

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cigarettes, tobacco products, and e-cigarettes and the administration of taxes imposed on the sale or use of certain of those products; requiring a permit; imposing a fee; providing administrative penalties.

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

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

CHAPTER 147. E-CIGARETTE RETAILER PERMITS

Sec. 147.0001. DEFINITIONS. In this chapter:

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

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

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

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

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

Sec. 147.0003. RULES. The comptroller may adopt rules to implement this chapter, including rules exempting a person who sells e-cigarettes to consumers through a marketplace from the

1 requirements of this chapter.

2 Sec. 147.0004. E-CIGARETTE RETAILER PERMIT REQUIRED. (a)
3 A person may not engage in business as an e-cigarette retailer in
4 this state unless the person has been issued a permit from the
5 comptroller. A person shall obtain a permit for each place of
6 business the person owns or operates at which sales of e-cigarettes
7 are made.

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

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

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

16 (1) financial information regarding the applicant;
17 and

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

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

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

27 (g) Permits for engaging in business as an e-cigarette

1 retailer are governed exclusively by the provisions of this code.

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

4 (1) has received an application and fee;

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

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

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

11 (c) The permits are nonassignable.

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

17 Sec. 147.0006. DENIAL OF PERMIT. The comptroller may
18 reject an application and deny a permit if the comptroller finds,
19 after notice and opportunity for hearing, any of the following:

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

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

27 (A) has failed to disclose any information

1 required by Sections 147.0004(c), (d), and (e), including previous
2 business experience, financial condition of the applicant, present
3 or previous business affiliations, previous employment, and any
4 conviction of a felony, or has made a false statement in the
5 application; or

6 (B) has previously violated provisions of this
7 chapter.

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

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

13 (1) one-half of the amount of the fee for a retailer's
14 permit required by Section 154.111(b), Tax Code, if the applicant
15 holds a valid retailer's permit under Section 154.101, 154.102, or
16 155.041, Tax Code; or

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

19 (c) For a new or renewal permit required by Section
20 147.0004, the comptroller shall prorate the fee according to the
21 number of months remaining during the period that the permit is to
22 be in effect.

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

26 (e) If on the date of issuance a permit will expire within
27 three months, the comptroller may collect the prorated permit fee

1 or the fee for the current period and, with the consent of the
2 permit holder, may collect the fee for the next permit period and
3 issue a permit or permits for both periods, as applicable.

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

7 Sec. 147.0008. PAYMENT FOR PERMITS. (a) An applicant for a
8 permit required by Section 147.0004 shall send the required fee
9 with the application.

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

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

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

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

20 Sec. 147.0010. REVENUE. Revenue from the sale of
21 e-cigarette retailer's permits shall be deposited to the general
22 revenue fund and may be appropriated only as provided by this
23 section. The money may be appropriated first to the comptroller for
24 administering:

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

27 (2) disciplinary actions taken under Section

1 161.0901.

2 Sec. 147.0011. FINAL SUSPENSION OR REVOCATION OF PERMIT.

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

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

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

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

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

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

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

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

25 (f) A person whose permit is suspended or revoked may not
26 sell, offer for sale, or distribute e-cigarettes from the place of
27 business to which the permit applied until a new permit is granted

1 or the suspension is removed.

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

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

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

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

20 (e) To initiate a proceeding to suspend summarily a permit
21 holder's permit, the comptroller shall serve notice on the permit
22 holder informing the permit holder of the right to a preliminary
23 hearing before the comptroller or the comptroller's representative
24 and of the time and place of the preliminary hearing. The notice
25 must be personally served on the permit holder or an officer,
26 employee, or agent of the permit holder or sent by certified or
27 registered mail, return receipt requested, to the permit holder's

1 mailing address as it appears in the comptroller's records. The
2 notice must state the alleged violations that constitute the
3 grounds for summary suspension. The suspension is effective at the
4 time the notice is served. If notice is served in person, the
5 permit holder shall immediately surrender the permit to the
6 comptroller. If notice is served by mail, the permit holder shall
7 immediately return the permit to the comptroller.

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

11 Sec. 147.0013. HEARINGS. Unless otherwise provided by this
12 chapter, the comptroller shall conduct all hearings required by
13 this chapter in accordance with Chapter 2001, Government Code. The
14 comptroller may designate one or more representatives to conduct
15 the hearings and may prescribe the rules of procedure governing the
16 hearings.

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

19 (1-a) "E-cigarette" means an electronic cigarette or
20 any other device that simulates smoking by using a mechanical
21 heating element, battery, or electronic circuit to deliver nicotine
22 or other substances to the individual inhaling from the device or a
23 consumable liquid solution or other material aerosolized or
24 vaporized during the use of an electronic cigarette or other device
25 described by this subdivision, regardless of whether the liquid or
26 other material contains nicotine. The term does not include a
27 prescription medical device unrelated to the cessation of smoking.

1 The term includes:

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

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

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

12 (4) "Retailer" means a person who engages in the
13 practice of selling cigarettes, e-cigarettes, or tobacco products
14 to consumers and includes the owner of a coin-operated cigarette,
15 e-cigarette, or tobacco product vending machine. The term includes
16 a retailer as [~~that term is~~] defined by Section 154.001 or 155.001,
17 Tax Code, and an e-cigarette retailer as defined by Section
18 147.0001 of this code, as applicable.

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

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

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

26 Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE,
27 E-CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) A retailer is

1 subject to disciplinary action as provided by this section if an
2 agent or employee of the retailer commits an offense under this
3 subchapter or Subchapter K.

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

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

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

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

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

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

1 (c) Except as provided by Subsection (e), if the permit
2 holder has been found to have violated this subchapter or
3 Subchapter K on four or more previous and separate occasions at the
4 same place of business during the 24-month period preceding the
5 violation, the comptroller shall revoke the permit issued under
6 Chapter 147 of this code or Chapter 154 or 155, Tax Code, as
7 applicable. If the permit holder does not hold a permit under
8 Chapter 147 of this code or Chapter 154 or 155, Tax Code, the
9 comptroller shall revoke the permit issued under Section 151.201,
10 Tax Code.

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

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

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

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

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

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

1 (f) The comptroller may adopt rules to implement this
2 section.

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

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

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

9 (2-a) "E-cigarette" has the meaning assigned by
10 Section 161.081.

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

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

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

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

27 SECTION 8. Section 161.123(a), Health and Safety Code, is

1 amended to read as follows:

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

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

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

10 (1) a show cause hearing or any hearing not related to
11 the collection, receipt, administration, or enforcement of the
12 amount of a tax or fee imposed, or the penalty or interest
13 associated with that amount, except for a hearing under Section
14 151.157(f), 151.1575(c), or 151.712(g) of this code or Section
15 161.0901, Health and Safety Code [~~154.1142, or 155.0592~~];

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

18 (3) a hearing in which the issue relates to:
19 (A) Chapters 72-75, Property Code;
20 (B) forfeiture of a right to do business;
21 (C) a certificate of authority;
22 (D) articles of incorporation;
23 (E) a penalty imposed under Section 151.703(d);
24 (F) the refusal or failure to settle under
25 Section 111.101; or
26 (G) a request for or revocation of an exemption
27 from taxation; and

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

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

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

9 SECTION 11. Section 154.121(b), Tax Code, is amended to
10 read 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] 155 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 12. Section 155.050(b), Tax Code, is amended to
21 read as follows:

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

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

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

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

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

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

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

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

- 11 (1) Section 154.1142;
12 (2) Section 154.1143;
13 (3) Section 155.0592; and
14 (4) Section 155.0593.

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

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

25 (b) The comptroller of public accounts shall prescribe the
26 form and content of an application for a permit under Section
27 147.0004, Health and Safety Code, as added by this Act, and begin

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1 accepting applications for the permit not later than October 1,
2 2021.

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