

By: Johnson, et al.
(Thierry)

S.B. No. 248

Substitute the following for S.B. No. 248:

By: Cole

C.S.S.B. No. 248

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sale of cigarettes, tobacco products, and
3 e-cigarettes; requiring occupational permits; imposing fees;
4 providing civil and administrative penalties; creating criminal
5 offenses.

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

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

9 CHAPTER 147. E-CIGARETTE RETAILER PERMITS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 147.0001. DEFINITIONS. In this chapter:

12 (1) "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 (2) "E-cigarette" has the meaning assigned by Section
16 161.081.

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

20 (4) "Marketplace" has the meaning assigned by Section
21 151.0242, Tax Code.

22 (5) "Permit holder" means a person who obtains a
23 permit under Section 147.0052.

24 (6) "Place of business" means:

1 (A) a commercial business location where
2 e-cigarettes are sold;

3 (B) a commercial business location where
4 e-cigarettes are kept for sale or consumption or otherwise stored;
5 or

6 (C) a vehicle from which e-cigarettes are sold.

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

9 Sec. 147.0003. HEARINGS. Unless otherwise provided by this
10 chapter, the comptroller shall conduct all hearings required by
11 this chapter in accordance with Chapter 2001, Government Code. The
12 comptroller may designate one or more representatives to conduct
13 the hearings and may prescribe the rules of procedure governing the
14 hearings.

15 Sec. 147.0004. RULES. The comptroller may adopt rules to
16 implement this chapter, including rules exempting a person who
17 sells e-cigarettes to consumers through a marketplace from the
18 requirements of this chapter.

19 SUBCHAPTER B. PERMITS

20 Sec. 147.0051. E-CIGARETTE RETAILER PERMIT REQUIRED. (a)
21 A person may not engage in business as an e-cigarette retailer in
22 this state unless the person has been issued a permit from the
23 comptroller.

24 (b) An e-cigarette retailer shall obtain a permit for each
25 place of business owned or operated by the e-cigarette retailer.
26 The comptroller may not issue a permit for a place of business that
27 is a residence or a unit in a public storage facility.

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

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

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

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

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

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

16 (1) has received an application and fee;

17 (2) does not reject the application and deny the
18 permit under Section 147.0053; and

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

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

23 (c) The permits are nonassignable.

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

1 comptroller are violated.

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

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

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

12 (A) has failed to disclose any information
13 required by Sections 147.0051(d) and (e); or

14 (B) has previously violated provisions of this
15 chapter.

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

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

21 (1) one-half of the amount of the fee for a retailer's
22 permit required by Section 154.111(b), Tax Code, if at the time of
23 application the applicant holds a valid retailer's permit under
24 Section 154.101, 154.102, or 155.041, Tax Code, for the same place
25 of business; or

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

1 (c) For a new permit required by Section 147.0051, the
2 comptroller shall prorate the fee according to the number of months
3 remaining during the period that the permit is to be in effect.

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

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

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

15 Sec. 147.0055. PAYMENT FOR PERMITS. (a) An applicant for a
16 permit required by Section 147.0051 shall send the required fee
17 with the application.

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

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

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

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

1 Sec. 147.0057. REVENUE. Revenue from the sale of
2 e-cigarette retailer's permits shall be deposited as provided by
3 Section 161.0903 and may be appropriated only as provided by that
4 section.

5 SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

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

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

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

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

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

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

19 (c) The comptroller shall deliver the written notice by
20 personal service or by mail to the permit holder's mailing address
21 as it appears in the comptroller's records. Service by mail is
22 complete when the notice is deposited with the United States Postal
23 Service.

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

26 (e) A permit holder may appeal the comptroller's decision to
27 a district court in Travis County not later than the 30th day after

1 the date the comptroller's decision becomes final.

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

6 Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT. (a) The
7 comptroller may suspend a permit holder's permit without notice or
8 a hearing for the permit holder's failure to comply with this
9 chapter or a rule adopted under this chapter if the permit holder's
10 continued operation constitutes an immediate and substantial
11 threat.

12 (b) If the comptroller summarily suspends a permit holder's
13 permit, proceedings for a preliminary hearing before the
14 comptroller or the comptroller's representative must be initiated
15 simultaneously with the summary suspension. The preliminary
16 hearing shall be set for a date not later than the 10th day after the
17 date of the summary suspension, unless the parties agree to a later
18 date.

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

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

24 (e) To initiate a proceeding to suspend summarily a permit
25 holder's permit, the comptroller shall serve notice on the permit
26 holder informing the permit holder of the right to a preliminary
27 hearing before the comptroller or the comptroller's representative

1 and of the time and place of the preliminary hearing. The notice
2 must be personally served on the permit holder or an officer,
3 employee, or agent of the permit holder or sent by certified or
4 registered mail, return receipt requested, to the permit holder's
5 mailing address as it appears in the comptroller's records. The
6 notice must state the alleged violations that constitute the
7 grounds for summary suspension. The suspension is effective at the
8 time the notice is served. If notice is served in person, the
9 permit holder shall immediately surrender the permit to the
10 comptroller. If notice is served by mail, the permit holder shall
11 immediately return the permit to the comptroller.

12 (f) Section 147.0101, governing hearings for final
13 suspension or revocation of a permit under this chapter, governs a
14 final administrative hearing.

15 SUBCHAPTER D. PENALTIES

16 Sec. 147.0151. PENALTIES. (a) A person violates this
17 chapter if the person:

18 (1) engages in the business of an e-cigarette retailer
19 without a permit; or

20 (2) is a person who is subject to a provision of this
21 chapter or a rule adopted by the comptroller under this chapter and
22 who violates the provision or rule.

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

25 (c) Each day on which a violation occurs is a separate
26 violation.

27 (d) The attorney general shall bring suit to recover

1 penalties under this section.

2 (e) A suit under this section may be brought in Travis
3 County or another county having jurisdiction.

4 Sec. 147.0152. FAILURE TO HAVE PERMIT; OFFENSE. (a) A
5 person commits an offense if the person acts as an e-cigarette
6 retailer and:

7 (1) receives or possesses e-cigarettes without having
8 a permit;

9 (2) receives or possesses e-cigarettes without having
10 a permit posted where it can be easily seen by the public; or

11 (3) sells e-cigarettes without having a permit.

12 (b) An offense under this section is a Class A misdemeanor.

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

15 (1-a) (A) "E-cigarette" means:

16 (i) an electronic cigarette or any other
17 device that simulates smoking by using a mechanical heating
18 element, battery, or electronic circuit to deliver nicotine or
19 other substances to the individual inhaling from the device; or

20 (ii) a consumable liquid solution or other
21 material aerosolized or vaporized during the use of an electronic
22 cigarette or other device described by this subdivision.

23 (B) The term "e-cigarette" does not include a
24 prescription medical device unrelated to the cessation of smoking.

25 (C) The term "e-cigarette" includes:

26 (i) [~~A~~] a device described by this
27 subdivision regardless of whether the device is manufactured,

1 distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under
2 another product name or description; and

3 (ii) ~~[(B)]~~ a component, part, or accessory
4 for the device, regardless of whether the component, part, or
5 accessory is sold separately from the device.

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

9 (4) "Retailer" means a person who engages in the
10 practice of selling cigarettes, e-cigarettes, or tobacco products
11 to consumers and includes the owner of a coin-operated cigarette,
12 e-cigarette, or tobacco product vending machine. The term includes
13 a retailer as ~~[that term is]~~ defined by Section 154.001 or 155.001,
14 Tax Code, and an e-cigarette retailer as defined by Section
15 147.0001 of this code, as applicable.

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

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

21 SECTION 4. Subchapter H, Chapter 161, Health and Safety
22 Code, is amended by adding Sections 161.0901 and 161.0903 to read as
23 follows:

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

1 subchapter.

2 (b) If the comptroller finds, after notice and an
3 opportunity for a hearing as provided by Chapter 2001, Government
4 Code, that a permit holder has violated this subchapter at a place
5 of business for which a permit is issued, the comptroller may
6 suspend the permit for that place of business and administratively
7 assess a fine as follows:

8 (1) for the first violation of this subchapter during
9 the 24-month period preceding the violation at that place of
10 business, the comptroller may require the permit holder to pay a
11 fine in an amount not to exceed \$1,000;

12 (2) for the second violation of this subchapter during
13 the 24-month period preceding the most recent violation at that
14 place of business, the comptroller may require the permit holder to
15 pay a fine in an amount not to exceed \$2,000; and

16 (3) for the third violation of this subchapter during
17 the 24-month period preceding the most recent violation at that
18 place of business, the comptroller may:

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

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

23 (c) Except as provided by Subsection (e), for the fourth or
24 a subsequent violation of this subchapter during the 24-month
25 period preceding the most recent violation at that place of
26 business, the comptroller shall revoke the permit issued under
27 Chapter 147 of this code or Chapter 154 or 155, Tax Code, as

1 applicable. If the permit holder does not hold a permit under
2 Chapter 147 of this code or Chapter 154 or 155, Tax Code, the
3 comptroller shall revoke the permit issued under Section 151.201,
4 Tax Code.

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

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

12 (1) the permit holder has not violated this subchapter
13 more than seven times at the place of business in the 48-month
14 period preceding the violation in question;

15 (2) the permit holder requires its employees to attend
16 a comptroller-approved seller training program;

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

19 (4) the permit holder has not directly or indirectly
20 encouraged the employees to violate the law.

21 (f) The comptroller may adopt rules to implement this
22 section.

23 Sec. 161.0903. USE OF CERTAIN REVENUE. Revenue from fees
24 collected under Section 161.123 and from the sale of permits under
25 Chapter 147 of this code, retailer permits under Chapter 154, Tax
26 Code, and retailer permits under Chapter 155, Tax Code, shall be
27 deposited in the general revenue fund and may be appropriated only

1 as provided by this section. The revenue shall be appropriated, in
2 order of priority, to:

3 (1) the comptroller for the purpose of administering
4 retailer permitting under Chapter 147 of this code and Chapters 154
5 and 155, Tax Code;

6 (2) the comptroller for the purpose of administering
7 and enforcing this subchapter and Subchapters K and N;

8 (3) the department for the purpose of administering
9 programs under Sections 161.253 and 161.301; and

10 (4) the appropriate entity for the purpose of
11 administering that entity's responsibilities under Section
12 161.302.

13 SECTION 5. Section 161.123(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) The comptroller shall collect the fee [~~and deposit the~~
16 ~~money~~] as provided in this section.

17 SECTION 6. Section 111.00455(b), Tax Code, is amended to
18 read as follows:

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

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

27 (2) a property value study hearing under Subchapter M,

1 Chapter 403, Government Code;

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

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

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

5 (C) a certificate of authority;

6 (D) articles of incorporation;

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

8 (F) the refusal or failure to settle under

9 Section 111.101; or

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

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

16 SECTION 7. Section 154.001, Tax Code, is amended by
17 amending Subdivisions (9), (14), and (19) and adding Subdivisions
18 (11-a) and (11-b) to read as follows:

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

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

24 (i) includes the sale of cigarettes by:

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

27 (b) a manufacturer in this state who

1 transfers the cigarettes in this state; and

2 (ii) does not include:

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

6 (b) the transfer of cigarettes from a
7 manufacturer outside this state to a bonded agent in this state;

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

11 (d) the transfer of cigarettes by an
12 interstate warehouse in an interstate warehouse transaction;

13 (B) the first use or consumption of cigarettes in
14 this state; or

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

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

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

26 (14) "Permit holder" means a bonded agent, interstate
27 warehouse, distributor, wholesaler, manufacturer, importer, export

1 warehouse, or retailer who obtains a permit under Section 154.101.

2 (19) "Wholesaler" means a person, including a
3 manufacturer's representative, who sells or distributes cigarettes
4 in this state for resale but who is not a distributor or interstate
5 warehouse.

6 SECTION 8. Section 154.041, Tax Code, is amended by adding
7 Subsection (f) to read as follows:

8 (f) No stamp is required on the transfer of possession of
9 cigarettes described by Section 154.001(9)(A)(ii)(d).

10 SECTION 9. Section 154.101, Tax Code, is amended by
11 amending Subsections (a), (b), and (h) and adding Subsection (k) to
12 read as follows:

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

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

25 (h) Permits for engaging in business as a distributor,
26 wholesaler, bonded agent, interstate warehouse, manufacturer,
27 export warehouse, importer, or retailer shall be governed

1 exclusively by the provisions of this code.

2 (k) A person may not hold a distributor's permit issued by
3 this state and an interstate warehouse's permit for the same
4 location.

5 SECTION 10. Section 154.1015, Tax Code, is amended by
6 amending Subsections (c), (d), and (e) and adding Subsection (j) to
7 read as follows:

8 (c) A manufacturer outside this state who is not a permitted
9 distributor may sell cigarettes only to a permitted distributor or
10 permitted interstate warehouse.

11 (d) A permitted distributor may sell cigarettes only to a
12 permitted distributor, wholesaler, or retailer. A permitted
13 distributor who manufactures or produces cigarettes in this state
14 may sell those cigarettes to a permitted interstate warehouse.

15 (e) A permitted importer may sell cigarettes only to a
16 permitted interstate warehouse, distributor, wholesaler, or
17 retailer.

18 (j) A permitted interstate warehouse may sell cigarettes
19 only in an interstate warehouse transaction. An interstate
20 warehouse may not make an intrastate sale of cigarettes without
21 written authorization by the comptroller.

22 SECTION 11. Section 154.102(a), Tax Code, is amended to
23 read as follows:

24 (a) The comptroller may issue a combination permit for
25 cigarettes and tobacco products to a person who is a distributor,
26 wholesaler, bonded agent, interstate warehouse, manufacturer,
27 importer, or retailer as defined by this chapter and Chapter 155 for

1 both cigarettes and tobacco products. An interstate warehouse may
2 not hold a combination permit as a retailer of cigarettes or tobacco
3 products.

4 SECTION 12. Sections 154.110(a) and (d), Tax Code, are
5 amended to read as follows:

6 (a) The comptroller shall issue a permit to a distributor,
7 wholesaler, bonded agent, interstate warehouse, manufacturer,
8 export warehouse, importer, or retailer if the comptroller:

- 9 (1) has received an application and fee, if required;
10 (2) believes that the applicant has complied with
11 Section 154.101; and

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

14 (d) The permit must indicate the type of permit that it is
15 and authorize the sale of cigarettes in this state, except as
16 provided by Section 154.1015(j). The permit must show that it is
17 revocable and shall be forfeited or suspended if the conditions of
18 issuance, provisions of this chapter, or rules of the comptroller
19 are violated.

20 SECTION 13. Section 154.111(b), Tax Code, is amended to
21 read as follows:

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

- 24 (1) \$300 for a bonded agent's permit;
25 (1-a) \$300 for an interstate warehouse's permit;
26 (2) \$300 for a distributor's permit;
27 (3) \$200 for a wholesaler's permit;

1 (4) \$15 for each permit for a vehicle if the applicant
2 is also applying for a permit as a bonded agent, distributor, or
3 wholesaler or has received a current permit from the comptroller
4 under Sections 154.101 and 154.110; and

5 (5) \$180 for a retailer's permit.

6 SECTION 14. Section 154.1135(b), Tax Code, is amended to
7 read as follows:

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

10 SECTION 15. Sections 154.121(a) and (b), Tax Code, are
11 amended to read as follows:

12 (a) Except as provided by Subsection (b), revenue from the
13 sale of permits to distributors, wholesalers, ~~[and]~~ bonded agents,
14 and interstate warehouses is allocated in the same manner as other
15 revenue allocated by Subchapter J.

16 (b) Revenue from the sale of retailer's permits shall be
17 deposited as provided by Section 161.0903, Health and Safety Code,
18 ~~[to the general revenue fund]~~ and may be appropriated only as
19 provided by that ~~[this]~~ section. ~~[The money may be appropriated~~
20 ~~first to the comptroller for administration of licensing of~~
21 ~~retailers under this chapter or Chapter 155.]~~

22 SECTION 16. Section 154.152(c), Tax Code, is amended to
23 read as follows:

24 (c) A person may not transport or cause to be transported
25 from this state cigarettes for sale in another state without first
26 affixing to the cigarettes the stamp required by the state in which
27 the cigarettes are to be sold or paying any other excise tax on the

1 cigarettes imposed by the state in which the cigarettes are to be
2 sold. This subsection does not apply to the distribution, sale, or
3 transportation of cigarettes sold by an interstate warehouse in an
4 interstate warehouse transaction.

5 SECTION 17. Section 154.201, Tax Code, is amended to read as
6 follows:

7 Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each
8 distributor, wholesaler, bonded agent, interstate warehouse, and
9 export warehouse shall keep records at each place of business of all
10 cigarettes purchased or received, including records of those
11 cigarettes for which no tax is due under federal law. Each
12 retailer shall keep records at a single commercial business
13 location, which the retailer shall designate as its principal place
14 of business in this state, of all cigarettes purchased and
15 received. These records must include:

16 (1) the name and address of the shipper or carrier and
17 the mode of transportation;

18 (2) all shipping records or copies of records,
19 including invoices, bills of lading, waybills, freight bills, and
20 express receipts;

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

23 (4) the date and the name of the place of arrival of
24 the cigarette shipment;

25 (5) a statement of the number, kind, and price paid for
26 cigarettes, including cigarettes in stamped and unstamped
27 packages;

1 (6) the name, address, permit number, and tax
2 identification number of the seller;

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

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

9 SECTION 18. Section [154.203](#), Tax Code, is amended by
10 amending Subsection (a) and adding Subsection (c) to read as
11 follows:

12 (a) Each interstate warehouse, distributor, and wholesaler
13 shall keep at each place of business in this state records of each
14 sale, distribution, exchange, or use of cigarettes whether taxed
15 under this chapter or not. Each interstate warehouse, distributor,
16 and wholesaler shall prepare and retain an original invoice for
17 each transaction involving cigarettes. Each interstate warehouse,
18 distributor, or wholesaler shall keep any supporting
19 documentation, including bills of lading, showing shipment and
20 receipt used in preparing the invoices at the place of business of
21 the interstate warehouse, distributor, or wholesaler. The
22 interstate warehouse, distributor, or wholesaler shall prepare and
23 deliver a duplicate invoice to the purchaser.

24 (c) On request by the comptroller, an interstate warehouse
25 shall provide to the comptroller copies of periodic cigarette
26 reports filed with each state into which the interstate warehouse
27 sells cigarettes and copies of each report required under 15 U.S.C.

1 Section 376.

2 SECTION 19. Section 154.501(a), Tax Code, is amended to
3 read as follows:

4 (a) A person violates this chapter if the person:

5 (1) is a distributor, wholesaler, manufacturer,
6 export warehouse, importer, bonded agent, interstate warehouse,
7 manufacturer's representative, or retailer and fails to keep
8 records required by this chapter;

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

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

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

20 SECTION 20. Section 154.503(a), Tax Code, is amended to
21 read as follows:

22 (a) Except as provided by Sections 154.026(b), 154.041(f),
23 and 154.042, a person commits an offense if the person possesses
24 unstamped cigarettes in quantities less than 10,000.

25 SECTION 21. Section 154.509, Tax Code, is amended to read as
26 follows:

27 Sec. 154.509. PERMITS. A person commits an offense if the

1 person acting:

2 (1) as a distributor, interstate warehouse,
3 wholesaler, or retailer, receives or possesses cigarettes without
4 having a valid permit;

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

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

11 (4) as a distributor, interstate warehouse,
12 wholesaler, or retailer, sells cigarettes without having a valid
13 permit; or

14 (5) as a bonded agent, interstate warehouse, or export
15 warehouse, stores, distributes, or delivers cigarettes in
16 unstamped packages without having a valid permit, except as
17 provided by Section 154.041(f).

18 SECTION 22. Section 154.511, Tax Code, is amended to read as
19 follows:

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

22 (1) knowingly transports cigarettes without a stamp
23 affixed to each individual package, except as provided by Section
24 154.024(a) or 154.152(c);

25 (2) wilfully refuses to stop a motor vehicle operated
26 to transport cigarettes after a request to stop from an authorized
27 person; or

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

3 SECTION 23. Section [154.515\(a\)](#), Tax Code, is amended to
4 read as follows:

5 (a) Except as provided by Sections [154.026\(b\)](#), [154.041\(f\)](#),
6 and [154.042](#), a person commits an offense if the person possesses
7 unstamped cigarettes in quantities of 10,000 or more.

8 SECTION 24. Section [155.001](#), Tax Code, is amended by
9 amending Subdivisions (8), (12), and (16) and adding Subdivisions
10 (9-a) and (9-b) to read as follows:

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

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

16 (i) includes the sale of tobacco products
17 by:

18 (a) a distributor in or outside this
19 state to a distributor, wholesaler, or retailer in this state; and

20 (b) a manufacturer in this state who
21 transfers the tobacco products in this state; and

22 (ii) does not include:

23 (a) the sale of tobacco products by a
24 manufacturer outside this state to a distributor in this state;
25 [~~or~~]

26 (b) the transfer of tobacco products
27 from a manufacturer outside this state to a bonded agent in this

1 state; or

2 (c) the sale of tobacco products by a
3 manufacturer, bonded agent, distributor, or importer to an
4 interstate warehouse in this state;

5 (B) the first use or consumption of tobacco
6 products in this state; or

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

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

13 (9-b) "Interstate warehouse transaction" means the
14 sale or delivery of tobacco products from an interstate warehouse
15 to a person located in another state who is licensed or permitted by
16 the other state to pay the state's excise tax on tobacco products as
17 required.

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

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

25 SECTION 25. Section 155.041, Tax Code, is amended by
26 amending Subsections (a), (b), and (h) and adding Subsection (i) to
27 read as follows:

1 (a) A person may not engage in business as a distributor,
2 wholesaler, bonded agent, interstate warehouse, manufacturer,
3 export warehouse, importer, or retailer unless the person has
4 applied for and received the applicable permit from the
5 comptroller.

6 (b) Each distributor, wholesaler, bonded agent, interstate
7 warehouse, manufacturer, export warehouse, importer, or retailer
8 shall obtain a permit for each place of business owned or operated
9 by the distributor, wholesaler, bonded agent, interstate
10 warehouse, manufacturer, export warehouse, importer, or retailer.

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) A person may not hold a distributor's permit issued by
16 this state and an interstate warehouse's permit for the same
17 location.

18 SECTION 26. Section [155.0415](#), Tax Code, is amended by
19 amending Subsections (c), (d), (e), and (f) and adding Subsection
20 (j) to read as follows:

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

24 (d) A permitted distributor may sell tobacco products only
25 to a permitted distributor, wholesaler, or retailer. A permitted
26 distributor who manufactures or produces tobacco products in this
27 state may sell those tobacco products to a permitted interstate

1 warehouse.

2 (e) A permitted importer may sell tobacco products only to a
3 permitted interstate warehouse, distributor, wholesaler, or
4 retailer.

5 (f) A permitted wholesaler may sell tobacco products only to
6 a permitted interstate warehouse, distributor, wholesaler, or
7 retailer.

8 (j) A permitted interstate warehouse may sell tobacco
9 products only in an interstate warehouse transaction. An
10 interstate warehouse may not make an intrastate sale of tobacco
11 products without written authorization by the comptroller.

12 SECTION 27. Sections 155.048(a) and (d), Tax Code, are
13 amended to read as follows:

14 (a) The comptroller shall issue a permit to a distributor,
15 wholesaler, bonded agent, interstate warehouse, manufacturer,
16 importer, or retailer 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 155.0481; and

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

22 (d) The permit must indicate the type of permit that it is
23 and authorize the sale of tobacco products in this state, except as
24 provided by Section 155.0415(j). The permit must show that it is
25 revocable and shall be forfeited or suspended if the conditions of
26 issuance, provisions of this chapter, or rules of the comptroller
27 are violated.

1 SECTION 28. Section 155.049(b), Tax Code, is amended to
2 read as follows:

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 (1-a) \$300 for an interstate warehouse's permit;

7 (2) \$300 for a distributor's permit;

8 (3) \$200 for a wholesaler's permit;

9 (4) \$15 for each permit for a vehicle if the applicant
10 is also applying for a permit as a bonded agent, distributor, or
11 wholesaler or has received a current permit from the comptroller
12 under Sections 155.041 and 155.048; and

13 (5) \$180 for a retailer's permit.

14 SECTION 29. Section 155.050(b), Tax Code, is amended to
15 read as follows:

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

18 SECTION 30. Sections 155.058(a) and (b), Tax Code, are
19 amended to read as follows:

20 (a) Except as provided by Subsection (b), revenue from the
21 sale of permits to distributors, wholesalers, ~~[and]~~ bonded agents,
22 and interstate warehouses is allocated in the same manner that
23 other revenue is allocated by Subchapter H.

24 (b) Revenue from the sale of retailer's permits shall be
25 deposited as provided by Section 161.0903, Health and Safety Code,
26 ~~[to the general revenue fund]~~ and may be appropriated only as
27 provided by that ~~[this]~~ section. ~~[The money may be appropriated~~

1 ~~first to the comptroller for administration of licensing of~~
2 ~~retailers under this chapter or Chapter 154.]~~

3 SECTION 31. Section 155.101, Tax Code, is amended to read as
4 follows:

5 Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each
6 distributor, wholesaler, bonded agent, interstate warehouse, and
7 export warehouse shall keep records at each place of business of all
8 tobacco products purchased or received. Each retailer shall keep
9 records at a single commercial business location, which the
10 retailer shall designate as its principal place of business in the
11 state, of all tobacco products purchased and received. These
12 records must include [~~the following, except that Subdivision (7)~~
13 ~~applies to distributors only and Subdivision (8) applies only to~~
14 ~~the purchase or receipt of tobacco products other than cigars]:~~

15 (1) the name and address of the shipper or carrier and
16 the mode of transportation;

17 (2) all shipping records or copies of records,
18 including invoices, bills of lading, waybills, freight bills, and
19 express receipts;

20 (3) the date and the name of the place of origin of the
21 tobacco product shipment;

22 (4) the date and the name of the place of arrival of
23 the tobacco product shipment;

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

26 (6) the name, address, permit number, and tax
27 identification number of the seller;

1 (7) in the case of a distributor, the manufacturer's
2 list price for the tobacco products;

3 (8) for tobacco products other than cigars, the net
4 weight as listed by the manufacturer for each unit; and

5 (9) any other information required by rules of the
6 comptroller.

7 SECTION 32. Section 155.102, Tax Code, is amended by
8 amending Subsections (a) and (b) and adding Subsection (d) to read
9 as follows:

10 (a) Each interstate warehouse, distributor, and wholesaler
11 shall keep at each place of business in this state records of each
12 sale, distribution, exchange, or use of tobacco products whether
13 taxed under this chapter or not. Each interstate warehouse,
14 distributor, and wholesaler shall prepare and retain an original
15 invoice for each transaction involving tobacco products. Each
16 interstate warehouse, distributor, or wholesaler shall keep any
17 supporting documentation, including bills of lading, showing
18 shipment and receipt used in preparing the invoices at the place of
19 business of the interstate warehouse, distributor, or wholesaler.
20 The interstate warehouse, distributor, or wholesaler shall prepare
21 and deliver a duplicate invoice to the purchaser.

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

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

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

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

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

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

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

9 (d) On request by the comptroller, an interstate warehouse
10 shall provide to the comptroller copies of periodic tobacco product
11 reports filed with each state into which the interstate warehouse
12 sells tobacco products and copies of each report required under 15
13 U.S.C. Section 376.

14 SECTION 33. Section 155.201(a), Tax Code, is amended to
15 read as follows:

16 (a) A person violates this chapter if the person:

17 (1) is a distributor, wholesaler, manufacturer,
18 export warehouse, importer, bonded agent, interstate warehouse,
19 manufacturer's representative, or retailer and fails to keep
20 records required by this chapter;

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

24 (3) is a distributor, wholesaler, manufacturer,
25 export warehouse, importer, bonded agent, interstate warehouse, or
26 retailer and fails to make a report required by this chapter to the
27 comptroller or makes a false or incomplete report or application

1 required by this chapter to the comptroller; or

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

5 SECTION 34. Section 155.207, Tax Code, is amended to read as
6 follows:

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

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

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

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

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

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

26 SECTION 35. (a) Section 161.124, Health and Safety Code, is
27 repealed.

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

2 (1) Section 154.1142;

3 (2) Section 154.1143;

4 (3) Sections 154.121(c), (d), and (e);

5 (4) Sections 155.058(c), (d), and (e);

6 (5) Section 155.0592; and

7 (6) Section 155.0593.

8 SECTION 36. Section 161.0901, Health and Safety Code, as
9 added by this Act, applies only to a violation that occurs on or
10 after the effective date of this Act. A violation that occurs
11 before the effective date of this Act is governed by the law in
12 effect on the date the violation occurred, and the former law is
13 continued in effect for that purpose.

14 SECTION 37. (a) Notwithstanding Sections 147.0051,
15 147.0151, and 147.0152, Health and Safety Code, as added by this
16 Act, a person is not required to hold a permit under Section
17 147.0051 to engage in business as a retailer of e-cigarettes in this
18 state until January 1, 2022.

19 (b) The comptroller of public accounts shall prescribe the
20 form and content of an application for a permit under Section
21 147.0051, Health and Safety Code, as added by this Act, and begin
22 accepting applications for the permit not later than October 1,
23 2021.

24 SECTION 38. This Act takes effect September 1, 2021.