

1-1 By: Johnson S.B. No. 248
 1-2 (In the Senate - Filed December 17, 2020; March 3, 2021,
 1-3 read first time and referred to Committee on Finance;
 1-4 April 6, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 15, Nays 0; April 6, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			

1-24 COMMITTEE SUBSTITUTE FOR S.B. No. 248 By: Buckingham

1-25 A BILL TO BE ENTITLED
 1-26 AN ACT

1-27 relating to the regulation of and permits for the sale or delivery
 1-28 of cigarettes, tobacco products, and e-cigarettes; requiring
 1-29 permits; imposing fees; providing administrative penalties.

1-30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-31 SECTION 1. Subtitle G, Title 2, Health and Safety Code, is
 1-32 amended by adding Chapter 147 to read as follows:

1-33 CHAPTER 147. E-CIGARETTE RETAILER PERMITS

1-34 SUBCHAPTER A. GENERAL PROVISIONS

1-35 Sec. 147.0001. DEFINITIONS. In this chapter:

1-36 (1) "E-cigarette" has the meaning assigned by Section
 1-37 161.081.

1-38 (2) "E-cigarette retailer" means a person who engages
 1-39 in the business of selling e-cigarettes to consumers, including a
 1-40 person who sells e-cigarettes to consumers through a marketplace.

1-41 (3) "Marketplace" has the meaning assigned by Section
 1-42 151.0242, Tax Code.

1-43 (4) "Permit holder" means a person who obtains a
 1-44 permit under Section 147.0052.

1-45 Sec. 147.0002. INAPPLICABILITY TO CERTAIN PRODUCTS. This
 1-46 chapter does not apply to a product described by Section 161.0815.

1-47 Sec. 147.0003. HEARINGS. Unless otherwise provided by this
 1-48 chapter, the comptroller shall conduct all hearings required by
 1-49 this chapter in accordance with Chapter 2001, Government Code. The
 1-50 comptroller may designate one or more representatives to conduct
 1-51 the hearings and may prescribe the rules of procedure governing the
 1-52 hearings.

1-53 Sec. 147.0004. RULES. The comptroller may adopt rules to
 1-54 implement this chapter, including rules exempting a person who
 1-55 sells e-cigarettes to consumers through a marketplace from the
 1-56 requirements of this chapter.

1-57 SUBCHAPTER B. PERMITS

1-58 Sec. 147.0051. E-CIGARETTE RETAILER PERMIT REQUIRED. (a)
 1-59 A person may not engage in business as an e-cigarette retailer in
 1-60 this state unless the person has been issued a permit from the

2-1 comptroller. A person shall obtain a permit for each place of
 2-2 business the person owns or operates at which sales of e-cigarettes
 2-3 are made.

2-4 (b) The comptroller shall prescribe the form and content of
 2-5 an application for a permit and provide the form on request.

2-6 (c) The applicant shall accurately complete all information
 2-7 required by the application and provide the comptroller with
 2-8 additional information the comptroller considers necessary.

2-9 (d) Each applicant that applies for a permit to sell
 2-10 e-cigarettes from a vehicle must provide the make, model, vehicle
 2-11 identification number, registration number, and any other
 2-12 information concerning the vehicle the comptroller requires.

2-13 (e) All financial information provided under this section
 2-14 is confidential and not subject to Chapter 552, Government Code.

2-15 (f) Permits for engaging in business as an e-cigarette
 2-16 retailer are governed exclusively by the provisions of this code.

2-17 Sec. 147.0052. ISSUANCE OF PERMIT. (a) The comptroller
 2-18 shall issue a permit to an applicant if the comptroller:

2-19 (1) has received an application and fee;

2-20 (2) does not reject the application and deny the
 2-21 permit under Section 147.0053; and

2-22 (3) determines that issuing the permit will not
 2-23 jeopardize the administration and enforcement of this chapter.

2-24 (b) The permit shall be issued for a designated place of
 2-25 business, except as provided by Section 147.0056.

2-26 (c) The permits are nonassignable.

2-27 (d) The permit must indicate the type of permit and
 2-28 authorize the sale of e-cigarettes in this state. The permit must
 2-29 show that it is revocable and shall be forfeited or suspended if the
 2-30 conditions of issuance, provisions of this chapter, or rules of the
 2-31 comptroller are violated.

2-32 Sec. 147.0053. DENIAL OF PERMIT. The comptroller may
 2-33 reject an application and deny a permit if the comptroller finds,
 2-34 after notice and opportunity for hearing, any of the following:

2-35 (1) the premises where business will be conducted are
 2-36 not adequate to protect the e-cigarettes; or

2-37 (2) the applicant or managing employee, or if the
 2-38 applicant is a corporation, an officer, director, manager, or any
 2-39 stockholder who holds directly or through family or partner
 2-40 relationship 10 percent or more of the corporation's stock, or, if
 2-41 the applicant is a partnership, a partner or manager:

2-42 (A) has failed to disclose any information
 2-43 required by Sections 147.0051(c) and (d); or

2-44 (B) has previously violated provisions of this
 2-45 chapter.

2-46 Sec. 147.0054. PERMIT PERIOD; FEES. (a) A permit required
 2-47 by this chapter expires on the last day of May of each even-numbered
 2-48 year.

2-49 (b) An application for a permit required by this chapter
 2-50 must be accompanied by a fee of:

2-51 (1) one-half of the amount of the fee for a retailer's
 2-52 permit required by Section 154.111(b), Tax Code, if the applicant
 2-53 holds a valid retailer's permit under Section 154.101, 154.102, or
 2-54 155.041, Tax Code; or

2-55 (2) the amount of the fee for a retailer's permit
 2-56 required by Section 154.111(b), Tax Code.

2-57 (c) For a new or renewal permit required by Section
 2-58 147.0051, the comptroller shall prorate the fee according to the
 2-59 number of months remaining during the period that the permit is to
 2-60 be in effect.

2-61 (d) A person who does not obtain a renewal permit in a timely
 2-62 manner must pay a late fee of \$50 in addition to the application fee
 2-63 for the permit.

2-64 (e) If on the date of issuance a permit will expire within
 2-65 three months, the comptroller may collect the prorated permit fee
 2-66 or the fee for the current period and, with the consent of the
 2-67 permit holder, may collect the fee for the next permit period and
 2-68 issue a permit or permits for both periods, as applicable.

2-69 (f) A person issued a permit for a place of business that

3-1 permanently closes before the permit expiration date is not
 3-2 entitled to a refund of the permit fee.

3-3 Sec. 147.0055. PAYMENT FOR PERMITS. (a) An applicant for a
 3-4 permit required by Section 147.0051 shall send the required fee
 3-5 with the application.

3-6 (b) The payment must be made in cash or by money order,
 3-7 check, or credit card.

3-8 (c) The comptroller may not issue a permit in exchange for a
 3-9 check until after the comptroller receives full payment on the
 3-10 check.

3-11 Sec. 147.0056. DISPLAY OF PERMIT. (a) A permit holder
 3-12 shall keep the permit on public display at the place of business for
 3-13 which the permit was issued.

3-14 (b) A permit holder who has a permit assigned to a vehicle
 3-15 shall post the permit in a conspicuous place on the vehicle.

3-16 Sec. 147.0057. REVENUE. Revenue from the sale of
 3-17 e-cigarette retailer's permits shall be deposited to the general
 3-18 revenue fund and may be appropriated only as provided by this
 3-19 section. The money may be appropriated first to the comptroller for
 3-20 administering:

3-21 (1) permitting of retailers under this chapter and
 3-22 Chapters 154 and 155, Tax Code; and

3-23 (2) disciplinary actions taken under Section
 3-24 161.0901.

3-25 SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

3-26 Sec. 147.0101. FINAL SUSPENSION OR REVOCATION OF PERMIT.

3-27 (a) The comptroller may revoke or suspend a permit holder's permit
 3-28 if the comptroller finds, after notice and hearing as provided by
 3-29 this section, that the permit holder violated this chapter or a rule
 3-30 adopted under this chapter.

3-31 (b) If the comptroller intends to suspend or revoke a
 3-32 permit, the comptroller shall provide the permit holder with
 3-33 written notice that includes a statement:

3-34 (1) of the reason for the intended revocation or
 3-35 suspension;

3-36 (2) that the permit holder is entitled to a hearing by
 3-37 the comptroller on the proposed suspension or revocation; and

3-38 (3) of the date, time, and place of the hearing.

3-39 (c) The comptroller shall deliver the written notice by
 3-40 personal service or by mail to the permit holder's mailing address
 3-41 as it appears in the comptroller's records. Service by mail is
 3-42 complete when the notice is deposited with the United States Postal
 3-43 Service.

3-44 (d) The comptroller shall give the permit holder notice
 3-45 before the 10th day before the final hearing.

3-46 (e) A permit holder may appeal the comptroller's decision to
 3-47 a district court in Travis County not later than the 30th day after
 3-48 the date the comptroller's decision becomes final.

3-49 (f) A person whose permit is suspended or revoked may not
 3-50 sell, offer for sale, or distribute e-cigarettes from the place of
 3-51 business to which the permit applied until a new permit is granted
 3-52 or the suspension is removed.

3-53 Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT. (a) The
 3-54 comptroller may suspend a permit holder's permit without notice or
 3-55 a hearing for the permit holder's failure to comply with this
 3-56 chapter or a rule adopted under this chapter if the permit holder's
 3-57 continued operation constitutes an immediate and substantial
 3-58 threat.

3-59 (b) If the comptroller summarily suspends a permit holder's
 3-60 permit, proceedings for a preliminary hearing before the
 3-61 comptroller or the comptroller's representative must be initiated
 3-62 simultaneously with the summary suspension. The preliminary
 3-63 hearing shall be set for a date not later than the 10th day after the
 3-64 date of the summary suspension, unless the parties agree to a later
 3-65 date.

3-66 (c) At the preliminary hearing, the permit holder must show
 3-67 cause why the permit should not remain suspended pending a final
 3-68 hearing on suspension or revocation.

3-69 (d) Chapter 2001, Government Code, does not apply to a

4-1 summary suspension under this section.

4-2 (e) To initiate a proceeding to suspend summarily a permit
 4-3 holder's permit, the comptroller shall serve notice on the permit
 4-4 holder informing the permit holder of the right to a preliminary
 4-5 hearing before the comptroller or the comptroller's representative
 4-6 and of the time and place of the preliminary hearing. The notice
 4-7 must be personally served on the permit holder or an officer,
 4-8 employee, or agent of the permit holder or sent by certified or
 4-9 registered mail, return receipt requested, to the permit holder's
 4-10 mailing address as it appears in the comptroller's records. The
 4-11 notice must state the alleged violations that constitute the
 4-12 grounds for summary suspension. The suspension is effective at the
 4-13 time the notice is served. If notice is served in person, the
 4-14 permit holder shall immediately surrender the permit to the
 4-15 comptroller. If notice is served by mail, the permit holder shall
 4-16 immediately return the permit to the comptroller.

4-17 (f) Section 147.0101, governing hearings for final
 4-18 suspension or revocation of a permit under this chapter, governs a
 4-19 final administrative hearing.

4-20 SECTION 2. Sections 161.081(1-a), (2), and (4), Health and
 4-21 Safety Code, are amended to read as follows:

4-22 (1-a) "E-cigarette" means an electronic cigarette or
 4-23 any other device that simulates smoking by using a mechanical
 4-24 heating element, battery, or electronic circuit to deliver nicotine
 4-25 or other substances to the individual inhaling from the device or a
 4-26 consumable liquid solution or other material aerosolized or
 4-27 vaporized during the use of an electronic cigarette or other device
 4-28 described by this subdivision, regardless of whether the liquid or
 4-29 other material contains nicotine. The term does not include a
 4-30 prescription medical device unrelated to the cessation of smoking.
 4-31 The term includes:

4-32 (A) a device described by this subdivision
 4-33 regardless of whether the device is manufactured, distributed, or
 4-34 sold as an e-cigarette, e-cigar, or e-pipe or under another product
 4-35 name or description; and

4-36 (B) a component, part, or accessory for the
 4-37 device, regardless of whether the component, part, or accessory is
 4-38 sold separately from the device.

4-39 (2) "Permit holder" has the meaning assigned by
 4-40 Section 147.0001 of this code or Section 154.001 or 155.001, Tax
 4-41 Code, as applicable.

4-42 (4) "Retailer" means a person who engages in the
 4-43 practice of selling cigarettes, e-cigarettes, or tobacco products
 4-44 to consumers and includes the owner of a coin-operated cigarette,
 4-45 e-cigarette, or tobacco product vending machine. The term includes
 4-46 a retailer as ~~[that term is]~~ defined by Section 154.001 or 155.001,
 4-47 Tax Code, and an e-cigarette retailer as defined by Section
 4-48 147.0001 of this code, as applicable.

4-49 SECTION 3. Section 161.083(d), Health and Safety Code, is
 4-50 amended to read as follows:

4-51 (d) Notwithstanding any other provision of law, a violation
 4-52 of this section is not a violation of this subchapter for purposes
 4-53 of Section 161.0901 ~~[154.1142 or 155.0592, Tax Code].~~

4-54 SECTION 4. Subchapter H, Chapter 161, Health and Safety
 4-55 Code, is amended by adding Section 161.0901 to read as follows:

4-56 Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE,
 4-57 E-CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) A retailer is
 4-58 subject to disciplinary action as provided by this section if an
 4-59 agent or employee of the retailer commits an offense under this
 4-60 subchapter.

4-61 (b) If the comptroller finds, after notice and an
 4-62 opportunity for a hearing as provided by Chapter 2001, Government
 4-63 Code, that a permit holder has violated this subchapter at a place
 4-64 of business for which a permit is issued, the comptroller may
 4-65 suspend the permit for that place of business and administratively
 4-66 assess a fine as follows:

4-67 (1) if the permit holder has not been found to have
 4-68 violated this subchapter at that place of business during the
 4-69 24-month period preceding the violation, the comptroller may

5-1 require the permit holder to pay a fine in an amount not to exceed
 5-2 \$1,000;

5-3 (2) if the permit holder has been found to have
 5-4 violated this subchapter at that place of business once during the
 5-5 24-month period preceding the violation, the comptroller may
 5-6 require the permit holder to pay a fine in an amount not to exceed
 5-7 \$2,000; and

5-8 (3) if the permit holder has been found to have
 5-9 violated this subchapter at that place of business at least twice
 5-10 during the 24-month period preceding the violation, the comptroller
 5-11 may:

5-12 (A) require the permit holder to pay a fine in an
 5-13 amount not to exceed \$3,000; and

5-14 (B) suspend the permit for that place of business
 5-15 for not more than five days.

5-16 (c) Except as provided by Subsection (e), if the permit
 5-17 holder has been found to have violated this subchapter on four or
 5-18 more previous and separate occasions at the same place of business
 5-19 during the 24-month period preceding the violation, the comptroller
 5-20 shall revoke the permit issued under Chapter 147 of this code or
 5-21 Chapter 154 or 155, Tax Code, as applicable. If the permit holder
 5-22 does not hold a permit under Chapter 147 of this code or Chapter 154
 5-23 or 155, Tax Code, the comptroller shall revoke the permit issued
 5-24 under Section 151.201, Tax Code.

5-25 (d) A permit holder whose permit has been revoked under this
 5-26 section may not apply for a permit for the same place of business
 5-27 before the expiration of six months after the effective date of the
 5-28 revocation.

5-29 (e) For purposes of this section, the comptroller may
 5-30 suspend a permit but may not revoke the permit under Subsection (c)
 5-31 if the comptroller finds that:

5-32 (1) the employer has not violated this subchapter more
 5-33 than seven times at the place of business for which the permit is
 5-34 issued in the 48-month period preceding the violation in question;

5-35 (2) the employer requires its employees to attend a
 5-36 comptroller-approved seller training program;

5-37 (3) the employees have actually attended a
 5-38 comptroller-approved seller training program; and

5-39 (4) the employer has not directly or indirectly
 5-40 encouraged the employees to violate the law.

5-41 (f) The comptroller may adopt rules to implement this
 5-42 section.

5-43 SECTION 5. Section 111.00455(b), Tax Code, is amended to
 5-44 read as follows:

5-45 (b) The following are not contested cases under Subsection
 5-46 (a) and Section 2003.101, Government Code:

5-47 (1) a show cause hearing or any hearing not related to
 5-48 the collection, receipt, administration, or enforcement of the
 5-49 amount of a tax or fee imposed, or the penalty or interest
 5-50 associated with that amount, except for a hearing under Section
 5-51 151.157(f), 151.1575(c), or 151.712(g) of this code or Section
 5-52 161.0901, Health and Safety Code [~~154.1142, or 155.0592~~];

5-53 (2) a property value study hearing under Subchapter M,
 5-54 Chapter 403, Government Code;

5-55 (3) a hearing in which the issue relates to:

5-56 (A) Chapters 72-75, Property Code;

5-57 (B) forfeiture of a right to do business;

5-58 (C) a certificate of authority;

5-59 (D) articles of incorporation;

5-60 (E) a penalty imposed under Section 151.703(d);

5-61 (F) the refusal or failure to settle under

5-62 Section 111.101; or

5-63 (G) a request for or revocation of an exemption

5-64 from taxation; and

5-65 (4) any other hearing not related to the collection,
 5-66 receipt, administration, or enforcement of the amount of a tax or
 5-67 fee imposed, or the penalty or interest associated with that
 5-68 amount.

5-69 SECTION 6. Section 154.1135(b), Tax Code, is amended to

6-1 read as follows:

6-2 (b) The payment must be made in cash or by money order, ~~[or]~~
6-3 check, or credit card.

6-4 SECTION 7. Section 154.121(b), Tax Code, is amended to read
6-5 as follows:

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

6-10 (1) permitting [administration of licensing] of
6-11 retailers under this chapter, Chapter [or Chapter] 155 of this
6-12 code, and Chapter 147, Health and Safety Code; and

6-13 (2) disciplinary actions taken under Section
6-14 161.0901, Health and Safety Code.

6-15 SECTION 8. Section 155.050(b), Tax Code, is amended to read
6-16 as follows:

6-17 (b) The payment must be made in cash or by money order, ~~[or]~~
6-18 check, or credit card.

6-19 SECTION 9. Section 155.058(b), Tax Code, is amended to read
6-20 as follows:

6-21 (b) Revenue from the sale of retailer's permits shall be
6-22 deposited to the general revenue fund and may be appropriated only
6-23 as provided by this section. The money may be appropriated first to
6-24 the comptroller for administering:

6-25 (1) permitting [administration of licensing] of
6-26 retailers under this chapter, Chapter [or Chapter] 154 of this
6-27 code, and Chapter 147, Health and Safety Code; and

6-28 (2) disciplinary actions taken under Section
6-29 161.0901, Health and Safety Code.

6-30 SECTION 10. Chapters 154 and 155, Tax Code, are amended to
6-31 read as follows:

6-32 Sec. 154.001. DEFINITIONS. In this chapter:

6-33 (1) "Bonded agent" means a person in this state who is
6-34 a third-party agent of a manufacturer outside this state and who
6-35 receives cigarettes in interstate commerce and stores the
6-36 cigarettes for distribution or delivery to distributors under
6-37 orders from the manufacturer.

6-38 (2) "Cigarette" means a roll for smoking:

6-39 (A) that is made of tobacco or tobacco mixed with
6-40 another ingredient and wrapped or covered with a material other
6-41 than tobacco; and

6-42 (B) that is not a cigar.

6-43 (3) "Commercial business location" means the entire
6-44 premises occupied by a permit applicant or a person required to hold
6-45 a permit under this chapter.

6-46 (4) "Common carrier" means a motor carrier registered
6-47 under Chapter 643, Transportation Code, or a motor carrier
6-48 operating under a certificate issued by the Interstate Commerce
6-49 Commission or a successor agency to the Interstate Commerce
6-50 Commission.

6-51 (5) "Consumer" means a person who possesses cigarettes
6-52 for personal consumption.

6-53 (6) "Counterfeit stamp" means a sticker, label, print,
6-54 tag, or token that is used or is intended to be used to simulate a
6-55 stamp and that is not authorized or issued by the comptroller.

6-56 (7) "Distributor" means a person who:

6-57 (A) is authorized to purchase for the purpose of
6-58 making a first sale in this state cigarettes in unstamped packages
6-59 from manufacturers who distribute cigarettes in this state and to
6-60 stamp cigarette packages;

6-61 (B) ships, transports, imports into this state,
6-62 acquires, or possesses cigarettes and makes a first sale of the
6-63 cigarettes in this state;

6-64 (C) manufactures or produces cigarettes; or

6-65 (D) is an importer.

6-66 (7-a) "Engage in business" means, in relation to
6-67 cigarettes, engaging by a person, either directly or through a
6-68 representative, in any of the following activities:

6-69 (A) selling cigarettes in or into this state;

7-1 (B) using a warehouse or another location to
7-2 store cigarettes; or
7-3 (C) otherwise conducting through a physical
7-4 presence cigarette-related business in this state.
7-5 (8) "Export warehouse" means a person in this state
7-6 who receives cigarettes in unstamped packages from manufacturers
7-7 and stores the cigarettes for the purpose of making sales to
7-8 authorized persons for resale, use, or consumption outside the
7-9 United States.
7-10 (9) "First sale" means, except as otherwise provided
7-11 by this chapter:
7-12 (A) the first transfer of possession in
7-13 connection with a purchase, sale, or any exchange for value of
7-14 cigarettes in or into this state, which:
7-15 (i) includes the sale of cigarettes by:
7-16 (a) a distributor in or outside this
7-17 state to a distributor, wholesaler, or retailer in this state; and
7-18 (b) a manufacturer in this state who
7-19 transfers the cigarettes in this state; and
7-20 (ii) does not include:
7-21 (a) the sale of cigarettes by a
7-22 manufacturer outside this state to a distributor in this state;
7-23 [~~or~~]
7-24 (b) the transfer of cigarettes from a
7-25 manufacturer outside this state to a bonded agent in this state; or
7-26 (c) the sale of cigarettes from a
7-27 manufacturer, bonded agent, distributor, or importer to an
7-28 interstate warehouse in this state;
7-29 (B) the first use or consumption of cigarettes in
7-30 this state; or
7-31 (C) the loss of cigarettes in this state whether
7-32 through negligence, theft, or other unaccountable loss.
7-33 (10) "Importer" means a person who ships, transports,
7-34 or imports into this state cigarettes manufactured or produced
7-35 outside the United States for the purpose of making a first sale in
7-36 this state.
7-37 (11) "Individual package of cigarettes" means a
7-38 package that contains at least 20 cigarettes.
7-39 (11-a) "Interstate warehouse" means a person in this
7-40 state who receives unstamped cigarettes from a manufacturer, bonded
7-41 agent, importer, or distributor and stores the cigarettes
7-42 exclusively for an interstate warehouse transaction.
7-43 (11-b) "Interstate warehouse transaction" means the
7-44 sale or delivery from an interstate warehouse to a person in another
7-45 state who is licensed or permitted by the other state to affix that
7-46 state's cigarette stamps or otherwise pay the state's excise tax on
7-47 cigarettes as may be required.
7-48 (12) "Manufacturer" means a person who manufactures,
7-49 fabricates, or assembles cigarettes, or causes or arranges for the
7-50 manufacture, fabrication, or assembly of cigarettes, for sale or
7-51 distribution.
7-52 (13) "Manufacturer's representative" means a person
7-53 employed by a manufacturer to sell or distribute the manufacturer's
7-54 stamped cigarette packages.
7-55 (14) "Permit holder" means a bonded agent, interstate
7-56 warehouse, distributor, wholesaler, manufacturer, importer, export
7-57 warehouse, or retailer who obtains a permit under Section 154.101.
7-58 (15) "Place of business" means:
7-59 (A) a commercial business location where
7-60 cigarettes are sold;
7-61 (B) a commercial business location where
7-62 cigarettes are kept for sale or consumption or otherwise stored;
7-63 (C) a vehicle from which cigarettes are sold; or
7-64 (D) a vending machine from which cigarettes are
7-65 sold.
7-66 (16) "Previously used stamp" means a stamp that has
7-67 been used to show payment of a tax imposed by this chapter and is
7-68 again used, sold, or possessed for sale or use to show payment of a
7-69 tax imposed by this chapter.

8-1 (17) "Retailer" means a person who engages in the
8-2 business of selling cigarettes to consumers and includes the owner
8-3 of a cigarette vending machine.

8-4 (17-a) "Roll-your-own machine" means a machine for
8-5 commercial use at a retail premise that is capable of producing
8-6 cigarettes only in quantities for personal use.

8-7 (18) "Stamp" includes only a stamp that:

8-8 (A) is printed, manufactured, or made by
8-9 authority of the comptroller;

8-10 (B) shows payment of the tax imposed by this
8-11 chapter;

8-12 (C) is consecutively numbered and uniquely
8-13 identifiable as a Texas tax stamp; and

8-14 (D) is not damaged beyond recognition as a valid
8-15 Texas tax stamp.

8-16 (19) "Wholesaler" means a person, including a
8-17 manufacturer's representative, who sells or distributes cigarettes
8-18 in this state for resale but who is not a distributor or interstate
8-19 warehouse.

8-20 Sec. 154.041. STAMP REQUIRED. (a) A person who pays a tax
8-21 imposed by this chapter shall securely affix a stamp to each
8-22 individual package of cigarettes to show payment of the tax.

8-23 (b) Except as provided by Section 154.152, each distributor
8-24 shall obtain the necessary stamps before receiving or accepting
8-25 delivery of unstamped packages of cigarettes. The possession of
8-26 unstamped packages of cigarettes without the possession of the
8-27 requisite amount or number of stamps is prima facie evidence that
8-28 the cigarettes are possessed for the purpose of making a first sale
8-29 without stamps and without payment of the tax imposed by this
8-30 chapter.

8-31 (c) The absence of a stamp on an individual package of
8-32 cigarettes is notice that the tax has not been paid.

8-33 (d) A manufacturer of cigarettes outside this state may
8-34 purchase a stamp and affix it to the individual package and no
8-35 further payment of the tax is required.

8-36 (e) The transfer of possession of cigarettes by a bonded
8-37 agent to a distributor in this state, under instructions received
8-38 from outside this state, is not a first sale.

8-39 (f) The transfer of possession of cigarettes by an
8-40 interstate warehouse in an interstate warehouse transaction is not
8-41 a first sale and no stamp is required.

8-42 Sec. 154.101. PERMITS. (a) A person may not engage in
8-43 business as a distributor, wholesaler, bonded agent, interstate
8-44 warehouse, manufacturer, export warehouse, importer, or retailer
8-45 unless the person has applied for and received the applicable
8-46 permit from the comptroller.

8-47 (b) Each distributor, wholesaler, bonded agent, interstate
8-48 warehouse, manufacturer, export warehouse, importer, or retailer
8-49 shall obtain a permit for each place of business owned or operated
8-50 by the distributor, wholesaler, bonded agent, interstate
8-51 warehouse, manufacturer, export warehouse, importer, or retailer.
8-52 The comptroller may not issue a permit for a place of business that
8-53 is a residence or a unit in a public storage facility.

8-54 (c) The comptroller shall prescribe the form and content of
8-55 an application for a permit and shall furnish the form on request of
8-56 an applicant.

8-57 (d) The applicant shall accurately complete all information
8-58 required by the application and provide the comptroller with such
8-59 additional information as the comptroller deems necessary.

8-60 (e) The comptroller may require each corporation,
8-61 association, joint venture, syndicate, partnership, or
8-62 proprietorship to furnish financial information regarding the
8-63 applicant and to provide the identity of each officer, director,
8-64 stockholder owning 10 percent or more of the outstanding stock,
8-65 partner, member, owner, or managing employee.

8-66 (f) Each distributor, wholesaler, and retailer that applies
8-67 for a permit to sell cigarettes from a vehicle must provide the
8-68 make, model, vehicle identification number, registration number,
8-69 and any other information required by the comptroller.

9-1 (g) All financial information provided under this section
 9-2 is confidential and not subject to Chapter 552, Government Code.
 9-3 (h) Permits for engaging in business as a distributor,
 9-4 wholesaler, bonded agent, interstate warehouse, manufacturer,
 9-5 export warehouse, importer, or retailer shall be governed
 9-6 exclusively by the provisions of this code.
 9-7 (i) This section does not apply to a research facility that
 9-8 possesses and uses cigarettes only for experimental purposes.
 9-9 (j) A person engaged in the business of selling cigarettes
 9-10 for commercial purposes who provides a roll-your-own machine
 9-11 available for use by consumers must obtain manufacturer's,
 9-12 distributor's, and retailer's permits.
 9-13 (k) A person may not hold a Texas distributor permit and an
 9-14 interstate warehouse permit at the same location.
 9-15 Sec. 154.1015. SALES; PERMIT HOLDERS AND NONPERMIT HOLDERS.
 9-16 (a) Except for retail sales to consumers, cigarettes may only be
 9-17 sold or distributed by and between permit holders as provided by
 9-18 this section.
 9-19 (b) A person who is not a permit holder may not sell or
 9-20 distribute more than 200 individual cigarettes to any person.
 9-21 (c) A manufacturer outside this state who is not a permitted
 9-22 distributor may sell cigarettes only to a permitted distributor or
 9-23 permitted interstate warehouse.
 9-24 (d) A permitted distributor may sell cigarettes only to a
 9-25 permitted distributor, wholesaler, or retailer. A permitted
 9-26 distributor who manufactures or produces cigarettes in this state
 9-27 may sell such cigarettes manufactured or produced to a permitted
 9-28 interstate warehouse.
 9-29 (e) A permitted importer may sell cigarettes only to a
 9-30 permitted interstate warehouse, permitted distributor, wholesaler,
 9-31 or retailer.
 9-32 (f) A permitted wholesaler may sell cigarettes only to a
 9-33 permitted distributor, wholesaler, or retailer.
 9-34 (g) A permitted retailer may sell cigarettes only to the
 9-35 consumer and may purchase cigarettes only from a permitted
 9-36 distributor or wholesaler in this state.
 9-37 (h) A permitted export warehouse may sell cigarettes only to
 9-38 persons authorized to sell or consume unstamped cigarettes outside
 9-39 the United States.
 9-40 (i) A manufacturer's representative may sell cigarettes
 9-41 only to a permitted distributor, wholesaler, or retailer.
 9-42 (j) A permitted interstate warehouse may sell cigarettes
 9-43 only in an interstate warehouse transaction. No intrastate sale of
 9-44 cigarettes by an interstate warehouse shall take place without
 9-45 written authorization by the comptroller.
 9-46 Sec. 154.102. COMBINATION PERMIT. (a) The comptroller may
 9-47 issue a combination permit for cigarettes and tobacco products to a
 9-48 person who is a distributor, wholesaler, bonded agent, interstate
 9-49 warehouse, manufacturer, importer, or retailer as defined by this
 9-50 chapter and Chapter 155 for both cigarettes and tobacco products.
 9-51 An interstate warehouse shall not be issued a combination permit as
 9-52 a retailer of cigarettes or tobacco products.
 9-53 (b) A person who receives a combination permit pays only the
 9-54 higher of the two permit fees.
 9-55 Sec. 154.110. ISSUANCE OF PERMIT. (a) The comptroller
 9-56 shall issue a permit to a distributor, wholesaler, bonded agent,
 9-57 interstate warehouse, manufacturer, export warehouse, importer, or
 9-58 retailer if the comptroller:
 9-59 (1) has received an application and fee, if required;
 9-60 (2) believes that the applicant has complied with
 9-61 Section 154.101; and
 9-62 (3) determines that issuing the permit will not
 9-63 jeopardize the administration and enforcement of this chapter.
 9-64 (b) The permit shall be issued for a designated place of
 9-65 business, except as provided by Section 154.117.
 9-66 (c) The permits are nonassignable.
 9-67 (d) The permit must indicate the type of permit that it is
 9-68 and authorize the sale of cigarettes in this state. The permit must
 9-69 show that it is revocable and shall be forfeited or suspended if the

10-1 conditions of issuance, provisions of this chapter, or rules of the
10-2 comptroller are violated.

10-3 Sec. 154.111. PERMIT YEAR; FEES. (a) A permit required by
10-4 this chapter expires on the last day of February of each year,
10-5 except that the retailer's permit required by Section [154.101](#)
10-6 expires on the last day of May of each even-numbered year.

10-7 (b) An application for a permit required by this chapter
10-8 must be accompanied by a fee of:

10-9 (1) \$300 for a bonded agent's permit;

10-10 (2) \$300 for an interstate warehouse's permit;

10-11 ~~(3) [~~2~~]~~ \$300 for a distributor's permit;

10-12 ~~(4) [~~3~~]~~ \$200 for a wholesaler's permit;

10-13 ~~(5) [~~4~~]~~ \$15 for each permit for a vehicle if the
10-14 applicant is also applying for a permit as a bonded agent,
10-15 distributor, or wholesaler or has received a current permit from
10-16 the comptroller under Sections [154.101](#) and [154.110](#); and

10-17 ~~(6) [~~5~~]~~ \$180 for a retailer's permit.

10-18 (c) A fee is not required for an export warehouse permit.

10-19 (d) For a new or renewal permit required by Section [154.101](#),
10-20 the comptroller shall prorate the fee according to the number of
10-21 months remaining during the calendar year that the permit is to be
10-22 in effect.

10-23 (e) A person who does not obtain a permit each year in a
10-24 timely manner must pay a fee of \$50 in addition to the application
10-25 fee for the permit.

10-26 (f) If at the date of issuance a permit will expire within
10-27 three months, the comptroller may collect the prorated permit fee
10-28 or the fee for the current year and, with the consent of the permit
10-29 holder, may collect the fee for the next permit year and issue a
10-30 permit or permits for both periods, as applicable.

10-31 (g) A person issued a permit for a place of business that
10-32 permanently closes before the permit expiration date is not
10-33 entitled to a refund of the permit fee.

10-34 Sec. 154.121. REVENUE. (a) Except as provided by
10-35 Subsection (b), revenue from the sale of permits to distributors,
10-36 wholesalers, ~~and~~ bonded agents, and interstate warehouses is
10-37 allocated in the same manner as other revenue allocated by
10-38 Subchapter J.

10-39 (b) Revenue from the sale of retailer's permits shall be
10-40 deposited to the general revenue fund and may be appropriated only
10-41 as provided by this section. The money may be appropriated first to
10-42 the comptroller for administration of licensing of retailers under
10-43 this chapter or Chapter [155](#).

10-44 (c) If, after any appropriation is made under Subsection
10-45 (b), revenue remains from the sale of retailer's permits, the
10-46 remaining money may be appropriated to the comptroller for
10-47 administration and enforcement of Subchapters H, K, and N, Chapter
10-48 [161](#), Health and Safety Code, and to the Texas Department of Health,
10-49 for the administration and enforcement of Section [161.253](#), Health
10-50 and Safety Code.

10-51 (d) If, after any appropriation is made under Subsections
10-52 (b) and (c), revenue remains from the sale of retailer's permits,
10-53 the remaining money may be appropriated to the Texas Department of
10-54 Health to administer the commissioner of public health's
10-55 responsibilities under Section [161.301](#), Health and Safety Code.

10-56 (e) If, after any appropriation is made under Subsections
10-57 (b), (c), and (d), revenue remains from the sale of retailer's
10-58 permits, the remaining money may be appropriated to the appropriate
10-59 entity to administer that entity's responsibilities under Section
10-60 [161.302](#), Health and Safety Code.

10-61 Sec. 154.152. INTERSTATE STOCK. (a) A distributor shall
10-62 set aside unstamped cigarette packages for interstate sale and for
10-63 which no tax is due under federal law in a separate part of the
10-64 building from the stamped packages. If the unstamped packages for
10-65 interstate sale or for which no tax is due under federal law are not
10-66 stored separately, the cigarettes are subject to the same
10-67 requirements as cigarettes possessed for the purpose of a first
10-68 sale in this state.

10-69 (b) A distributor who possesses unstamped cigarette

11-1 packages for interstate sale must possess a number of unused stamps
 11-2 from the appropriate state sufficient to stamp the distributor's
 11-3 inventory of unstamped interstate cigarettes, except for cigarette
 11-4 packages for which no tax is due under federal law. Any unstamped
 11-5 packages of cigarettes that exceed the number of out-of-state
 11-6 stamps on hand shall be presumed to be held for sale in this state,
 11-7 except for cigarette packages for which no tax is due under federal
 11-8 law.

11-9 (c) A person may not transport or cause to be transported
 11-10 from this state cigarettes for sale in another state without first
 11-11 affixing to the cigarettes the stamp required by the state in which
 11-12 the cigarettes are to be sold or paying any other excise tax on the
 11-13 cigarettes imposed by the state in which the cigarettes are to be
 11-14 sold. This provision shall not apply to distribution, sale and
 11-15 transportation of cigarettes sold by an interstate warehouse in an
 11-16 interstate warehouse transaction.

11-17 (d) A person may not affix to cigarettes the stamp required
 11-18 by another state or pay any other excise tax on the cigarettes
 11-19 imposed by another state if the other state prohibits stamps from
 11-20 being affixed to the cigarettes, prohibits the payment of any other
 11-21 excise tax on the cigarettes, or prohibits the sale of the
 11-22 cigarettes.

11-23 (e) Not later than the 15th day after the end of each
 11-24 calendar quarter, a person who transports or causes to be
 11-25 transported from this state cigarettes for sale in another state
 11-26 shall submit to the attorney general a report identifying:

11-27 (1) the quantity of cigarettes, by brand style,
 11-28 transported or caused to be transported in the preceding calendar
 11-29 quarter; and

11-30 (2) the name and address of each recipient of the
 11-31 cigarettes.

11-32 Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each
 11-33 distributor, wholesaler, bonded agent, interstate warehouse, and
 11-34 export warehouse shall keep records at each place of business of all
 11-35 cigarettes purchased or received, including records of those
 11-36 cigarettes for which no tax is due under federal law. Each retailer
 11-37 shall keep records at a single commercial business location, which
 11-38 the retailer shall designate as its principal place of business in
 11-39 this state, of all cigarettes purchased and received. These
 11-40 records must include:

11-41 (1) the name and address of the shipper or carrier and
 11-42 the mode of transportation;

11-43 (2) all shipping records or copies of records,
 11-44 including invoices, bills of lading, waybills, freight bills, and
 11-45 express receipts;

11-46 (3) the date and the name of the place of origin of the
 11-47 cigarette shipment;

11-48 (4) the date and the name of the place of arrival of
 11-49 the cigarette shipment;

11-50 (5) a statement of the number, kind, and price paid for
 11-51 cigarettes, including cigarettes in stamped and unstamped
 11-52 packages;

11-53 (6) the name, address, permit number, and tax
 11-54 identification number of the seller;

11-55 (7) in the case of a distributor, copies of the customs
 11-56 certificates required by 19 U.S.C. Section 1681a(c), as amended,
 11-57 for all cigarettes imported into the United States to which the
 11-58 distributor has affixed a tax stamp; and

11-59 (8) any other information required by rules of the
 11-60 comptroller.

11-61 Sec. 154.203. REPORT OF SALE OR USE. (a) Each interstate
 11-62 warehouse, distributor, and wholesaler shall keep at each place of
 11-63 business in this state records of each sale, distribution,
 11-64 exchange, or use of cigarettes whether taxed under this chapter or
 11-65 not. Each interstate warehouse, distributor, and wholesaler shall
 11-66 prepare and retain an original invoice for each transaction
 11-67 involving cigarettes. Each interstate warehouse, distributor, or
 11-68 wholesaler shall keep any supporting documentation, including
 11-69 bills of lading, showing shipment and receipt used in preparing the

12-1 invoices at the place of business of the interstate warehouse,
 12-2 distributor, or wholesaler. The interstate warehouse,
 12-3 distributor, or wholesaler shall prepare and deliver a duplicate
 12-4 invoice to the purchaser.

12-5 (b) The records for each sale, distribution, exchange, or
 12-6 use of cigarettes must show:

12-7 (1) the purchaser's name and address, permit number,
 12-8 or tax identification number;

12-9 (2) the method of delivery and the name of the common
 12-10 carrier or other person delivering the cigarettes;

12-11 (3) the date, number, and kind of cigarettes in
 12-12 stamped packages sold, distributed, exchanged, or used; and

12-13 (4) the date, number, and kind of cigarettes in
 12-14 unstamped packages sold, distributed, exchanged, or used.

12-15 (c) Upon request by the comptroller, each interstate
 12-16 warehouse shall provide to the comptroller copies of periodic
 12-17 cigarette reports filed with each state into which the interstate
 12-18 warehouse sells cigarettes and copies of the PACT Act report
 12-19 required by 15 U.S.C. 376.

12-20 Sec. 154.501. PENALTIES. (a) A person violates this
 12-21 chapter if the person:

12-22 (1) is a distributor, wholesaler, manufacturer,
 12-23 export warehouse, importer, bonded agent, interstate warehouse,
 12-24 manufacturer's representative, or retailer and fails to keep
 12-25 records required by this chapter;

12-26 (2) engages in the business of a bonded agent,
 12-27 interstate warehouse, distributor, wholesaler, manufacturer,
 12-28 export warehouse, importer, or retailer without a valid permit;

12-29 (3) is a distributor, wholesaler, manufacturer,
 12-30 export warehouse, importer, bonded agent, interstate warehouse, or
 12-31 retailer and fails to make a report or makes a false or incomplete
 12-32 report or application required by this chapter to the comptroller;
 12-33 or

12-34 (4) is a person affected by this chapter and fails or
 12-35 refuses to abide by or violates a provision of this chapter or a
 12-36 rule adopted by the comptroller under this chapter.

12-37 (b) A person who violates this section shall pay to the
 12-38 state a penalty of not more than \$2,000 for each violation.

12-39 (c) Each day on which a violation occurs is a separate
 12-40 offense.

12-41 (d) The attorney general shall bring a suit to recover
 12-42 penalties under this section.

12-43 (e) A suit under this section may be brought in a court of
 12-44 competent jurisdiction in Travis County or in any court having
 12-45 jurisdiction.

12-46 Sec. 154.503. POSSESSION IN QUANTITIES LESS THAN 10,000.

12-47 (a) Except as provided by Sections [154.026\(b\)](#), [154.041\(f\)](#), and
 12-48 [154.042](#), a person commits an offense if the person possesses
 12-49 unstamped cigarettes in quantities less than 10,000.

12-50 (b) This section does not prohibit transportation of
 12-51 cigarettes by a common carrier.

12-52 Sec. 154.509. PERMITS. A person commits an offense if the
 12-53 person acting:

12-54 (1) as a distributor, interstate warehouse,
 12-55 wholesaler, or retailer, receives or possesses cigarettes without
 12-56 having a valid permit;

12-57 (2) as a distributor, interstate warehouse,
 12-58 wholesaler, or retailer, receives or possesses cigarettes without
 12-59 having a permit posted where it can be easily seen by the public;

12-60 (3) as a distributor, interstate warehouse, or
 12-61 wholesaler, does not deliver an invoice to the purchaser as
 12-62 required by Section [154.203](#);

12-63 (4) as a distributor, interstate warehouse,
 12-64 wholesaler, or retailer, sells cigarettes without having a valid
 12-65 permit; or

12-66 (5) as a bonded agent, interstate warehouse, or export
 12-67 warehouse, stores, distributes, or delivers cigarettes in
 12-68 unstamped packages without having a valid permit.

12-69 Sec. 154.511. TRANSPORTATION OF CIGARETTES. A person,

13-1 other than a common carrier, commits an offense if the person:
 13-2 (1) knowingly transports cigarettes without a stamp
 13-3 affixed to each individual package, except as provided by Section
 13-4 154.024(a) or Section 154.152(c);
 13-5 (2) wilfully refuses to stop a motor vehicle operated
 13-6 to transport cigarettes after a request to stop from an authorized
 13-7 person; or
 13-8 (3) while transporting cigarettes refuses to permit a
 13-9 complete inspection of the cargo by an authorized person.
 13-10 Sec. 154.515. POSSESSION IN QUANTITIES OF 10,000 OR MORE.
 13-11 (a) Except as provided by Sections 154.026(b), 154.041(f), and
 13-12 154.042, a person commits an offense if the person possesses
 13-13 unstamped cigarettes in quantities of 10,000 or more.
 13-14 (b) This section does not prohibit transportation of
 13-15 cigarettes by a common carrier.
 13-16 Sec. 155.001. DEFINITIONS. In this chapter:
 13-17 (1) "Bonded agent" means a person in this state who is
 13-18 a third-party agent of a manufacturer outside this state and who
 13-19 receives tobacco products in interstate commerce and stores the
 13-20 tobacco products for distribution or delivery to distributors under
 13-21 orders from the manufacturer.
 13-22 (2) "Cigar" means a roll of fermented tobacco that is
 13-23 wrapped in tobacco and the main stream of smoke from which produces
 13-24 an alkaline reaction to litmus paper.
 13-25 (3) "Commercial business location" means the entire
 13-26 premises occupied by a permit applicant or a person required to hold
 13-27 a permit under this chapter.
 13-28 (4) "Common carrier" means a motor carrier registered
 13-29 under Chapter 643, Transportation Code, or a motor carrier
 13-30 operating under a certificate issued by the Interstate Commerce
 13-31 Commission or a successor agency to the Interstate Commerce
 13-32 Commission.
 13-33 (5) "Consumer" means a person who possesses tobacco
 13-34 products for personal consumption.
 13-35 (6) "Distributor" means a person who:
 13-36 (A) receives untaxed tobacco products for the
 13-37 purpose of making a first sale in this state from a manufacturer
 13-38 outside the state or within the state or otherwise brings or causes
 13-39 to be brought into this state untaxed tobacco products for sale,
 13-40 use, or consumption;
 13-41 (B) manufactures or produces tobacco products;
 13-42 or
 13-43 (C) is an importer.
 13-44 (6-a) "Engage in business" means, in relation to
 13-45 tobacco products, engaging by a person, either directly or through
 13-46 a representative, in any of the following activities:
 13-47 (A) selling tobacco products in or into this
 13-48 state;
 13-49 (B) using a warehouse or another location to
 13-50 store tobacco products; or
 13-51 (C) otherwise conducting through a physical
 13-52 presence tobacco product-related business in this state.
 13-53 (7) "Export warehouse" means a person in this state
 13-54 who receives untaxed tobacco products from manufacturers and stores
 13-55 the tobacco products for the purpose of making sales to authorized
 13-56 persons for resale, use, or consumption outside the United States.
 13-57 (8) "First sale" means, except as otherwise provided
 13-58 by this chapter:
 13-59 (A) the first transfer of possession in
 13-60 connection with a purchase, sale, or any exchange for value of
 13-61 tobacco products in or into this state, which:
 13-62 (i) includes the sale of tobacco products
 13-63 by:
 13-64 (a) a distributor in or outside this
 13-65 state to a distributor, wholesaler, or retailer in this state; and
 13-66 (b) a manufacturer in this state who
 13-67 transfers the tobacco products in this state; and
 13-68 (ii) does not include:
 13-69 (a) the sale of tobacco products by a

14-1 manufacturer outside this state to a distributor in this state;
 14-2 [~~or~~]
 14-3 (b) the transfer of tobacco products
 14-4 from a manufacturer outside this state to a bonded agent in this
 14-5 state; or
 14-6 (c) the sale of tobacco products from
 14-7 a manufacturer, bonded agent, distributor, or importer to an
 14-8 interstate warehouse in this state;
 14-9 (B) the first use or consumption of tobacco
 14-10 products in this state; or
 14-11 (C) the loss of tobacco products in this state
 14-12 whether through negligence, theft, or other unaccountable loss.
 14-13 (9) "Importer" means a person who ships, transports,
 14-14 or imports into this state tobacco products manufactured or
 14-15 produced outside the United States for the purpose of making a first
 14-16 sale in this state.
 14-17 (9-a) "Interstate warehouse" means a person in this
 14-18 state who receives untaxed tobacco products from a manufacturer,
 14-19 bonded agent, importer, or distributor and stores the tobacco
 14-20 products exclusively for an interstate warehouse transaction.
 14-21 (9-b) "Interstate warehouse transaction" means the
 14-22 sale or delivery from an interstate warehouse to a person in another
 14-23 state who is licensed or permitted by the other state to pay the
 14-24 state's excise tax on tobacco products as may be required.
 14-25 (10) "Manufacturer" means a person who manufactures,
 14-26 fabricates, or assembles tobacco products, or causes or arranges
 14-27 for the manufacture, fabrication, or assembly of tobacco products,
 14-28 for sale or distribution.
 14-29 (11) "Manufacturer's representative" means a person
 14-30 employed by a manufacturer to sell or distribute the manufacturer's
 14-31 tobacco products for which the tax imposed under this chapter has
 14-32 been paid.
 14-33 (12) "Permit holder" means a bonded agent, interstate
 14-34 warehouse, distributor, wholesaler, manufacturer, importer, export
 14-35 warehouse, or retailer who obtains a permit under Section 155.041.
 14-36 (13) "Place of business" means:
 14-37 (A) a commercial business location where tobacco
 14-38 products are sold;
 14-39 (B) a commercial business location where tobacco
 14-40 products are kept for sale or consumption or otherwise stored;
 14-41 (C) a vehicle from which tobacco products are
 14-42 sold; or
 14-43 (D) a vending machine from which tobacco products
 14-44 are sold.
 14-45 (13-a) "Raw tobacco" means any part of the tobacco
 14-46 plant, including the tobacco leaf or stem, that is harvested from
 14-47 the ground and is not a tobacco product as the term is defined in
 14-48 this chapter.
 14-49 (14) "Retailer" means a person who engages in the
 14-50 business of selling tobacco products to consumers and includes the
 14-51 owner of a vending machine.
 14-52 (15) "Tobacco product" means:
 14-53 (A) a cigar;
 14-54 (B) smoking tobacco, including granulated,
 14-55 plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable
 14-56 for smoking in a pipe or as a cigarette;
 14-57 (C) chewing tobacco, including Cavendish, Twist,
 14-58 plug, scrap, and any kind of tobacco suitable for chewing;
 14-59 (D) snuff or other preparations of pulverized
 14-60 tobacco; or
 14-61 (E) an article or product that is made of tobacco
 14-62 or a tobacco substitute and that is not a cigarette or an
 14-63 e-cigarette as defined by Section 161.081, Health and Safety Code.
 14-64 (16) "Wholesaler" means a person, including a
 14-65 manufacturer's representative, who sells or distributes tobacco
 14-66 products in this state for resale but who is not a distributor or
 14-67 interstate warehouse.
 14-68 Sec. 155.041. PERMITS. (a) A person may not engage in
 14-69 business as a distributor, wholesaler, bonded agent, interstate

15-1 warehouse, manufacturer, export warehouse, importer, or retailer
 15-2 unless the person has applied for and received the applicable
 15-3 permit from the comptroller.

15-4 (b) Each distributor, wholesaler, bonded agent, interstate
 15-5 warehouse, manufacturer, export warehouse, importer, or retailer
 15-6 shall obtain a permit for each place of business owned or operated
 15-7 by the distributor, wholesaler, bonded agent, interstate
 15-8 warehouse, manufacturer, export warehouse, importer, or retailer.

15-9 (c) The comptroller shall prescribe the form and content of
 15-10 an application for a permit and shall furnish the form on request of
 15-11 an applicant.

15-12 (d) The applicant shall accurately complete all information
 15-13 required by the application and provide the comptroller with
 15-14 additional information the comptroller considers necessary.

15-15 (e) The comptroller may require each corporation,
 15-16 association, joint venture, syndicate, partnership, or
 15-17 proprietorship to furnish financial information regarding the
 15-18 applicant and to provide the identity of each officer, director,
 15-19 stockholder owning 10 percent or more of the outstanding stock,
 15-20 partner, member, owner, or managing employee.

15-21 (f) Each distributor, wholesaler, and retailer that applies
 15-22 for a permit to sell tobacco products from a vehicle must provide
 15-23 the make, model, vehicle identification number, registration
 15-24 number, and any other information required by the comptroller.

15-25 (g) All financial information provided under this section
 15-26 is confidential and not subject to Chapter 552, Government Code.

15-27 (h) Permits for engaging in business as a distributor,
 15-28 wholesaler, bonded agent, interstate warehouse, manufacturer,
 15-29 export warehouse, importer, or retailer shall be governed
 15-30 exclusively by the provisions of this code.

15-31 (i) A person may not hold a Texas distributor permit and an
 15-32 interstate warehouse permit at the same location.

15-33 Sec. 155.0415. SALES: PERMIT HOLDERS AND NONPERMIT
 15-34 HOLDERS. (a) Except for retail sales to consumers, tobacco
 15-35 products may only be sold or distributed by and between permit
 15-36 holders as provided by this section.

15-37 (b) A person who is not a permit holder may not sell or
 15-38 distribute tobacco products on which a tax of more than \$50 has been
 15-39 paid or is due.

15-40 (c) A manufacturer outside this state who is not a permitted
 15-41 distributor may sell tobacco products only to a permitted
 15-42 distributor or a permitted interstate warehouse.

15-43 (d) A permitted distributor may sell tobacco products only
 15-44 to a permitted distributor, wholesaler, or retailer. A permitted
 15-45 distributor who manufactures or produces tobacco products in this
 15-46 state may sell such tobacco products manufactured or produced to a
 15-47 permitted interstate warehouse.

15-48 (e) A permitted importer may sell tobacco products only to a
 15-49 permitted interstate warehouse, permitted distributor, wholesaler,
 15-50 or retailer.

15-51 (f) A permitted wholesaler may sell tobacco products only to
 15-52 a permitted interstate warehouse, permitted distributor,
 15-53 wholesaler, or retailer.

15-54 (g) A permitted retailer may sell tobacco products only to
 15-55 the consumer and may purchase tobacco products only from a
 15-56 permitted distributor or wholesaler in this state.

15-57 (h) A permitted export warehouse may sell tobacco products
 15-58 only to persons authorized to sell or consume untaxed tobacco
 15-59 products outside the United States.

15-60 (i) A manufacturer's representative may sell tobacco
 15-61 products only to a permitted distributor, wholesaler, or retailer.

15-62 (j) A permitted interstate warehouse may sell tobacco
 15-63 products only in an interstate warehouse transaction. No
 15-64 intrastate sale of tobacco products by an interstate warehouse
 15-65 shall take place without written authorization by the comptroller.

15-66 Sec. 155.048. ISSUANCE OF PERMITS. (a) The comptroller
 15-67 shall issue a permit to an interstate warehouse, [a] distributor,
 15-68 wholesaler, bonded agent, manufacturer, importer, or retailer if
 15-69 the comptroller:

16-1 (1) has received an application and fee, if required;
 16-2 (2) does not reject the application and deny the
 16-3 permit under Section 155.0481; and
 16-4 (3) determines that issuing the permit will not
 16-5 jeopardize the administration and enforcement of this chapter.
 16-6 (b) The permit shall be issued for a designated place of
 16-7 business, except as provided by Section 155.053.
 16-8 (c) The permits are nonassignable.
 16-9 (d) The permit must indicate the type of permit that it is
 16-10 and authorize the sale of tobacco products in this state. The
 16-11 permit must show that it is revocable and shall be forfeited or
 16-12 suspended if the conditions of issuance, provisions of this
 16-13 chapter, or rules of the comptroller are violated.

16-14 Sec. 155.049. PERMIT YEAR; FEES. (a) A permit required by
 16-15 this chapter expires on the last day of February of each year,
 16-16 except the retailer's permit required by Section 155.041 expires on
 16-17 the last day of May of each even-numbered year.
 16-18 (b) An application for a permit required by this chapter
 16-19 must be accompanied by a fee of:
 16-20 (1) \$300 for a bonded agent's permit;
 16-21 (2) \$300 for an interstate warehouse's permit;
 16-22 ~~(3) [(2)] \$300 for a distributor's permit;~~
 16-23 ~~(4) [(3)] \$200 for a wholesaler's permit;~~
 16-24 ~~(5) [(4)] \$15 for each permit for a vehicle if the~~
 16-25 applicant is also applying for a permit as a bonded agent,
 16-26 distributor, or wholesaler or has received a current permit from
 16-27 the comptroller under Sections 155.041 and 155.048; and
 16-28 ~~(6) [(5)] \$180 for a retailer's permit.~~
 16-29 (c) A fee is not required for an export warehouse permit.
 16-30 (d) For a new or renewal permit required by Section 155.041,
 16-31 the comptroller shall prorate the fee according to the number of
 16-32 months remaining during the calendar year that the permit is to be
 16-33 in effect.
 16-34 (e) A person who does not obtain a permit each year in a
 16-35 timely manner must pay a late fee of \$50 in addition to the
 16-36 application fee for the permit.
 16-37 (f) If at the date of issuance a permit will expire within
 16-38 three months, the comptroller may collect the prorated permit fee
 16-39 or the fee for a current year and, with the consent of the permit
 16-40 holder, may collect the fee for the next permit year and issue a
 16-41 permit or permits for both periods, as applicable.
 16-42 (g) A person issued a permit for a place of business that
 16-43 permanently closes before the permit expiration date is not
 16-44 entitled to a refund of the permit fee.

16-45 Sec. 155.058. REVENUE. (a) Except as provided by
 16-46 Subsection (b), revenue from the sale of permits to interstate
 16-47 warehouses, distributors, wholesalers, and bonded agents is
 16-48 allocated in the same manner that other revenue is allocated by
 16-49 Subchapter H.
 16-50 (b) Revenue from the sale of retailer's permits shall be
 16-51 deposited to the general revenue fund and may be appropriated only
 16-52 as provided by this section. The money may be appropriated first to
 16-53 the comptroller for administration of licensing of retailers under
 16-54 this chapter or Chapter 154.
 16-55 (c) If, after any appropriation is made under Subsection
 16-56 (b), revenue remains from the sale of retailer's permits, the
 16-57 remaining money may be appropriated to the comptroller for
 16-58 administration and enforcement of Subchapters H, K, and N, Chapter
 16-59 161, Health and Safety Code, and to the Texas Department of Health,
 16-60 for the administration and enforcement of Section 161.253, Health
 16-61 and Safety Code.
 16-62 (d) If, after any appropriation is made under Subsections
 16-63 (b) and (c), revenue remains from the sale of retailer's permits,
 16-64 the remaining money may be appropriated to the Texas Department of
 16-65 Health to administer the commissioner of public health's
 16-66 responsibilities under Section 161.301, Health and Safety Code.
 16-67 (e) If, after any appropriation is made under Subsections
 16-68 (b), (c), and (d), revenue remains from the sale of retailer's
 16-69 permits, the remaining money may be appropriated to the appropriate

17-1 entity to administer that entity's responsibilities under Section
17-2 161.302, Health and Safety Code.

17-3 Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each
17-4 interstate warehouse, distributor, wholesaler, bonded agent, and
17-5 export warehouse shall keep records at each place of business of all
17-6 tobacco products purchased or received. Each retailer shall keep
17-7 records at a single commercial business location, which the
17-8 retailer shall designate as its principal place of business in the
17-9 state, of all tobacco products purchased and received. These
17-10 records must include the following, except that Subdivision (7)
17-11 applies to distributors only and Subdivision (8) applies only to
17-12 the purchase or receipt of tobacco products other than cigars:

17-13 (1) the name and address of the shipper or carrier and
17-14 the mode of transportation;

17-15 (2) all shipping records or copies of records,
17-16 including invoices, bills of lading, waybills, freight bills, and
17-17 express receipts;

17-18 (3) the date and the name of the place of origin of the
17-19 tobacco product shipment;

17-20 (4) the date and the name of the place of arrival of
17-21 the tobacco product shipment;

17-22 (5) a statement of the number, kind, and price paid for
17-23 the tobacco products;

17-24 (6) the name, address, permit number, and tax
17-25 identification number of the seller;

17-26 (7) the manufacturer's list price for the tobacco
17-27 products;

17-28 (8) the net weight as listed by the manufacturer for
17-29 each unit; and

17-30 (9) any other information required by rules of the
17-31 comptroller.

17-32 Sec. 155.102. REPORT OF SALE OR USE. (a) Each interstate
17-33 warehouse, distributor, and wholesaler shall keep at each place of
17-34 business in this state records of each sale, distribution,
17-35 exchange, or use of tobacco products whether taxed under this
17-36 chapter or not. Each interstate warehouse, distributor, and
17-37 wholesaler shall prepare and retain an original invoice for each
17-38 transaction involving tobacco products. Each interstate
17-39 warehouse, distributor, or wholesaler shall keep any supporting
17-40 documentation, including bills of lading, showing shipment and
17-41 receipt used in preparing the invoices at the place of business of
17-42 the distributor or wholesaler. The interstate warehouse,
17-43 distributor, or wholesaler shall prepare and deliver a duplicate
17-44 invoice to the purchaser.

17-45 (b) The records for each sale, distribution, exchange, or
17-46 use of tobacco products must show:

17-47 (1) the purchaser's name and address, permit number,
17-48 or tax identification number;

17-49 (2) the method of delivery and the name of the common
17-50 carrier or other person delivering the tobacco products;

17-51 (3) the date, amount, and type of tobacco products
17-52 sold, distributed, exchanged, or used;

17-53 (4) the price received for the tobacco products;

17-54 (5) the number and kind of tobacco products on which
17-55 the tax has been paid; and

17-56 (6) for sales from a manufacturer to a distributor or
17-57 interstate warehouse, the manufacturer's list price for the tobacco
17-58 products.

17-59 (c) In addition to the information required under
17-60 Subsection (b), the records for each sale, distribution, exchange,
17-61 or use of tobacco products other than cigars must show the net
17-62 weight as listed by the manufacturer for each unit.

17-63 (d) Upon request by the comptroller, each interstate
17-64 warehouse shall provide to the comptroller copies of periodic
17-65 tobacco product reports filed with each state into which the
17-66 interstate warehouse sells tobacco products and copies of the PACT
17-67 Act report required by 15 U.S.C. 376.

17-68 Sec. 155.201. PENALTIES. (a) A person violates this
17-69 chapter if the person:

18-1 (1) is a distributor, wholesaler, manufacturer,
18-2 export warehouse, importer, bonded agent, interstate warehouse,
18-3 manufacturer's representative, or retailer and fails to keep
18-4 records required by this chapter;

18-5 (2) engages in the business of a bonded agent,
18-6 interstate warehouse, distributor, wholesaler, manufacturer,
18-7 export warehouse, importer, or retailer without a valid permit;

18-8 (3) is a distributor, wholesaler, manufacturer, export
18-9 warehouse, importer, bonded agent, interstate warehouse, or
18-10 retailer and fails to make a report required by this chapter to the
18-11 comptroller or makes a false or incomplete report or application
18-12 required by this chapter to the comptroller; or

18-13 (4) is a person affected by this chapter and fails or
18-14 refuses to abide by or violates a provision of this chapter or a
18-15 rule adopted by the comptroller under this chapter.

18-16 (b) A person who violates this chapter shall pay to the
18-17 state a penalty of not more than \$2,000 for each violation.

18-18 (c) A separate offense is committed each day on which a
18-19 violation occurs.

18-20 (d) The attorney general shall bring suits to recover
18-21 penalties under this section.

18-22 (e) A suit under this section may be brought in a court of
18-23 competent jurisdiction in Travis County or in any court having
18-24 jurisdiction.

18-25 Sec. 155.207. PERMITS. A person commits an offense if the
18-26 person acting:

18-27 (1) as a distributor, interstate warehouse,
18-28 wholesaler, or retailer, receives or possesses tobacco products
18-29 without having a valid permit;

18-30 (2) as a distributor, interstate warehouse,
18-31 wholesaler, or retailer, receives or possesses tobacco products
18-32 without having a permit posted where it can be easily seen by the
18-33 public;

18-34 (3) as a distributor, interstate warehouse, or
18-35 wholesaler, does not deliver an invoice to the purchaser as
18-36 required by Section 155.102;

18-37 (4) as a distributor, interstate warehouse,
18-38 wholesaler, or retailer, sells tobacco products without having a
18-39 valid permit; or

18-40 (5) as a bonded agent, interstate warehouse, or export
18-41 warehouse, stores, distributes, or delivers tobacco products on
18-42 which the tax has not been paid without having a valid permit.

18-43 SECTION 11. (a) Section 161.124, Health and Safety Code, is
18-44 repealed.

18-45 (b) The following provisions of the Tax Code are repealed:

18-46 (1) Section 154.1142;

18-47 (2) Section 154.1143;

18-48 (3) Section 155.0592; and

18-49 (4) Section 155.0593.

18-50 SECTION 12. Section 161.0901, Health and Safety Code, as
18-51 added by this Act, applies only to a violation that occurs on or
18-52 after the effective date of this Act. A violation that occurs
18-53 before the effective date of this Act is governed by the law in
18-54 effect on the date the violation occurred, and the former law is
18-55 continued in effect for that purpose.

18-56 SECTION 13. (a) Notwithstanding Section 147.0051, Health
18-57 and Safety Code, as added by this Act, a person is not required to
18-58 hold a permit under that section to engage in business as a retailer
18-59 of e-cigarettes in this state until January 1, 2022.

18-60 (b) The comptroller of public accounts shall prescribe the
18-61 form and content of an application for a permit under Section
18-62 147.0051, Health and Safety Code, as added by this Act, and begin
18-63 accepting applications for the permit not later than October 1,
18-64 2021.

18-65 SECTION 14. This Act takes effect September 1, 2021.

18-66 * * * * *