholesaler, manufacturer, importer, export
8 warehouse, or retailer who obtains a permit under Section [154.101](#).

9 (15) "Place of business" means:

10 (A) a commercial business location where
11 cigarettes are sold;

12 (B) a commercial business location where
13 cigarettes are kept for sale or consumption or otherwise stored;

14 (C) a vehicle from which cigarettes are sold; or

15 (D) a vending machine from which cigarettes are
16 sold.

17 (16) "Previously used stamp" means a stamp that has
18 been used to show payment of a tax imposed by this chapter and is
19 again used, sold, or possessed for sale or use to show payment of a
20 tax imposed by this chapter.

21 (17) "Retailer" means a person who engages in the
22 business of selling cigarettes to consumers and includes the owner
23 of a cigarette vending machine.

24 (17-a) "Roll-your-own machine" means a machine for
25 commercial use at a retail premise that is capable of producing
26 cigarettes only in quantities for personal use.

27 (18) "Stamp" includes only a stamp that:

1 (A) is printed, manufactured, or made by
2 authority of the comptroller;

3 (B) shows payment of the tax imposed by this
4 chapter;

5 (C) is consecutively numbered and uniquely
6 identifiable as a Texas tax stamp; and

7 (D) is not damaged beyond recognition as a valid
8 Texas tax stamp.

9 (19) "Wholesaler" means a person, including a
10 manufacturer's representative, who sells or distributes cigarettes
11 in this state for resale but who is not a distributor or interstate
12 warehouse.

13 Sec. 154.041. STAMP REQUIRED. (a) A person who pays a tax
14 imposed by this chapter shall securely affix a stamp to each
15 individual package of cigarettes to show payment of the tax.

16 (b) Except as provided by Section 154.152, each distributor
17 shall obtain the necessary stamps before receiving or accepting
18 delivery of unstamped packages of cigarettes. The possession of
19 unstamped packages of cigarettes without the possession of the
20 requisite amount or number of stamps is prima facie evidence that
21 the cigarettes are possessed for the purpose of making a first sale
22 without stamps and without payment of the tax imposed by this
23 chapter.

24 (c) The absence of a stamp on an individual package of
25 cigarettes is notice that the tax has not been paid.

26 (d) A manufacturer of cigarettes outside this state may
27 purchase a stamp and affix it to the individual package and no

1 further payment of the tax is required.

2 (e) The transfer of possession of cigarettes by a bonded
3 agent to a distributor in this state, under instructions received
4 from outside this state, is not a first sale.

5 (f) The transfer of possession of cigarettes by an
6 interstate warehouse in an interstate warehouse transaction is not
7 a first sale and no stamp is required.

8 Sec. 154.101. PERMITS. (a) A person may not engage in
9 business as a distributor, wholesaler, bonded agent, interstate
10 warehouse, manufacturer, export warehouse, importer, or retailer
11 unless the person has applied for and received the applicable
12 permit from the comptroller.

13 (b) Each distributor, wholesaler, bonded agent, interstate
14 warehouse, manufacturer, export warehouse, importer, or retailer
15 shall obtain a permit for each place of business owned or operated
16 by the distributor, wholesaler, bonded agent, interstate
17 warehouse, manufacturer, export warehouse, importer, or retailer.
18 The comptroller may not issue a permit for a place of business that
19 is a residence or a unit in a public storage facility.

20 (c) The comptroller shall prescribe the form and content of
21 an application for a permit and shall furnish the form on request of
22 an applicant.

23 (d) The applicant shall accurately complete all information
24 required by the application and provide the comptroller with such
25 additional information as the comptroller deems necessary.

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

1 proprietorship to furnish financial information regarding the
2 applicant and to provide the identity of each officer, director,
3 stockholder owning 10 percent or more of the outstanding stock,
4 partner, member, owner, or managing employee.

5 (f) Each distributor, wholesaler, and retailer that applies
6 for a permit to sell cigarettes from a vehicle must provide the
7 make, model, vehicle identification number, registration number,
8 and any other information required by the comptroller.

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

11 (h) Permits for engaging in business as a distributor,
12 wholesaler, bonded agent, interstate warehouse, manufacturer,
13 export warehouse, importer, or retailer shall be governed
14 exclusively by the provisions of this code.

15 (i) This section does not apply to a research facility that
16 possesses and uses cigarettes only for experimental purposes.

17 (j) A person engaged in the business of selling cigarettes
18 for commercial purposes who provides a roll-your-own machine
19 available for use by consumers must obtain manufacturer's,
20 distributor's, and retailer's permits.

21 (k) A person may not hold a Texas distributor permit and an
22 interstate warehouse permit at the same location.

23 Sec. 154.1015. SALES; PERMIT HOLDERS AND NONPERMIT HOLDERS.

24 (a) Except for retail sales to consumers, cigarettes may only be
25 sold or distributed by and between permit holders as provided by
26 this section.

27 (b) A person who is not a permit holder may not sell or

1 distribute more than 200 individual cigarettes to any person.

2 (c) A manufacturer outside this state who is not a permitted
3 distributor may sell cigarettes only to a permitted distributor or
4 permitted interstate warehouse.

5 (d) A permitted distributor may sell cigarettes only to a
6 permitted distributor, wholesaler, or retailer. A permitted
7 distributor who manufactures or produces cigarettes in this state
8 may sell such cigarettes manufactured or produced to a permitted
9 interstate warehouse.

10 (e) A permitted importer may sell cigarettes only to a
11 permitted interstate warehouse, permitted distributor, wholesaler,
12 or retailer.

13 (f) A permitted wholesaler may sell cigarettes only to a
14 permitted distributor, wholesaler, or retailer.

15 (g) A permitted retailer may sell cigarettes only to the
16 consumer and may purchase cigarettes only from a permitted
17 distributor or wholesaler in this state.

18 (h) A permitted export warehouse may sell cigarettes only to
19 persons authorized to sell or consume unstamped cigarettes outside
20 the United States.

21 (i) A manufacturer's representative may sell cigarettes
22 only to a permitted distributor, wholesaler, or retailer.

23 (j) A permitted interstate warehouse may sell cigarettes
24 only in an interstate warehouse transaction. No intrastate sale of
25 cigarettes by an interstate warehouse shall take place without
26 written authorization by the comptroller.

27 Sec. 154.102. COMBINATION PERMIT. (a) The comptroller may

1 issue a combination permit for cigarettes and tobacco products to a
2 person who is a distributor, wholesaler, bonded agent, interstate
3 warehouse, manufacturer, importer, or retailer as defined by this
4 chapter and Chapter 155 for both cigarettes and tobacco products.
5 An interstate warehouse shall not be issued a combination permit as
6 a retailer of cigarettes or tobacco products.

7 (b) A person who receives a combination permit pays only the
8 higher of the two permit fees.

9 Sec. 154.110. ISSUANCE OF PERMIT. (a) The comptroller
10 shall issue a permit to a distributor, wholesaler, bonded agent,
11 interstate warehouse, manufacturer, export warehouse, importer, or
12 retailer if the comptroller:

- 13 (1) has received an application and fee, if required;
14 (2) believes that the applicant has complied with
15 Section 154.101; and
16 (3) determines that issuing the permit will not
17 jeopardize the administration and enforcement of this chapter.

18 (b) The permit shall be issued for a designated place of
19 business, except as provided by Section 154.117.

20 (c) The permits are nonassignable.

21 (d) The permit must indicate the type of permit that it is
22 and authorize the sale of cigarettes in this state. The permit must
23 show that it is revocable and shall be forfeited or suspended if the
24 conditions of issuance, provisions of this chapter, or rules of the
25 comptroller are violated.

26 Sec. 154.111. PERMIT YEAR; FEES. (a) A permit required by
27 this chapter expires on the last day of February of each year,

1 except that the retailer's permit required by Section [154.101](#)
2 expires on the last day of May of each even-numbered year.

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

- 5 (1) \$300 for a bonded agent's permit;
- 6 (2) ~~(\$300 for an interstate warehouse's permit;~~
- 7 (3) [~~(2)~~] \$300 for a distributor's permit;
- 8 (4) [~~(3)~~] \$200 for a wholesaler's permit;
- 9 (5) [~~(4)~~] \$15 for each permit for a vehicle if the
10 applicant is also applying for a permit as a bonded agent,
11 distributor, or wholesaler or has received a current permit from
12 the comptroller under Sections [154.101](#) and [154.110](#); and
- 13 (6) [~~(5)~~] \$180 for a retailer's permit.

14 (c) A fee is not required for an export warehouse permit.

15 (d) For a new or renewal permit required by Section [154.101](#),
16 the comptroller shall prorate the fee according to the number of
17 months remaining during the calendar year that the permit is to be
18 in effect.

19 (e) A person who does not obtain a permit each year in a
20 timely manner must pay a fee of \$50 in addition to the application
21 fee for the permit.

22 (f) If at the date of issuance a permit will expire within
23 three months, the comptroller may collect the prorated permit fee
24 or the fee for the current year and, with the consent of the permit
25 holder, may collect the fee for the next permit year and issue a
26 permit or permits for both periods, as applicable.

27 (g) A person issued a permit for a place of business that

1 permanently closes before the permit expiration date is not
2 entitled to a refund of the permit fee.

3 Sec. 154.121. REVENUE. (a) Except as provided by
4 Subsection (b), revenue from the sale of permits to distributors,
5 wholesalers, ~~[and]~~ bonded agents, and interstate warehouses is
6 allocated in the same manner as other revenue allocated by
7 Subchapter J.

8 (b) Revenue from the sale of retailer's permits shall be
9 deposited to the general revenue fund and may be appropriated only
10 as provided by this section. The money may be appropriated first to
11 the comptroller for administration of licensing of retailers under
12 this chapter or Chapter 155.

13 (c) If, after any appropriation is made under Subsection
14 (b), revenue remains from the sale of retailer's permits, the
15 remaining money may be appropriated to the comptroller for
16 administration and enforcement of Subchapters H, K, and N, Chapter
17 161, Health and Safety Code, and to the Texas Department of Health,
18 for the administration and enforcement of Section 161.253, Health
19 and Safety Code.

20 (d) If, after any appropriation is made under Subsections
21 (b) and (c), revenue remains from the sale of retailer's permits,
22 the remaining money may be appropriated to the Texas Department of
23 Health to administer the commissioner of public health's
24 responsibilities under Section 161.301, Health and Safety Code.

25 (e) If, after any appropriation is made under Subsections
26 (b), (c), and (d), revenue remains from the sale of retailer's
27 permits, the remaining money may be appropriated to the appropriate

1 entity to administer that entity's responsibilities under Section
2 [161.302](#), Health and Safety Code.

3 Sec. 154.152. INTERSTATE STOCK. (a) A distributor shall
4 set aside unstamped cigarette packages for interstate sale and for
5 which no tax is due under federal law in a separate part of the
6 building from the stamped packages. If the unstamped packages for
7 interstate sale or for which no tax is due under federal law are not
8 stored separately, the cigarettes are subject to the same
9 requirements as cigarettes possessed for the purpose of a first
10 sale in this state.

11 (b) A distributor who possesses unstamped cigarette
12 packages for interstate sale must possess a number of unused stamps
13 from the appropriate state sufficient to stamp the distributor's
14 inventory of unstamped interstate cigarettes, except for cigarette
15 packages for which no tax is due under federal law. Any unstamped
16 packages of cigarettes that exceed the number of out-of-state
17 stamps on hand shall be presumed to be held for sale in this state,
18 except for cigarette packages for which no tax is due under federal
19 law.

20 (c) A person may not transport or cause to be transported
21 from this state cigarettes for sale in another state without first
22 affixing to the cigarettes the stamp required by the state in which
23 the cigarettes are to be sold or paying any other excise tax on the
24 cigarettes imposed by the state in which the cigarettes are to be
25 sold. This provision shall not apply to distribution, sale and
26 transportation of cigarettes sold by an interstate warehouse in an
27 interstate warehouse transaction.

1 (d) A person may not affix to cigarettes the stamp required
2 by another state or pay any other excise tax on the cigarettes
3 imposed by another state if the other state prohibits stamps from
4 being affixed to the cigarettes, prohibits the payment of any other
5 excise tax on the cigarettes, or prohibits the sale of the
6 cigarettes.

7 (e) Not later than the 15th day after the end of each
8 calendar quarter, a person who transports or causes to be
9 transported from this state cigarettes for sale in another state
10 shall submit to the attorney general a report identifying:

11 (1) the quantity of cigarettes, by brand style,
12 transported or caused to be transported in the preceding calendar
13 quarter; and

14 (2) the name and address of each recipient of the
15 cigarettes.

16 Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each
17 distributor, wholesaler, bonded agent, interstate warehouse, and
18 export warehouse shall keep records at each place of business of all
19 cigarettes purchased or received, including records of those
20 cigarettes for which no tax is due under federal law. Each retailer
21 shall keep records at a single commercial business location, which
22 the retailer shall designate as its principal place of business in
23 this state, of all cigarettes purchased and received. These
24 records must include:

25 (1) the name and address of the shipper or carrier and
26 the mode of transportation;

27 (2) all shipping records or copies of records,

1 including invoices, bills of lading, waybills, freight bills, and
2 express receipts;

3 (3) the date and the name of the place of origin of the
4 cigarette shipment;

5 (4) the date and the name of the place of arrival of
6 the cigarette shipment;

7 (5) a statement of the number, kind, and price paid for
8 cigarettes, including cigarettes in stamped and unstamped
9 packages;

10 (6) the name, address, permit number, and tax
11 identification number of the seller;

12 (7) in the case of a distributor, copies of the customs
13 certificates required by 19 U.S.C. Section 1681a(c), as amended,
14 for all cigarettes imported into the United States to which the
15 distributor has affixed a tax stamp; and

16 (8) any other information required by rules of the
17 comptroller.

18 Sec. 154.203. REPORT OF SALE OR USE. (a) Each interstate
19 warehouse, distributor, and wholesaler shall keep at each place of
20 business in this state records of each sale, distribution,
21 exchange, or use of cigarettes whether taxed under this chapter or
22 not. Each interstate warehouse, distributor, and wholesaler shall
23 prepare and retain an original invoice for each transaction
24 involving cigarettes. Each interstate warehouse, distributor, or
25 wholesaler shall keep any supporting documentation, including
26 bills of lading, showing shipment and receipt used in preparing the
27 invoices at the place of business of the interstate warehouse,

1 distributor, or wholesaler. The interstate warehouse,
2 distributor, or wholesaler shall prepare and deliver a duplicate
3 invoice to the purchaser.

4 (b) The records for each sale, distribution, exchange, or
5 use of cigarettes must show:

6 (1) the purchaser's name and address, permit number,
7 or tax identification number;

8 (2) the method of delivery and the name of the common
9 carrier or other person delivering the cigarettes;

10 (3) the date, number, and kind of cigarettes in
11 stamped packages sold, distributed, exchanged, or used; and

12 (4) the date, number, and kind of cigarettes in
13 unstamped packages sold, distributed, exchanged, or used.

14 (c) Upon request by the comptroller, each interstate
15 warehouse shall provide to the comptroller copies of periodic
16 cigarette reports filed with each state into which the interstate
17 warehouse sells cigarettes and copies of the PACT Act report
18 required by 15 U.S.C. 376.

19 Sec. 154.501. PENALTIES. (a) A person violates this
20 chapter if the person:

21 (1) is a distributor, wholesaler, manufacturer,
22 export warehouse, importer, bonded agent, interstate warehouse,
23 manufacturer's representative, or retailer and fails to keep
24 records required by this chapter;

25 (2) engages in the business of a bonded agent,
26 interstate warehouse, distributor, wholesaler, manufacturer,
27 export warehouse, importer, or retailer without a valid permit;

1 (3) is a distributor, wholesaler, manufacturer,
2 export warehouse, importer, bonded agent, interstate warehouse, or
3 retailer and fails to make a report or makes a false or incomplete
4 report or application required by this chapter to the comptroller;
5 or

6 (4) is a person affected by this chapter and fails or
7 refuses to abide by or violates a provision of this chapter or a
8 rule adopted by the comptroller under this chapter.

9 (b) A person who violates this section shall pay to the
10 state a penalty of not more than \$2,000 for each violation.

11 (c) Each day on which a violation occurs is a separate
12 offense.

13 (d) The attorney general shall bring a suit to recover
14 penalties under this section.

15 (e) A suit under this section may be brought in a court of
16 competent jurisdiction in Travis County or in any court having
17 jurisdiction.

18 Sec. 154.503. POSSESSION IN QUANTITIES LESS THAN 10,000.

19 (a) Except as provided by Sections [154.026\(b\)](#), [154.041\(f\)](#), and
20 [154.042](#), a person commits an offense if the person possesses
21 unstamped cigarettes in quantities less than 10,000.

22 (b) This section does not prohibit transportation of
23 cigarettes by a common carrier.

24 Sec. 154.509. PERMITS. A person commits an offense if the
25 person acting:

26 (1) as a distributor, interstate warehouse,
27 wholesaler, or retailer, receives or possesses cigarettes without

1 having a valid permit;

2 (2) as a distributor, interstate warehouse,
3 wholesaler, or retailer, receives or possesses cigarettes without
4 having a permit posted where it can be easily seen by the public;

5 (3) as a distributor, interstate warehouse, or
6 wholesaler, does not deliver an invoice to the purchaser as
7 required by Section 154.203;

8 (4) as a distributor, interstate warehouse,
9 wholesaler, or retailer, sells cigarettes without having a valid
10 permit; or

11 (5) as a bonded agent, interstate warehouse, or export
12 warehouse, stores, distributes, or delivers cigarettes in
13 unstamped packages without having a valid permit.

14 Sec. 154.511. TRANSPORTATION OF CIGARETTES. A person,
15 other than a common carrier, commits an offense if the person:

16 (1) knowingly transports cigarettes without a stamp
17 affixed to each individual package, except as provided by Section
18 154.024(a) or Section 154.152(c);

19 (2) wilfully refuses to stop a motor vehicle operated
20 to transport cigarettes after a request to stop from an authorized
21 person; or

22 (3) while transporting cigarettes refuses to permit a
23 complete inspection of the cargo by an authorized person.

24 Sec. 154.515. POSSESSION IN QUANTITIES OF 10,000 OR MORE.

25 (a) Except as provided by Sections 154.026(b), 154.041(f), and
26 154.042, a person commits an offense if the person possesses
27 unstamped cigarettes in quantities of 10,000 or more.

1 (b) This section does not prohibit transportation of
2 cigarettes by a common carrier.

3 Sec. 155.001. DEFINITIONS. In this chapter:

4 (1) "Bonded agent" means a person in this state who is
5 a third-party agent of a manufacturer outside this state and who
6 receives tobacco products in interstate commerce and stores the
7 tobacco products for distribution or delivery to distributors under
8 orders from the manufacturer.

9 (2) "Cigar" means a roll of fermented tobacco that is
10 wrapped in tobacco and the main stream of smoke from which produces
11 an alkaline reaction to litmus paper.

12 (3) "Commercial business location" means the entire
13 premises occupied by a permit applicant or a person required to hold
14 a permit under this chapter.

15 (4) "Common carrier" means a motor carrier registered
16 under Chapter 643, Transportation Code, or a motor carrier
17 operating under a certificate issued by the Interstate Commerce
18 Commission or a successor agency to the Interstate Commerce
19 Commission.

20 (5) "Consumer" means a person who possesses tobacco
21 products for personal consumption.

22 (6) "Distributor" means a person who:

23 (A) receives untaxed tobacco products for the
24 purpose of making a first sale in this state from a manufacturer
25 outside the state or within the state or otherwise brings or causes
26 to be brought into this state untaxed tobacco products for sale,
27 use, or consumption;

1 (B) manufactures or produces tobacco products;
2 or

3 (C) is an importer.

4 (6-a) "Engage in business" means, in relation to
5 tobacco products, engaging by a person, either directly or through
6 a representative, in any of the following activities:

7 (A) selling tobacco products in or into this
8 state;

9 (B) using a warehouse or another location to
10 store tobacco products; or

11 (C) otherwise conducting through a physical
12 presence tobacco product-related business in this state.

13 (7) "Export warehouse" means a person in this state
14 who receives untaxed tobacco products from manufacturers and stores
15 the tobacco products for the purpose of making sales to authorized
16 persons for resale, use, or consumption outside the United States.

17 (8) "First sale" means, except as otherwise provided
18 by this chapter:

19 (A) the first transfer of possession in
20 connection with a purchase, sale, or any exchange for value of
21 tobacco products in or into this state, which:

22 (i) includes the sale of tobacco products
23 by:

24 (a) a distributor in or outside this
25 state to a distributor, wholesaler, or retailer in this state; and

26 (b) a manufacturer in this state who
27 transfers the tobacco products in this state; and

1 (ii) does not include:

2 (a) the sale of tobacco products by a
3 manufacturer outside this state to a distributor in this state;
4 [~~or~~]

5 (b) the transfer of tobacco products
6 from a manufacturer outside this state to a bonded agent in this
7 state; or

8 (c) the sale of tobacco products from
9 a manufacturer, bonded agent, distributor, or importer to an
10 interstate warehouse in this state;

11 (B) the first use or consumption of tobacco
12 products in this state; or

13 (C) the loss of tobacco products in this state
14 whether through negligence, theft, or other unaccountable loss.

15 (9) "Importer" means a person who ships, transports,
16 or imports into this state tobacco products manufactured or
17 produced outside the United States for the purpose of making a first
18 sale in this state.

19 (9-a) "Interstate warehouse" means a person in this
20 state who receives untaxed tobacco products from a manufacturer,
21 bonded agent, importer, or distributor and stores the tobacco
22 products exclusively for an interstate warehouse transaction.

23 (9-b) "Interstate warehouse transaction" means the
24 sale or delivery from an interstate warehouse to a person in another
25 state who is licensed or permitted by the other state to pay the
26 state's excise tax on tobacco products as may be required.

27 (10) "Manufacturer" means a person who manufactures,

1 fabricates, or assembles tobacco products, or causes or arranges
2 for the manufacture, fabrication, or assembly of tobacco products,
3 for sale or distribution.

4 (11) "Manufacturer's representative" means a person
5 employed by a manufacturer to sell or distribute the manufacturer's
6 tobacco products for which the tax imposed under this chapter has
7 been paid.

8 (12) "Permit holder" means a bonded agent, interstate
9 warehouse, distributor, wholesaler, manufacturer, importer, export
10 warehouse, or retailer who obtains a permit under Section 155.041.

11 (13) "Place of business" means:

12 (A) a commercial business location where tobacco
13 products are sold;

14 (B) a commercial business location where tobacco
15 products are kept for sale or consumption or otherwise stored;

16 (C) a vehicle from which tobacco products are
17 sold; or

18 (D) a vending machine from which tobacco products
19 are sold.

20 (13-a) "Raw tobacco" means any part of the tobacco
21 plant, including the tobacco leaf or stem, that is harvested from
22 the ground and is not a tobacco product as the term is defined in
23 this chapter.

24 (14) "Retailer" means a person who engages in the
25 business of selling tobacco products to consumers and includes the
26 owner of a vending machine.

27 (15) "Tobacco product" means:

- 1 (A) a cigar;
- 2 (B) smoking tobacco, including granulated,
3 plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable
4 for smoking in a pipe or as a cigarette;
- 5 (C) chewing tobacco, including Cavendish, Twist,
6 plug, scrap, and any kind of tobacco suitable for chewing;
- 7 (D) snuff or other preparations of pulverized
8 tobacco; or
- 9 (E) an article or product that is made of tobacco
10 or a tobacco substitute and that is not a cigarette or an
11 e-cigarette as defined by Section 161.081, Health and Safety Code.

12 (16) "Wholesaler" means a person, including a
13 manufacturer's representative, who sells or distributes tobacco
14 products in this state for resale but who is not a distributor or
15 interstate warehouse.

16 Sec. 155.041. PERMITS. (a) A person may not engage in
17 business as a distributor, wholesaler, bonded agent, interstate
18 warehouse, manufacturer, export warehouse, importer, or retailer
19 unless the person has applied for and received the applicable
20 permit from the comptroller.

21 (b) Each distributor, wholesaler, bonded agent, interstate
22 warehouse, manufacturer, export warehouse, importer, or retailer
23 shall obtain a permit for each place of business owned or operated
24 by the distributor, wholesaler, bonded agent, interstate
25 warehouse, manufacturer, export warehouse, importer, or retailer.

26 (c) The comptroller shall prescribe the form and content of
27 an application for a permit and shall furnish the form on request of

1 an applicant.

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

5 (e) The comptroller may require each corporation,
6 association, joint venture, syndicate, partnership, or
7 proprietorship to furnish financial information regarding the
8 applicant and to provide the identity of each officer, director,
9 stockholder owning 10 percent or more of the outstanding stock,
10 partner, member, owner, or managing employee.

11 (f) Each distributor, wholesaler, and retailer that applies
12 for a permit to sell tobacco products from a vehicle must provide
13 the make, model, vehicle identification number, registration
14 number, and any other information required by the comptroller.

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

17 (h) Permits for engaging in business as a distributor,
18 wholesaler, bonded agent, interstate warehouse, manufacturer,
19 export warehouse, importer, or retailer shall be governed
20 exclusively by the provisions of this code.

21 (i) A person may not hold a Texas distributor permit and an
22 interstate warehouse permit at the same location.

23 Sec. 155.0415. SALES: PERMIT HOLDERS AND NONPERMIT
24 HOLDERS. (a) Except for retail sales to consumers, tobacco
25 products may only be sold or distributed by and between permit
26 holders as provided by this section.

27 (b) A person who is not a permit holder may not sell or

1 distribute tobacco products on which a tax of more than \$50 has been
2 paid or is due.

3 (c) A manufacturer outside this state who is not a permitted
4 distributor may sell tobacco products only to a permitted
5 distributor or a permitted interstate warehouse.

6 (d) A permitted distributor may sell tobacco products only
7 to a permitted distributor, wholesaler, or retailer. A permitted
8 distributor who manufactures or produces tobacco products in this
9 state may sell such tobacco products manufactured or produced to a
10 permitted interstate warehouse.

11 (e) A permitted importer may sell tobacco products only to a
12 permitted interstate warehouse, permitted distributor, wholesaler,
13 or retailer.

14 (f) A permitted wholesaler may sell tobacco products only to
15 a permitted interstate warehouse, permitted distributor,
16 wholesaler, or retailer.

17 (g) A permitted retailer may sell tobacco products only to
18 the consumer and may purchase tobacco products only from a
19 permitted distributor or wholesaler in this state.

20 (h) A permitted export warehouse may sell tobacco products
21 only to persons authorized to sell or consume untaxed tobacco
22 products outside the United States.

23 (i) A manufacturer's representative may sell tobacco
24 products only to a permitted distributor, wholesaler, or retailer.

25 (j) A permitted interstate warehouse may sell tobacco
26 products only in an interstate warehouse transaction. No
27 intrastate sale of tobacco products by an interstate warehouse

1 shall take place without written authorization by the comptroller.

2 Sec. 155.048. ISSUANCE OF PERMITS. (a) The comptroller
3 shall issue a permit to an interstate warehouse, [~~a~~] distributor,
4 wholesaler, bonded agent, manufacturer, importer, or retailer if
5 the comptroller:

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

7 (2) does not reject the application and deny the
8 permit under Section 155.0481; and

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

11 (b) The permit shall be issued for a designated place of
12 business, except as provided by Section 155.053.

13 (c) The permits are nonassignable.

14 (d) The permit must indicate the type of permit that it is
15 and authorize the sale of tobacco products in this state. The
16 permit must show that it is revocable and shall be forfeited or
17 suspended if the conditions of issuance, provisions of this
18 chapter, or rules of the comptroller are violated.

19 Sec. 155.049. PERMIT YEAR; FEES. (a) A permit required by
20 this chapter expires on the last day of February of each year,
21 except the retailer's permit required by Section 155.041 expires on
22 the last day of May of each even-numbered year.

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

25 (1) \$300 for a bonded agent's permit;

26 (2) \$300 for an interstate warehouse's permit;

27 (3) [~~2~~] \$300 for a distributor's permit;

1 (4) [~~(3)~~] \$200 for a wholesaler's permit;

2 (5) [~~(4)~~] \$15 for each permit for a vehicle if the
3 applicant is also applying for a permit as a bonded agent,
4 distributor, or wholesaler or has received a current permit from
5 the comptroller under Sections [155.041](#) and [155.048](#); and

6 (6) [~~(5)~~] \$180 for a retailer's permit.

7 (c) A fee is not required for an export warehouse permit.

8 (d) For a new or renewal permit required by Section [155.041](#),
9 the comptroller shall prorate the fee according to the number of
10 months remaining during the calendar year that the permit is to be
11 in effect.

12 (e) A person who does not obtain a permit each year in a
13 timely manner must pay a late fee of \$50 in addition to the
14 application fee for the permit.

15 (f) If at the date of issuance a permit will expire within
16 three months, the comptroller may collect the prorated permit fee
17 or the fee for a current year and, with the consent of the permit
18 holder, may collect the fee for the next permit year and issue a
19 permit or permits for both periods, as applicable.

20 (g) A person issued a permit for a place of business that
21 permanently closes before the permit expiration date is not
22 entitled to a refund of the permit fee.

23 Sec. 155.058. REVENUE. (a) Except as provided by
24 Subsection (b), revenue from the sale of permits to interstate
25 warehouses, distributors, wholesalers, and bonded agents is
26 allocated in the same manner that other revenue is allocated by
27 Subchapter H.

1 (b) Revenue from the sale of retailer's permits shall be
2 deposited to the general revenue fund and may be appropriated only
3 as provided by this section. The money may be appropriated first to
4 the comptroller for administration of licensing of retailers under
5 this chapter or Chapter 154.

6 (c) If, after any appropriation is made under Subsection
7 (b), revenue remains from the sale of retailer's permits, the
8 remaining money may be appropriated to the comptroller for
9 administration and enforcement of Subchapters H, K, and N, Chapter
10 161, Health and Safety Code, and to the Texas Department of Health,
11 for the administration and enforcement of Section 161.253, Health
12 and Safety Code.

13 (d) If, after any appropriation is made under Subsections
14 (b) and (c), revenue remains from the sale of retailer's permits,
15 the remaining money may be appropriated to the Texas Department of
16 Health to administer the commissioner of public health's
17 responsibilities under Section 161.301, Health and Safety Code.

18 (e) If, after any appropriation is made under Subsections
19 (b), (c), and (d), revenue remains from the sale of retailer's
20 permits, the remaining money may be appropriated to the appropriate
21 entity to administer that entity's responsibilities under Section
22 161.302, Health and Safety Code.

23 Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each
24 interstate warehouse, distributor, wholesaler, bonded agent, and
25 export warehouse shall keep records at each place of business of all
26 tobacco products purchased or received. Each retailer shall keep
27 records at a single commercial business location, which the

1 retailer shall designate as its principal place of business in the
2 state, of all tobacco products purchased and received. These
3 records must include the following, except that Subdivision (7)
4 applies to distributors only and Subdivision (8) applies only to
5 the purchase or receipt of tobacco products other than cigars:

6 (1) the name and address of the shipper or carrier and
7 the mode of transportation;

8 (2) all shipping records or copies of records,
9 including invoices, bills of lading, waybills, freight bills, and
10 express receipts;

11 (3) the date and the name of the place of origin of the
12 tobacco product shipment;

13 (4) the date and the name of the place of arrival of
14 the tobacco product shipment;

15 (5) a statement of the number, kind, and price paid for
16 the tobacco products;

17 (6) the name, address, permit number, and tax
18 identification number of the seller;

19 (7) the manufacturer's list price for the tobacco
20 products;

21 (8) the net weight as listed by the manufacturer for
22 each unit; and

23 (9) any other information required by rules of the
24 comptroller.

25 Sec. 155.102. REPORT OF SALE OR USE. (a) Each interstate
26 warehouse, distributor, and wholesaler shall keep at each place of
27 business in this state records of each sale, distribution,

1 exchange, or use of tobacco products whether taxed under this
2 chapter or not. Each interstate warehouse, distributor, and
3 wholesaler shall prepare and retain an original invoice for each
4 transaction involving tobacco products. Each interstate
5 warehouse, distributor, or wholesaler shall keep any supporting
6 documentation, including bills of lading, showing shipment and
7 receipt used in preparing the invoices at the place of business of
8 the distributor or wholesaler. The interstate warehouse,
9 distributor, or wholesaler shall prepare and deliver a duplicate
10 invoice to the purchaser.

11 (b) The records for each sale, distribution, exchange, or
12 use of tobacco products must show:

13 (1) the purchaser's name and address, permit number,
14 or tax identification number;

15 (2) the method of delivery and the name of the common
16 carrier or other person delivering the tobacco products;

17 (3) the date, amount, and type of tobacco products
18 sold, distributed, exchanged, or used;

19 (4) the price received for the tobacco products;

20 (5) the number and kind of tobacco products on which
21 the tax has been paid; and

22 (6) for sales from a manufacturer to a distributor or
23 interstate warehouse, the manufacturer's list price for the tobacco
24 products.

25 (c) In addition to the information required under
26 Subsection (b), the records for each sale, distribution, exchange,
27 or use of tobacco products other than cigars must show the net

1 weight as listed by the manufacturer for each unit.

2 (d) Upon request by the comptroller, each interstate
3 warehouse shall provide to the comptroller copies of periodic
4 tobacco product reports filed with each state into which the
5 interstate warehouse sells tobacco products and copies of the PACT
6 Act report required by 15 U.S.C. 376.

7 Sec. 155.201. PENALTIES. (a) A person violates this
8 chapter if the person:

9 (1) is a distributor, wholesaler, manufacturer,
10 export warehouse, importer, bonded agent, interstate warehouse,
11 manufacturer's representative, or retailer and fails to keep
12 records required by this chapter;

13 (2) engages in the business of a bonded agent,
14 interstate warehouse, distributor, wholesaler, manufacturer,
15 export warehouse, importer, or retailer without a valid permit;

16 (3) is a distributor, wholesaler, manufacturer, export
17 warehouse, importer, bonded agent, interstate warehouse, or
18 retailer and fails to make a report required by this chapter to the
19 comptroller or makes a false or incomplete report or application
20 required by this chapter to the comptroller; or

21 (4) is a person affected by this chapter and fails or
22 refuses to abide by or violates a provision of this chapter or a
23 rule adopted by the comptroller under this chapter.

24 (b) A person who violates this chapter shall pay to the
25 state a penalty of not more than \$2,000 for each violation.

26 (c) A separate offense is committed each day on which a
27 violation occurs.

1 (d) The attorney general shall bring suits to recover
2 penalties under this section.

3 (e) A suit under this section may be brought in a court of
4 competent jurisdiction in Travis County or in any court having
5 jurisdiction.

6 Sec. 155.207. PERMITS. A person commits an offense if the
7 person acting:

8 (1) as a distributor, interstate warehouse,
9 wholesaler, or retailer, receives or possesses tobacco products
10 without having a valid permit;

11 (2) as a distributor, interstate warehouse,
12 wholesaler, or retailer, receives or possesses tobacco products
13 without having a permit posted where it can be easily seen by the
14 public;

15 (3) as a distributor, interstate warehouse, or
16 wholesaler, does not deliver an invoice to the purchaser as
17 required by Section 155.102;

18 (4) as a distributor, interstate warehouse,
19 wholesaler, or retailer, sells tobacco products without having a
20 valid permit; or

21 (5) as a bonded agent, interstate warehouse, or export
22 warehouse, stores, distributes, or delivers tobacco products on
23 which the tax has not been paid without having a valid permit.

24 SECTION 11. (a) Section 161.124, Health and Safety Code, is
25 repealed.

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

27 (1) Section 154.1142;

- 1 (2) Section 154.1143;
- 2 (3) Section 155.0592; and
- 3 (4) Section 155.0593.

4 SECTION 12. Section 161.0901, Health and Safety Code, as
5 added by this Act, applies only to a violation that occurs on or
6 after the effective date of this Act. A violation that occurs
7 before the effective date of this Act is governed by the law in
8 effect on the date the violation occurred, and the former law is
9 continued in effect for that purpose.

10 SECTION 13. (a) Notwithstanding Section 147.0051, Health
11 and Safety Code, as added by this Act, a person is not required to
12 hold a permit under that section to engage in business as a retailer
13 of e-cigarettes in this state until January 1, 2022.

14 (b) The comptroller of public accounts shall prescribe the
15 form and content of an application for a permit under Section
16 147.0051, Health and Safety Code, as added by this Act, and begin
17 accepting applications for the permit not later than October 1,
18 2021.

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