

House Bill 3578
Senate Amendments
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SECTION 1. Section 154.1135(b), Tax Code, is amended to read as follows: (b) The payment must be <u>made</u> in cash or by money order, [or] <u>check, or credit card</u> .	SECTION 1. Same as House version.	
SECTION 2. Section 155.050(b), Tax Code, is amended to read as follows: (b) The payment must be <u>made</u> in cash or by money order, [or] <u>check, or credit card</u> .	SECTION 2. Same as House version.	
No equivalent provision.	SECTION __. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 147 to read as follows: <u>CHAPTER 147. E-CIGARETTE RETAILER PERMITS</u> <u>SUBCHAPTER A. GENERAL PROVISIONS</u> <u>Sec. 147.0001. DEFINITIONS. In this chapter:</u> (1) <u>"Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.</u> (2) <u>"E-cigarette" has the meaning assigned by Section 161.081.</u> (3) <u>"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.</u> (4) <u>"Marketplace" has the meaning assigned by Section 151.0242, Tax Code.</u> (5) <u>"Permit holder" means a person who obtains a permit under Section 147.0052.</u> (6) <u>"Place of business" means:</u> (A) <u>a commercial business location where e-cigarettes are</u>	

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sold;

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

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

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

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

Sec. 147.0004. 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 requirements of this chapter.

SUBCHAPTER B. PERMITS

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

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

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

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

(e) Each applicant that applies for a permit to sell e-cigarettes

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from a vehicle must provide the make, model, vehicle identification number, registration number, and any other information concerning the vehicle the comptroller requires.

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

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

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

(1) has received an application and fee;

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

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

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

(c) The permits are nonassignable.

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

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

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

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any

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stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:
(A) has failed to disclose any information required by Sections 147.0051(d) and (e); or
(B) has previously violated provisions of this chapter.
Sec. 147.0054. PERMIT PERIOD; FEES. (a) A permit required by this chapter expires on the last day of May of each even-numbered year.
(b) An application for a permit required by this chapter must be accompanied by a fee of:
(1) one-half of the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code, if at the time of application the applicant holds a valid retailer's permit under Section 154.101, 154.102, or 155.041, Tax Code, for the same place of business; or
(2) the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code.
(c) For a new permit required by Section 147.0051, the comptroller shall prorate the fee according to the number of months remaining during the period that the permit is to be in effect.
(d) A person who does not obtain a renewal permit in a timely manner must pay a late fee of \$50 in addition to the application fee for the permit.
(e) If on the date of issuance a permit will expire within three months, the comptroller may collect the prorated permit fee or the fee for the current period and, with the consent of the permit holder, may collect the fee for the next permit period and issue a permit or permits for both periods, as applicable.
(f) A person issued a permit for a place of business that permanently closes before the permit expiration date is not

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entitled to a refund of the permit fee.

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

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

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

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

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

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

SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

Sec. 147.0101. FINAL SUSPENSION OR REVOCATION OF PERMIT. (a) The comptroller may revoke or suspend a permit holder's permit if the comptroller finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or a rule adopted under this chapter.

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

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

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

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

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

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

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

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

Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT.

(a) The comptroller may suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this chapter or a rule adopted under this chapter if the permit holder's continued operation constitutes an immediate and substantial threat.

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

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

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

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

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

SUBCHAPTER D. PENALTIES

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

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

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

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

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

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

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under this section.
(e) A suit under this section may be brought in Travis County or another county having jurisdiction.
Sec. 147.0152. FAILURE TO HAVE PERMIT; OFFENSE.
(a) A person commits an offense if the person acts as an e-cigarette retailer and:
(1) receives or possesses e-cigarettes without having a permit;
(2) receives or possesses e-cigarettes without having a permit posted where it can be easily seen by the public; or
(3) sells e-cigarettes without having a permit.
(b) An offense under this section is a Class A misdemeanor.
[FA1]

SECTION __. Sections 161.081(1-a), (2), and (4), Health and Safety Code, are amended to read as follows:
(1-a) (A) "E-cigarette" means:
(i) an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or
(ii) a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this subdivision.
(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.
(C) The term "e-cigarette" includes:
(i) [(A)] a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and
(ii) [(B)] a component, part, or accessory for the device,

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regardless of whether the component, part, or accessory is sold separately from the device.

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

(4) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as ~~[that term is]~~ defined by Section 154.001 or 155.001, Tax Code, and an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable. [FA1]

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

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 161.0901 ~~[154.1142 or 155.0592, Tax Code]~~. [FA1]

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

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

No equivalent provision.

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

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

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

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

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

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

(c) Except as provided by Subsection (e), for the fourth or a subsequent violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller shall revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as applicable. If the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, the comptroller shall revoke the permit issued under Section 151.201, Tax Code.

(d) A permit holder whose permit has been revoked under this section may not apply for a permit for the same place of

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business before the expiration of six months after the effective date of the revocation.

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

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

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

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

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

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

Sec. 161.0903. USE OF CERTAIN REVENUE. Revenue from fees collected under Section 161.123 and from the sale of permits under Chapter 147 of this code, retailer permits under Chapter 154, Tax Code, and retailer permits under Chapter 155, Tax Code, shall be deposited in the general revenue fund and may be appropriated only as provided by this section. The revenue shall be appropriated, in order of priority, to:

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

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

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

(4) the appropriate entity for the purpose of administering that

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entity's responsibilities under Section 161.302. [FA1]

No equivalent provision.

SECTION __. Section 161.123(b), Health and Safety Code, is amended to read as follows:
(b) The comptroller shall collect the fee [~~and deposit the money~~] as provided in this section. [FA1]

No equivalent provision.

SECTION __. Section 111.00455(b), Tax Code, is amended to read as follows:
(b) The following are not contested cases under Subsection (a) and Section 2003.101, Government Code:
(1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section 151.157(f), 151.1575(c), or 151.712(g) of this code or Section 161.0901, Health and Safety Code~~[, 154.1142, or 155.0592]~~;
(2) a property value study hearing under Subchapter M, Chapter 403, Government Code;
(3) a hearing in which the issue relates to:
(A) Chapters 72-75, Property Code;
(B) forfeiture of a right to do business;
(C) a certificate of authority;
(D) articles of incorporation;
(E) a penalty imposed under Section 151.703(d);
(F) the refusal or failure to settle under Section 111.101; or
(G) a request for or revocation of an exemption from taxation; and
(4) any other hearing not related to the collection, receipt,

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administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount. [FA1]

No equivalent provision.

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

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

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

(i) includes the sale of cigarettes by:

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

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

(ii) does not include:

(a) the sale of cigarettes by a manufacturer outside this state to a distributor in this state; [øø]

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

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

or

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

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

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

(11-a) "Interstate warehouse" means a person in this state who

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	<p><u>receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.</u></p> <p><u>(11-b) "Interstate warehouse transaction" means the sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.</u></p> <p>(14) "Permit holder" means a bonded agent, <u>interstate warehouse</u>, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains a permit under Section 154.101.</p> <p>(19) "Wholesaler" means a person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor <u>or interstate warehouse.</u></p> <p>[FA1]</p>	
No equivalent provision.	<p>SECTION __. Section 154.041, Tax Code, is amended by adding Subsection (f) to read as follows:</p> <p><u>(f) No stamp is required on the transfer of possession of cigarettes described by Section 154.001(9)(A)(ii)(d).</u> [FA1]</p>	
No equivalent provision.	<p>SECTION __. Section 154.101, Tax Code, is amended by amending Subsections (a), (b), and (h) and adding Subsection (k) to read as follows:</p> <p>(a) A person may not engage in business as a distributor, wholesaler, bonded agent, <u>interstate warehouse</u>, manufacturer, export warehouse, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.</p>	

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

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

(k) A person may not hold a distributor's permit issued by this state and an interstate warehouse's permit for the same location. [FA1]

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

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

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

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

(f) A permitted wholesaler may sell cigarettes only to a

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	permitted <u>interstate warehouse</u> , distributor, wholesaler, or retailer. (j) <u>A permitted interstate warehouse may sell cigarettes only in an interstate warehouse transaction. An interstate warehouse may not make an intrastate sale of cigarettes without written authorization by the comptroller.</u> [FA1]	
No equivalent provision.	SECTION __. Section 154.102(a), Tax Code, is amended to read as follows: (a) The comptroller may issue a combination permit for cigarettes and tobacco products to a person who is a distributor, wholesaler, bonded agent, <u>interstate warehouse</u> , manufacturer, importer, or retailer as defined by this chapter and Chapter 155 for both cigarettes and tobacco products. <u>An interstate warehouse may not hold a combination permit as a retailer of cigarettes or tobacco products.</u> [FA1]	
No equivalent provision.	SECTION __. Sections 154.110(a) and (d), Tax Code, are amended to read as follows: (a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, <u>interstate warehouse</u> , manufacturer, export warehouse, importer, or retailer if the comptroller: (1) has received an application and fee, if required; (2) believes that the applicant has complied with Section 154.101; and (3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter. (d) The permit must indicate the type of permit that it is and authorize the sale of cigarettes in this state, <u>except as provided by Section 154.1015(j).</u> The permit must show that it is	

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revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated. [FA1]

SECTION __. Section 154.111(b), Tax Code, is amended to read as follows:
(b) An application for a permit required by this chapter must be accompanied by a fee of:
(1) \$300 for a bonded agent's permit;
(1-a) \$300 for an interstate warehouse's permit;
(2) \$300 for a distributor's permit;
(3) \$200 for a wholesaler's permit;
(4) \$15 for each permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller under Sections 154.101 and 154.110; and
(5) \$180 for a retailer's permit. [FA1]

SECTION __. Sections 154.121(a) and (b), Tax Code, are amended to read as follows:
(a) Except as provided by Subsection (b), revenue from the sale of permits to distributors, wholesalers, ~~[and] bonded agents, and interstate warehouses~~ is allocated in the same manner as other revenue allocated by Subchapter J.
(b) Revenue from the sale of retailer's permits shall be deposited as provided by Section 161.0903, Health and Safety Code, ~~[to the general revenue fund]~~ and may be appropriated only as provided by that ~~[this]~~ section. ~~[The money may be appropriated first to the comptroller for administration of licensing of retailers under this chapter or Chapter 155.]~~

No equivalent provision.

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[FA1]

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

(c) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold. This subsection does not apply to the distribution, sale, or transportation of cigarettes sold by an interstate warehouse in an interstate warehouse transaction.

[FA1]

SECTION __. Section 154.201, Tax Code, is amended to read as follows:

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

- (1) the name and address of the shipper or carrier and the mode of transportation;
- (2) all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express

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- receipts;
- (3) the date and the name of the place of origin of the cigarette shipment;
 - (4) the date and the name of the place of arrival of the cigarette shipment;
 - (5) a statement of the number, kind, and price paid for cigarettes, including cigarettes in stamped and unstamped packages;
 - (6) the name, address, permit number, and tax identification number of the seller;
 - (7) in the case of a distributor, copies of the customs certificates required by 19 U.S.C. Section 1681a(c), as amended, for all cigarettes imported into the United States to which the distributor has affixed a tax stamp; and
 - (8) any other information required by rules of the comptroller. [FA1]

SECTION __. Section 154.203, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Each interstate warehouse, distributor, and wholesaler shall keep at each place of business in this state records of each sale, distribution, exchange, or use of cigarettes whether taxed under this chapter or not. Each interstate warehouse, distributor, and wholesaler shall prepare and retain an original invoice for each transaction involving cigarettes. Each interstate warehouse, distributor, or wholesaler shall keep any supporting documentation, including bills of lading, showing shipment and receipt used in preparing the invoices at the place of business of the interstate warehouse, distributor, or wholesaler. The interstate warehouse, distributor, or

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wholesaler shall prepare and deliver a duplicate invoice to the purchaser.

(c) On request by the comptroller, an interstate warehouse shall provide to the comptroller copies of periodic cigarette reports filed with each state into which the interstate warehouse sells cigarettes and copies of each report required under 15 U.S.C. Section 376. [FA1]

No equivalent provision.

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

- (a) A person violates this chapter if the person:
- (1) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, interstate warehouse, manufacturer's representative, or retailer and fails to keep records required by this chapter;
 - (2) engages in the business of a bonded agent, interstate warehouse, distributor, wholesaler, manufacturer, export warehouse, importer, or retailer without a valid permit;
 - (3) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, interstate warehouse, or retailer and fails to make a report or makes a false or incomplete report or application required by this chapter to the comptroller; or
 - (4) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter. [FA1]

No equivalent provision.

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

- (a) Except as provided by Sections 154.026(b), 154.041(f),

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	and 154.042, a person commits an offense if the person possesses unstamped cigarettes in quantities less than 10,000. [FA1]	
No equivalent provision.	<p>SECTION __. Section 154.509, Tax Code, is amended to read as follows:</p> <p>Sec. 154.509. PERMITS. A person commits an offense if the person acting:</p> <p>(1) as a distributor, <u>interstate warehouse</u>, wholesaler, or retailer, receives or possesses cigarettes without having a valid permit;</p> <p>(2) as a distributor, <u>interstate warehouse</u>, wholesaler, or retailer, receives or possesses cigarettes without having a permit posted where it can be easily seen by the public;</p> <p>(3) as a distributor, <u>interstate warehouse</u>, or wholesaler, does not deliver an invoice to the purchaser as required by Section 154.203;</p> <p>(4) as a distributor, <u>interstate warehouse</u>, wholesaler, or retailer, sells cigarettes without having a valid permit; or</p> <p>(5) as a bonded agent, <u>interstate warehouse</u>, or export warehouse, stores, distributes, or delivers cigarettes in unstamped packages without having a valid permit, <u>except as provided by Section 154.041(f)</u>. [FA1]</p>	
No equivalent provision.	<p>SECTION __. Section 154.511, Tax Code, is amended to read as follows:</p> <p>Sec. 154.511. TRANSPORTATION OF CIGARETTES. A person, other than a common carrier, commits an offense if the person:</p> <p>(1) knowingly transports cigarettes without a stamp affixed to</p>	

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each individual package, except as provided by Section 154.024(a) or 154.152(c);

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

(3) while transporting cigarettes refuses to permit a complete inspection of the cargo by an authorized person. [FA1]

No equivalent provision.

SECTION __. Section 154.515(a), Tax Code, is amended to read as follows:

(a) Except as provided by Sections 154.026(b), 154.041(f), and 154.042, a person commits an offense if the person possesses unstamped cigarettes in quantities of 10,000 or more. [FA1]

No equivalent provision.

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

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

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

(i) includes the sale of tobacco products by:

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

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

(ii) does not include:

(a) the sale of tobacco products by a manufacturer outside

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this state to a distributor in this state; [øf]

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

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

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

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

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

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

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

(16) "Wholesaler" means a person, including a manufacturer's representative, who sells or distributes tobacco products in this state for resale but who is not a distributor or interstate warehouse. [FA1]

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

No equivalent provision.

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- (a) A person may not engage in business as a distributor, wholesaler, bonded agent, interstate warehouse, manufacturer, export warehouse, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.
- (b) Each distributor, wholesaler, bonded agent, interstate warehouse, manufacturer, export warehouse, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, interstate warehouse, manufacturer, export warehouse, importer, or retailer.
- (h) Permits for engaging in business as a distributor, wholesaler, bonded agent, interstate warehouse, manufacturer, export warehouse, importer, or retailer shall be governed exclusively by the provisions of this code.
- (i) A person may not hold a distributor's permit issued by this state and an interstate warehouse's permit for the same location. [FA1]

SECTION __. Section 155.0415, Tax Code, is amended by amending Subsections (c), (d), (e), and (f) and adding Subsection (j) to read as follows:

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

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

(e) A permitted importer may sell tobacco products only to a

No equivalent provision.

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permitted interstate warehouse, distributor, wholesaler, or retailer.
(f) A permitted wholesaler may sell tobacco products only to a permitted interstate warehouse, distributor, wholesaler, or retailer.
(j) A permitted interstate warehouse may sell tobacco products only in an interstate warehouse transaction. An interstate warehouse may not make an intrastate sale of tobacco products without written authorization by the comptroller. [FA1]

SECTION __. Sections 155.048(a) and (d), Tax Code, are amended to read as follows:
(a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, interstate warehouse, manufacturer, importer, or retailer if the comptroller:
(1) has received an application and fee, if required;
(2) does not reject the application and deny the permit under Section 155.0481; and
(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.
(d) The permit must indicate the type of permit that it is and authorize the sale of tobacco products in this state, except as provided by Section 155.0415(j). The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated. [FA1]

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

No equivalent provision.

No equivalent provision.

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- (b) An application for a permit required by this chapter must be accompanied by a fee of:
- (1) \$300 for a bonded agent's permit;
 - ~~(1-a) \$300 for an interstate warehouse's permit;~~
 - (2) \$300 for a distributor's permit;
 - (3) \$200 for a wholesaler's permit;
 - (4) \$15 for each permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller under Sections 155.041 and 155.048; and
 - (5) \$180 for a retailer's permit. [FA1]

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

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

(b) Revenue from the sale of retailer's permits shall be deposited as provided by Section 161.0903, Health and Safety Code, ~~[to the general revenue fund]~~ and may be appropriated only as provided by that ~~[this]~~ section. ~~[The money may be appropriated first to the comptroller for administration of licensing of retailers under this chapter or Chapter 154.]~~ [FA1]

SECTION __. Section 155.101, Tax Code, is amended to read as follows:

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT.
Each distributor, wholesaler, bonded agent, interstate

No equivalent provision.

No equivalent provision.

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warehouse, and export warehouse shall keep records at each place of business of all tobacco products purchased or received. Each retailer shall keep records at a single commercial business location, which the retailer shall designate as its principal place of business in the state, of all tobacco products purchased and received. These records must include ~~[the following, except that Subdivision (7) applies to distributors only and Subdivision (8) applies only to the purchase or receipt of tobacco products other than cigars]:~~

- (1) the name and address of the shipper or carrier and the mode of transportation;
- (2) all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;
- (3) the date and the name of the place of origin of the tobacco product shipment;
- (4) the date and the name of the place of arrival of the tobacco product shipment;
- (5) a statement of the number, kind, and price paid for the tobacco products;
- (6) the name, address, permit number, and tax identification number of the seller;
- (7) in the case of a distributor, the manufacturer's list price for the tobacco products;
- (8) for tobacco products other than cigars, the net weight as listed by the manufacturer for each unit; and
- (9) any other information required by rules of the comptroller. [FA1]

SECTION __. Section 155.102, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsection (d)

No equivalent provision.

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to read as follows:

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

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

- (1) the purchaser's name and address, permit number, or tax identification number;
- (2) the method of delivery and the name of the common carrier or other person delivering the tobacco products;
- (3) the date, amount, and type of tobacco products sold, distributed, exchanged, or used;
- (4) the price received for the tobacco products;
- (5) the number and kind of tobacco products on which the tax has been paid; and
- (6) for sales from a manufacturer to a distributor or interstate warehouse, the manufacturer's list price for the tobacco products.

(d) On request by the comptroller, an interstate warehouse shall provide to the comptroller copies of periodic tobacco product reports filed with each state into which the interstate warehouse sells tobacco products and copies of each report

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required under 15 U.S.C. Section 376. [FA1]

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

- (a) A person violates this chapter if the person:
- (1) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, interstate warehouse, manufacturer's representative, or retailer and fails to keep records required by this chapter;
 - (2) engages in the business of a bonded agent, interstate warehouse, distributor, wholesaler, manufacturer, export warehouse, importer, or retailer without a valid permit;
 - (3) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, interstate warehouse, or retailer and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report or application required by this chapter to the comptroller; or
 - (4) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter. [FA1]

SECTION __. Section 155.207, Tax Code, is amended to read as follows:

- Sec. 155.207. PERMITS. A person commits an offense if the person acting:
- (1) as a distributor, interstate warehouse, wholesaler, or retailer, receives or possesses tobacco products without having a valid permit;
 - (2) as a distributor, interstate warehouse, wholesaler, or retailer, receives or possesses tobacco products without having

No equivalent provision.

No equivalent provision.

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	<p>a permit posted where it can be easily seen by the public;</p> <p>(3) as a distributor, <u>interstate warehouse</u>, or wholesaler, does not deliver an invoice to the purchaser as required by Section 155.102;</p> <p>(4) as a distributor, <u>interstate warehouse</u>, wholesaler, or retailer, sells tobacco products without having a valid permit; or</p> <p>(5) as a bonded agent, <u>interstate warehouse</u>, or export warehouse, stores, distributes, or delivers tobacco products on which the tax has not been paid without having a valid permit. [FA1]</p>	
No equivalent provision.	<p>SECTION __. (a) Section 161.124, Health and Safety Code, is repealed.</p> <p>(b) The following provisions of the Tax Code are repealed:</p> <p>(1) Section 154.1142;</p> <p>(2) Section 154.1143;</p> <p>(3) Sections 154.121(c), (d), and (e);</p> <p>(4) Sections 155.058(c), (d), and (e);</p> <p>(5) Section 155.0592; and</p> <p>(6) Section 155.0593. [FA1]</p>	
No equivalent provision.	<p>SECTION __. Section 161.0901, Health and Safety Code, as added by this Act, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. [FA1]</p>	

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No equivalent provision.	SECTION __. (a) Notwithstanding Sections 147.0051, 147.0151, and 147.0152, Health and Safety Code, as added by this Act, a person is not required to hold a permit under Section 147.0051 to engage in business as a retailer of e-cigarettes in this state until January 1, 2022. (b) The comptroller of public accounts shall prescribe the form and content of an application for a permit under Section 147.0051, Health and Safety Code, as added by this Act, and begin accepting applications for the permit not later than October 1, 2021. [FA1]	
SECTION 3. This Act takes effect September 1, 2021.	SECTION 3. Same as House version.	