PRELIMINARY DRAFT

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Chapter 161B
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CHAPTER 161B. REGULATION OF CIGARETTES, E-CIGARETTES, AND TOBACCO PRODUCTS

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CHAPTER 161B. REGULATION OF CIGARETTES, E-CIGARETTES, AND TOBACCO PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 161B.001. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "E-cigarette":

(A) 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, regardless of whether the liquid solution or material contains nicotine;

(B) includes:

(i) 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) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device; and

(C) does not include a prescription medical device, a prescription medication, or another prescribed substance

unrelated to the cessation of smoking.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code. (H&S Code, Secs. 161.081(1), (1-a), (5), 161.121(2), (2-a), (5), 161.251(1), (1-a), (2), 161.351(1), (3), 161.451(2-a).)

Source Law

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(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, regardless of whether the liquid solution or material contains nicotine.

(B) The term "e-cigarette" does not include a prescription medical device, prescription medication, or other prescribed substance unrelated to the cessation of smoking.

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

(i) 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) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.121. DEFINITIONS. In this subchapter:

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

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

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

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

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.351. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Sec. 161.451. DEFINITIONS. In this subchapter:

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

Revisor's Note

(1) Sections 161.081, 161.121, 161.251, 161.351, and 161.451, Health and Safety Code, provide definitions applicable "in this subchapter," meaning Subchapters H, K, N, P, and R, Chapter 161, of that code, respectively, which are revised as this chapter. The revised law substitutes "in this chapter" for "in this subchapter" because the pertinent parts of Chapter 161 referencing those terms are revised as this chapter.

(2) Sections 161.081(1-b) and 161.251(1-b), Health and Safety Code, define "minor." The revised law omits those definitions and, throughout this chapter, substitutes "an individual younger than 21 years of age" for references to "minor" for clarity and consistency because, in statutes, "minor" usually refers to an individual younger than 18 years of age who has not had the disabilities of minority removed. Throughout this chapter, the revised law also substitutes "individual" for "person" for clarity and consistency where the context makes clear the referenced person is a natural person and not an entity described by the definition of "person" provided by Section 311.005(2), Government Code (Code Construction Act). The omitted law reads:

[Sec. 161.081]
(1-b) "Minor" means a person under 21 years of age.

[Sec. 161.251]
(1-b) "Minor" means a person under 21 years of age.

SUBCHAPTER B. SALE AND DISTRIBUTION

Revised Law

Sec. 161B.051. DEFINITIONS. In this subchapter:

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

(2) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers. The term includes:

(A) the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine;

(B) an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable; and

(C) a retailer, as defined by Section 154.001 or 155.001, Tax Code.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products. (H&S Code, Secs. 161.081(2), (3), (4).)

Source Law

Sec. 161.081. DEFINITIONS. In this subchapter:

(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.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products.

(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 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.

Revisor's Note

Section 161.081(6), Health and Safety Code, defines "wholesaler" for purposes of Subchapter H, Chapter 161, of that code, the majority of which is revised as this subchapter. The revised law omits that

definition as unnecessary because the term is not used elsewhere in Subchapter H, Chapter 161, or in the law revised in this subchapter. The omitted law reads:

> (6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Revised Law

Sec. 161B.052. NONAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a product that is:

(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and

(2) labeled with a "Drug Facts" panel in accordance with United States Food and Drug Administration regulations. (H&S Code, Sec. 161.0815.)

Source Law

> Sec. 161.0815. NONAPPLICABILITY. This subchapter does not apply to a product that is:
> (1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and
> (2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.

Revised Law

Sec. 161B.053. PROHIBITED SALE TO INDIVIDUALS YOUNGER THAN 21 YEARS OF AGE; CRIMINAL OFFENSE. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to an individual younger than 21 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to an individual younger than 21 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is

subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the individual to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the individual's appearance, purports to establish that the individual is not younger than 21 years of age, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1) that the individual to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(g) It is an affirmative defense to prosecution under this section that:

(1) a transaction scan device, as defined by Section 161B.054, identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device, as defined by Section 161B.054, in working condition; and

(B) adequate training in the use of the

transaction scan device. (H&S Code, Secs. 161.082, 161.0825(e).)

Source Law

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 21 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

[Sec. 161.0825]

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Revised Law

Sec. 161B.054. USE OF CERTAIN ELECTRONICALLY READABLE

INFORMATION; CRIMINAL OFFENSE. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or personal identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or personal identification certificate for the purpose of complying with Section 161B.053.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor. (H&S Code, Secs. 161.0825(a), (b), (c), (d).)

Source Law

> Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.
>
> (b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.
>
> (c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.
>
> (d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Revisor's Note

Sections 161.0825(a) and (b), Health and Safety Code, refer to an "identification certificate." The revised law substitutes "personal identification certificate" for "identification certificate" because

"personal identification certificate" is the term used by Section 521.101, Transportation Code, which establishes the requirements for those certificates.

Revised Law

Sec. 161B.055. SALE TO INDIVIDUALS YOUNGER THAN 30 YEARS OF AGE. (a) A person may not sell, give, or cause to be sold or given a cigarette, e-cigarette, or tobacco product to an individual younger than 30 years of age unless the individual presents an apparently valid proof of identification.

(b) A proof of identification described by Section 161B.053(e) satisfies the requirements of Subsection (a).

(c) A retailer shall adequately supervise and train the retailer's employees and agents to prevent a violation of Subsection (a).

(d) Notwithstanding any other law, a violation of this section is not a violation of this subchapter for purposes of Section 161B.065. (H&S Code, Sec. 161.083.)

Source Law

> Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 30 YEARS OF AGE. (a) A person may not sell, give, or cause to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 30 years of age unless the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presents an apparently valid proof of identification.
>
> (b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).
>
> (c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).
>
> (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.

Revised Law

Sec. 161B.056. WARNING SIGN; CRIMINAL OFFENSE. (a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section. (H&S Code, Sec. 161.084.)

Source Law

> Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which

the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

<u>Revised Law</u>

Sec. 161B.057. STATE LAW NOTIFICATION FOR EMPLOYEES; CRIMINAL OFFENSE. (a) Each retailer shall notify each individual that retailer employs who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to individuals younger than 21 years of age as provided by Section 161B.053 and a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning sign as provided by Section 161B.056, requires each employee to ensure the appropriate sign is always properly displayed while the employee is exercising the employee's duties, and provides a violation of that section is a Class C misdemeanor.

(b) A retailer must provide the notice required by this section not later than 72 hours after the time an individual the retailer employs begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products. The individual shall signify the individual received the notice required by this section by signing a form stating that:

(1) the law has been fully explained;

(2) the individual understands the law; and

(3) the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section must include the date of the signature, the individual's current address, and the individual's social security number. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual's employment with the retailer ends.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) that not later than the seventh day after the date of a demand under that subsection the retailer provides proof to the comptroller or an agent of the comptroller that the employee completed, signed, and dated the forms as required by Subsections (b) and (c). (H&S Code, Sec. 161.085.)

Source Law

> Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that state law:
>
> (1) prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and
>
> (2) requires each person who sells

cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Revisor's Note

Section 161.085(d), Health and Safety Code, refers to an offense under "this section." The revised law substitutes "this subsection" for the quoted language because the offense is created under and limited to Subsection (d).

Revised Law

Sec. 161B.058. VENDOR ASSISTED SALES REQUIRED; PROHIBITED ACCESS TO VENDING MACHINES; CRIMINAL OFFENSE. (a) Except as provided by Subsection (b), a person may not:

(1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or

(2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open at any time to individuals younger than 21 years of age;

(2) a part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment and that is not open at any time to individuals younger than 21 years of age; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code and that is not open at any time to individuals younger than 21 years of age.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor. (H&S Code, Sec. 161.086.)

Source Law

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or

(2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 21 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment and that is not open to persons younger than 21 years of age at any time; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code and that is not open to persons younger than 21 years of age at any time.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to

forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Revised Law

Sec. 161B.059. PROHIBITED DISTRIBUTION AND REDEMPTION; CRIMINAL OFFENSE. (a) A person may not distribute:

(1) a free sample of a cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

(b) A person may not distribute to individuals younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product.

(c) A person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem:

(1) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product if the recipient is an individual younger than 21 years of age.

(d) A coupon or other item that a recipient described by Subsection (c) may use to receive a discounted cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

(e) Notwithstanding any other provision of this section, Subsections (a)(2), (b), (c), and (d) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor. (H&S Code, Sec. 161.087.)

Source Law

Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS. (a) A person may not distribute:

(1) a free sample of a cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

(a-1) A person may not distribute to persons younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product.

(b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem:

(1) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product if the recipient is younger than 21 years of age.

(b-1) A coupon or other item that a recipient described by Subsection (b) may use to receive a discounted cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2), (a-1), (b), and (b-1) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Revisor's Note

Section 161.087(b), Health and Safety Code, states the subsection applies "[e]xcept as provided by Subsection (c)" of Section 161.087 of that code, and Subsection (c) states most of the operative provisions of that section do not apply to certain transactions. The revised law omits the quoted language and adds "[n]otwithstanding any other provision of this section" to Subsection (e) for clarity and consistency with Section 161.087 because that subsection provides the exception.

Revised Law

Sec. 161B.060. SALE OF E-CIGARETTE NICOTINE CONTAINERS. (a) A person may not sell or cause to be sold a container that

contains liquid with nicotine and that is an accessory for an e-cigarette unless the container:

(1) satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or

(2) is a prefilled cartridge that is sealed by the manufacturer and is not intended to be opened by a consumer.

(b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section. (H&S Code, Sec. 161.0875.)

Source Law

> Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS. (a) A person may not sell or cause to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless:
>
> (1) the container satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or
>
> (2) the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer.
>
> (b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section.

Revised Law

Sec. 161B.061. PROHIBITED E-CIGARETTE PRODUCTS; CRIMINAL OFFENSE. (a) For purposes of this section, "e-cigarette product" means a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by Section 161B.001(2)(A)(i), regardless of whether the liquid solution or material contains nicotine. The term does not include a prescription medication or other prescribed substance unrelated to the cessation of smoking.

(b) A person commits an offense if the person markets, advertises, sells, offers for sale, or causes to be sold an e-cigarette product:

(1) in a product container that:

(A) depicts a cartoon-like fictional character mimicking a character primarily aimed at entertaining individuals younger than 21 years of age;

(B) imitates or mimics trademarks or trade dress of products primarily marketed to individuals younger than 21 years of age;

(C) includes a symbol primarily used to market products to individuals younger than 21 years of age;

(D) includes an image or name of a celebrity; or

(E) includes an image resembling a food product, including candy or juice;

(2) in a product shape or design disguised to appear as an alternative product, including a product in the shape or design of:

(A) a school or office supply, such as a highlighter, marker, ink pen, or pencil;

(B) a smart phone, smart watch, smart phone case, or smart watch case;

(C) headphones, including ear buds;

(D) clothing;

(E) a backpack;

(F) a cosmetic, including lipstick; or

(G) a toy;

(3) that is wholly or partially manufactured in or marketed as being manufactured in:

(A) China; or

(B) a country designated as a foreign adversary by the United States secretary of commerce under 15 C.F.R. Section 791.4; or

(4) that contains, is mixed with, or is marketed as containing or being mixed with any cannabinoids, alcohol, kratom, kava, mushrooms, tianeptine, or any derivatives of those substances.

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

(H&S Code, Sec. 161.0876.)

Source Law

Sec. 161.0876. PROHIBITED E-CIGARETTE PRODUCTS. (a) For purposes of this section, "e-cigarette product" means a consumable liquid solution or other material aerosolized or vaporized during the use of an electric cigarette or other device described by Section 161.081(1-a), regardless of whether the liquid solution or material contains nicotine. The term does not include a prescription medication or other prescribed substance unrelated to the cessation of smoking.

(b) A person commits an offense if the person markets, advertises, sells, offers for sale, or causes to be sold an e-cigarette product:

(1) in a product container that:

(A) depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;

(B) imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;

(C) includes a symbol that is primarily used to market products to minors;

(D) includes an image or name of a celebrity; or

(E) includes an image that resembles a food product, including candy or juice;

(2) in a product shape or design disguised to appear as an alternative product, including a product in the shape or design of:

(A) a school or office supply, such as a highlighter, marker, ink pen, or pencil;

(B) a smart phone, smart watch, smart phone case, or smart watch case;

(C) headphones, including ear buds;

(D) clothing;

(E) a backpack;

(F) a cosmetic, including lipstick; or

(G) a toy;

(3) that is wholly or partially manufactured in or marketed as being manufactured in:

(A) China; or

(B) a country designated as a foreign adversary by the United States secretary of commerce under 15 C.F.R. Section 791.4; or

(4) that contains, is mixed with, or is marketed as containing or being mixed with any cannabinoids, alcohol, kratom, kava, mushrooms, tianeptine, or any derivatives of those substances.

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

Revisor's Note

Section 161.0876(a), Health and Safety Code, refers to "an electric cigarette or other device described by Section 161.081(1-a)." The revised law substitutes "electronic cigarette" for "electric

cigarette" for clarity and consistency with the chapter-wide definition of "e-cigarette." The revised law substitutes "Section 161B.001(2)(A)(i)" for "Section 161.081(1-a)" because the pertinent part of Section 161.081(1-a) is revised as Section 161B.001(2)(A)(i).

Revised Law

Sec. 161B.062. ENFORCEMENT; UNANNOUNCED INSPECTIONS; DECOYS. (a) The comptroller shall enforce this subchapter in partnership and cooperation with local law enforcement agencies and shall ensure the state's compliance with:

(1) Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26); and

(2) any implementing regulations adopted by the United States Department of Health and Human Services.

(b) Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter D or G.

(c) The comptroller may award block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter C in a manner reasonably expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to individuals younger than 21 years of age.

(d) At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter C. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter C.

(e) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies

may assist the comptroller in the administration and enforcement of this subchapter.

(f) The use of an individual younger than 21 years of age to act as a decoy to test compliance with this subchapter and Subchapter C shall be conducted in a fashion that promotes fairness. An individual younger than 21 years of age may be enlisted by the comptroller or a local law enforcement agency to act as a decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of an individual younger than 18 years of age to act as a decoy to test compliance with this subchapter and Subchapter C;

(2) at the time of the inspection, order, or delivery, the decoy is an individual younger than 21 years of age;

(3) the decoy has an appearance that would cause a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco products to request identification and proof of age;

(4) the decoy carries either the decoy's own identification showing the decoy's correct date of birth or carries no identification, and a decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the decoy answers truthfully any questions about the decoy's age at the time of the inspection, order, or delivery.

(g) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26). (H&S Code, Sec. 161.088.)

Source Law

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller

may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R in a manner that can reasonably be expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to persons who are younger than 21 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 21 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R;

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than 21 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age at the time of the inspection, order, or delivery.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Revisor's Note

Section 161.088, Health and Safety Code, refers to a "minor decoy." The revised law substitutes "decoy" for "minor decoy" to avoid the use of "minor" when referencing an individual younger than 21 years of age for the reason stated in Revisor's Note (2) to

Section 161B.001.

Revised Law

Sec. 161B.063. PREEMPTION OF LOCAL LAW. (a) Except as provided by Subsection (b), this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

(b) A political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter. (H&S Code, Sec. 161.089.)

Source Law

> Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Except as provided by Subsection (b), this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:
>
> (1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or
>
> (2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.
>
> (b) A political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter.

Revised Law

Sec. 161B.064. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day

after that date, of any violation of this subchapter that occurred during the preceding month that the agency or unit detects, investigates, or prosecutes. (H&S Code, Sec. 161.090.)

Source Law

> Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Revised Law

Sec. 161B.065. DISCIPLINARY ACTION AGAINST RETAILERS AND PERMIT HOLDERS. (a) A retailer is subject to disciplinary action as provided by this section if the retailer's employee or agent commits an offense under this subchapter.

(b) If the comptroller finds, after notice and an opportunity for a hearing as provided by Chapter 2001, Government Code, that a permit holder 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 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 Subsection (c) may not apply for a permit for the same place of 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 during the 48-month period preceding the violation in question;

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

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

(f) The comptroller may adopt rules to implement this section. (H&S Code, Sec. 161.0901.)

Source Law

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.

(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 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.

Revised Law

Sec. 161B.066. E-CIGARETTE REPORT. (a) Not later than January 5 of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report at a minimum must include:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter and Subchapter C;

(2) a baseline of statistics and analysis regarding

illegal e-cigarette sales, including:

(A) sales to individuals younger than 21 years of age;

(B) enforcement actions concerning individuals younger than 21 years of age; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the department's future goals and plans to decrease the use of e-cigarettes;

(5) the department's educational programs and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for cigarettes or tobacco products required by law. (H&S Code, Sec. 161.0902.)

Source Law

Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than January 5th of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter and Subchapter R;

(2) a baseline of statistics and analysis regarding illegal e-cigarette sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the department to decrease the use of e-cigarettes;

(5) the educational programs of the department and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for

cigarettes or tobacco products required by law.

Revised Law

Sec. 161B.067. USE OF CERTAIN REVENUE. Revenue from fees collected under Section 161B.303 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; and

(2) the comptroller for the purpose of administering and enforcing this subchapter and Subchapters D and G. (H&S Code, Sec. 161.0903.)

Source Law

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

SUBCHAPTER C. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

Revised Law

Sec. 161B.101. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mail or any other delivery service, or through the Internet or another online service, or the cigarettes or e-cigarettes are delivered by use of mail or another delivery service. The term:

(A) includes a sale of cigarettes or e-cigarettes regardless of whether the seller is located in this state; and

(B) does not include a sale of cigarettes or e-cigarettes for a purpose other than personal consumption to a wholesale dealer or retail dealer.

(2) "Delivery service" means a person, including the United States Postal Service, engaged in the commercial delivery of letters, packages, or other containers. (H&S Code, Secs. 161.451(1), (2).)

Source Law

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or e-cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes or e-cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or e-cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

Revisor's Note

Sections 161.451(3) and (4), Health and Safety Code, respectively, define "shipping container" and "shipping documents" for purposes of Subchapter R, Chapter 161, Health and Safety Code. Because "shipping container" and "shipping documents" are not used elsewhere in that subchapter, the revised law omits those definitions as unnecessary. The omitted law reads:

(3) "Shipping container" means a container in which cigarettes or e-cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters,

packages, or other containers.

Revised Law

Sec. 161B.102. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual younger than the age prescribed by Section 161B.053.

(b) A person taking a delivery sale order of cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161B.103;

(2) the disclosure requirements prescribed by Section 161B.104;

(3) the registration and reporting requirements prescribed by Section 161B.105;

(4) the tax collection requirements prescribed by Section 161B.106; and

(5) each state law generally applicable to cigarette sales occurring entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161B.103;

(2) the disclosure requirements prescribed by Section 161B.104;

(3) the registration and reporting requirements prescribed by Section 161B.105; and

(4) each state law generally applicable to e-cigarette sales occurring entirely within this state. (H&S Code, Sec. 161.452.)

Source Law

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order of cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456;

(4) the tax collection requirements prescribed by Section 161.457; and

(5) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456; and

(4) each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

Revised Law

Sec. 161B.103. AGE VERIFICATION REQUIREMENTS. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective purchaser a certification that includes:

(A) reliable confirmation the prospective purchaser is at least 21 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual younger than the age prescribed by Section 161B.053 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming the prospective purchaser

wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification the prospective purchaser provides under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161B.104; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit card or debit card issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies the prospective purchaser is at least 21 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the

prospective purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card issued in the prospective purchaser's name or by a check associated with a bank account in the prospective purchaser's name. (H&S Code, Sec. 161.453.)

Source Law

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 21 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 21 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the prospective purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card that has been issued in the prospective purchaser's name or by a check that is associated with a bank account in the prospective purchaser's name.

Revisor's Note

Section 161.453(a)(1), Health and Safety Code, refers to a "prospective customer" while other provisions of that section refer to a "prospective purchaser." The revised law substitutes "prospective purchaser" for "prospective customer" for consistency of terminology used in the revised section and because it is clear, in this context, that the "prospective customer" is the "prospective purchaser" referenced elsewhere in that section.

Revised Law

Sec. 161B.104. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161B.103(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals younger than the age prescribed by Section 161B.053 are illegal under state law;

(2) cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161B.103; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and include an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a

prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161B.053 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161B.103. (H&S Code, Sec. 161.454.)

Source Law

Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161.453(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161.082 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161.453.

Revised Law

Sec. 161B.105. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name;

(2) the address of the person's principal place of business and any other place of business; and

(3) the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the preceding month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand of cigarettes or e-cigarettes sold; and

(3) the quantity of cigarettes or e-cigarettes sold.

(c) With respect to cigarettes, a person who complies with 15 U.S.C. Section 376 is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section 161B.064 to the comptroller as having violated Subchapter B.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the preceding two years unless the person has previously submitted the memorandum or copy to the comptroller.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record was prepared. (H&S Code, Sec. 161.456.)

Source Law

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and

(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes or e-cigarettes that were sold; and

(3) the quantity of cigarettes or e-cigarettes that were sold.

(c) With respect to cigarettes, a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section 161.090 to the comptroller as having violated Subchapter H.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record was prepared.

Revised Law

Sec. 161B.106. COLLECTION OF TAXES. (a) A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by the state in relation to the delivery sale.

(b) A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state. (H&S Code, Sec. 161.457.)

Source Law

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Revised Law

Sec. 161B.107. GENERAL CRIMINAL OFFENSE. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) An offense under Subsection (a) is a Class C misdemeanor, except the offense is a Class B misdemeanor if it is shown on the trial of a person that the person has previously been convicted of an offense under this section. (H&S Code, Sec. 161.458.)

Source Law

> Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.
>
> (b) An offense under Subsection (a) is a Class C misdemeanor.
>
> (c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Revised Law

Sec. 161B.108. CRIMINAL OFFENSE FOR KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161B.103(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree. (H&S Code, Sec. 161.459.)

Source Law

> Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.
>
> (b) An offense under this section is a felony of the third degree.

Revised Law

Sec. 161B.109. CIVIL PENALTY FOR NONPAYMENT OF TAX. (a) A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due.

(b) The penalty provided by this section is in addition to any other penalty provided by law. (H&S Code, Sec. 161.460.)

Source Law

> Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Revised Law

Sec. 161B.110. FORFEITURE. (a) Cigarettes or e-cigarettes a person sells or attempts to sell in a delivery sale that does not

comply with this subchapter are forfeited to this state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to this state. (H&S Code, Sec. 161.461.)

Source Law

> Sec. 161.461. FORFEITURE. (a) Cigarettes or e-cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.
>
> (b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Revised Law

Sec. 161B.111. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person. (H&S Code, Sec. 161.462.)

Source Law

> Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

SUBCHAPTER D. PROHIBITED POSSESSION, PURCHASE, AND USE BY INDIVIDUALS YOUNGER THAN 21 YEARS OF AGE

Revised Law

Sec. 161B.151. PROHIBITED POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT; CRIMINAL OFFENSE. (a) An individual younger than 21 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or

(2) falsely represents the individual to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age to obtain possession of, purchase, or receive a cigarette,

e-cigarette, or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the individual's duties as an employee;

(2) is participating in an inspection or test of compliance in accordance with Section 161B.062; or

(3) both:

(A) is at least 18 years of age; and

(B) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(c) An offense under this section is punishable by a fine not to exceed $100.

(d) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161B.153 on or after the individual's 21st birthday. (H&S Code, Sec. 161.252.)

Source Law

> Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 21 years of age commits an offense if the individual:
>
> (1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or
>
> (2) falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.
>
> (b) It is an exception to the application of this section that the individual younger than 21 years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 21 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(c-1) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) An offense under this section is punishable by a fine not to exceed $100.

(e) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161.255 on or after the individual's 21st birthday.

Revised Law

Sec. 161B.152. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM OR RELATED COMMUNITY SERVICE. (a) On conviction of an individual younger than 21 years of age for an offense under Section 161B.151, the court shall suspend the imposition of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.

(b) On request, an e-cigarette and tobacco awareness program may be taught in a language other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and tobacco awareness program is not readily available, the court shall require the defendant to perform 8 to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.

(d) The e-cigarette and tobacco awareness program and the e-cigarette- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161B.151, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness

program or the e-cigarette- and tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court:

(1) for a defendant previously convicted of an offense under Section 161B.151, shall impose the sentence, and at the discretion of the court, may reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) for a defendant not previously convicted of an offense under Section 161B.151, shall discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161B.151 committed after the dismissal under Subsection (f)(2). (H&S Code, Sec. 161.253.)

Source Law

> Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.
>
> (b) On request, an e-cigarette and tobacco awareness program may be taught in languages other than English.
>
> (c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.
>
> (d) The e-cigarette and tobacco awareness program and the e-cigarette- and tobacco-related community service are remedial and are not punishment.
>
> (e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette- and tobacco-related community service.
>
> (f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Revised Law

Sec. 161B.153. EXPUNCTION OF CONVICTION; FEE. (a) An individual convicted of an offense under Section 161B.151 may apply to the court to have the conviction expunged on or after the individual's 21st birthday. The court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a reimbursement fee in the amount of $30 for each application for expunction filed under this section to defray the cost of notifying state agencies of orders of expunction under this section. (H&S Code, Sec. 161.255.)

Source Law

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged on or after the individual's 21st birthday. The court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a reimbursement fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Revised Law

Sec. 161B.154. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or

perform e-cigarette- and tobacco-related community service. (H&S Code, Sec. 161.256.)

Source Law

> Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or perform e-cigarette- and tobacco-related community service.

Revised Law

Sec. 161B.155. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter. (H&S Code, Sec. 161.257.)

Source Law

> Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

SUBCHAPTER E. PUBLIC PROGRAMS

Revised Law

Sec. 161B.201. E-CIGARETTE AND TOBACCO USE PUBLIC AWARENESS CAMPAIGN. (a) The department shall develop and implement a public awareness campaign designed to reduce the use by minors in this state of e-cigarettes and tobacco. The campaign may use advertisements or similar media to provide educational information about e-cigarette and tobacco use.

(b) The department may contract with another person to develop and implement the public awareness campaign. The department shall award the contract:

(1) on the basis of competitive bids; and

(2) only to a business with a proven background in advertising and public relations.

(c) The department may not award a contract under Subsection (b) to:

(1) a person required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (e);

(2) any partner, employee, employer, relative,

contractor, consultant, or related entity of a person described by Subdivision (1) and not described by Subsection (e); or

(3) a person hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(d) A person described by Subsection (c) is not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(e) A person required to register under Chapter 305, Government Code, is not ineligible under Subsections (c) and (d) if the registration is required under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action relating to a state agency's purchase of products or services. (H&S Code, Sec. 161.301.)

Source Law

> Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS CAMPAIGN. (a) The department shall develop and implement a public awareness campaign designed to reduce the use by minors in this state of tobacco and e-cigarettes as defined by Section 161.081. The campaign may use advertisements or similar media to provide educational information about tobacco and e-cigarette use.
>
> (b) The department may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.
>
> (c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.
>
> (d) The department may not award a contract under Subsection (b) to:
>
> (1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (f);
>
> (2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f); or
>
> (3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.
>
> (e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(f) A registrant under Chapter 305, Government Code, is not ineligible under Subsections (d) and (e) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products or services by a state agency.

Revisor's Note

Sections 161.301(d) and (e), Health and Safety Code, bar a "person or entity" and "persons or entities" required to register with the Texas Ethics Commission from being awarded a contract. The revised law omits the references to entity and entities because Section 311.005(2), Government Code (Code Construction Act), defines "person" to include any legal entity.

Revised Law

Sec. 161B.202. GRANT PROGRAM FOR YOUTH GROUPS. (a) In this section, "youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (b), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

(b) The person administering Section 161B.201 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of use by the group's members of e-cigarettes and tobacco. (H&S Code, Sec. 161.302.)

Source Law

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of use by the group's members of tobacco and e-cigarettes as defined by Section 161.081.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

SUBCHAPTER F. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS

Revised Law

Sec. 161B.251. DEFINITION. In this subchapter, "manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code. (H&S Code, Sec. 161.351(2).)

Source Law

Sec. 161.351. DEFINITIONS. In this subchapter:

(2) "Manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code.

Revised Law

Sec. 161B.252. ANNUAL REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, identifying each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(1) tobacco;

(2) water; or

(3) a reconstituted tobacco sheet made wholly from tobacco.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if the United States Food and Drug Administration or a successor entity has approved that ingredient as safe when burned and inhaled.

(c) The executive commissioner by rule shall establish the date by which an annual report must be filed under this section and shall prescribe the form for the report. (H&S Code, Sec. 161.352.)

Source Law

> Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:
>
> (1) tobacco;
>
> (2) water; or
>
> (3) a reconstituted tobacco sheet made wholly from tobacco.
>
> (b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.
>
> (c) The executive commissioner by rule shall establish the time for filing an annual report under this section and shall prescribe the form for the report.

Revised Law

Sec. 161B.253. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless the information is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department obtains the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law. (H&S Code, Sec. 161.354.)

Source Law

> Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.
>
> (b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.
>
> (c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.
>
> (d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.

Revised Law

Sec. 161B.254. INJUNCTION. (a) A district court, on petition of the department and on the court's finding that a manufacturer failed to file the report required by Section 161B.252, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall bring and maintain an action authorized by this section at the request of the department and in the name of the state.

(c) An action for injunctive relief must be brought in Travis County. (H&S Code, Sec. 161.355.)

Source Law

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Revisor's Note

Section 161.355, Health and Safety Code, requires the attorney general to "institute and conduct a suit" authorized by that section and also references a "suit." The revised law substitutes "bring and maintain an action" and "action" for the quoted language, respectively, because the substituted language is consistent with modern usage in laws relating to civil actions.

Revised Law

Sec. 161B.255. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter. (H&S Code, Sec. 161.356.)

Source Law

Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter.

SUBCHAPTER G. PROHIBITED ADVERTISING

Revised Law

Sec. 161B.301. DEFINITIONS. In this subchapter:

(1) "Church" means a facility owned by a religious organization and used primarily for religious services.

(2) "School" means a private or public elementary or secondary school.

(3) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway. (H&S Code, Secs. 161.121(1), (3), (4).)

Source Law

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(3) "School" means a private or public elementary or secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

Revised Law

Sec. 161B.302. PROHIBITED SIGN LOCATIONS; CRIMINAL OFFENSE. (a) Except as provided by this section, a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products may not be located within 1,000 feet of a church or school. The measurement of the distance between the sign and a church or school is from the nearest property line of the church or school to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(b) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period. For purposes of this subsection, "facility" includes a stadium, arena, or events center and any land or property the professional sports franchise owns or leases that is connected to or immediately contiguous to the stadium, arena, or events center.

(c) Subsection (a) does not apply to a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products that, before September 1, 1997, was located within 1,000 feet of a church or school but that was not located within 500 feet of the church or school.

(d) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor. (H&S Code, Sec. 161.122.)

Source Law

> Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products may not be located closer than 1,000 feet to a church or school.
>
> (b) The measurement of the distance between the sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.
>
> (c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.
>
> (d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.
>
> (e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.
>
> (f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

Revised Law

Sec. 161B.303. ADVERTISING FEE. (a) In this section, "gross sales price" means the sum of the costs of:

(1) production;

(2) media; and

(3) sales or commissions paid to an agency or broker.

(b) A purchaser of advertising is liable for and shall remit

to the comptroller a fee in an amount equal to 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall:

(1) by rule establish the fee collection period and payment method;

(2) adopt other rules necessary to administer and enforce this section; and

(3) collect the fee prescribed by this section. (H&S Code, Sec. 161.123.)

Source Law

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

(1) production costs;

(2) media cost; and

(3) cost of sales or commissions paid to an agency or broker.

Revised Law

Sec. 161B.304. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising who is required to comply with Section 161B.303 and violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing the penalty.

(c) The amount of the penalty must be based on:

(1) the amount of fees due and owing;

(2) attempted concealment of misconduct by the purchaser of advertising who committed the violation;

(3) premeditated misconduct by the purchaser who committed the violation;

(4) intentional misconduct by the purchaser who committed the violation;

(5) the motive of the purchaser who committed the violation;

(6) prior misconduct of a similar or related nature by the purchaser who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official regarding statutes or rules pertaining to the misconduct;

(8) violation by the purchaser who committed the violation of a comptroller order;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the purchaser of advertising of the comptroller's order. The notice must include a statement of the rights of the purchaser to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be

deposited to the credit of the general revenue fund. (H&S Code, Sec. 161.125.)

Source Law

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the amount of fees due and owing;

(2) attempted concealment of misconduct by the person who committed the violation;

(3) premeditated misconduct by the person who committed the violation;

(4) intentional misconduct by the person who committed the violation;

(5) the motive of the person who committed the violation;

(6) prior misconduct of a similar or related nature by the person who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(8) violation by the person who committed the violation of an order of the comptroller;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

Revised Law

Sec. 161B.305. PROHIBITED IMAGES AND SIGNAGE; CRIMINAL OFFENSE. (a) In this section, "retailer" has the meaning assigned by Section 161B.051.

(b) A retailer commits an offense if the retailer uses in

any manner related to the retailer's marketing, advertising, or sale of cigarettes, e-cigarettes, or tobacco products a sign, logo, or other design mark that:

(1) depicts a cartoon-like fictional character primarily aimed at entertaining individuals younger than 21 years of age;

(2) imitates or mimics the trademarks or visual appearance of products primarily marketed to individuals younger than 21 years of age;

(3) includes a symbol primarily used to market products to individuals younger than 21 years of age;

(4) includes an image of a celebrity; or

(5) includes an image resembling a food product, such as candy or juice.

(c) An offense under this section is a Class B misdemeanor. (H&S Code, Sec. 161.124.)

Source Law

Sec. 161.124. PROHIBITED IMAGES AND SIGNAGE; CRIMINAL OFFENSE. (a) In this section, "e-cigarette" and "retailer" have the meanings assigned by Section 161.081.

(b) A retailer commits an offense if the retailer uses in any manner related to the retailer's marketing, advertising, or sale of cigarettes, e-cigarettes, or tobacco products a sign, logo, or other design mark that:

(1) depicts a cartoon-like fictional character primarily aimed at entertaining minors;

(2) imitates or mimics the trademarks or visual appearance of products primarily marketed to minors;

(3) includes a symbol primarily used to market products to minors;

(4) includes an image of a celebrity; or

(5) includes an image resembling a food product, such as candy or juice.

(c) An offense under this section is a Class B misdemeanor.

Revisor's Note

(1) Section 161.124, Health and Safety Code, defines "e-cigarette" and "retailer." The revised law omits the definition of "e-cigarette" because it duplicates the chapter-wide definition for that term in Section 161B.001(2) of the revised law. The revised

law substitutes "Section 161B.051" for "Section 161.081" in the definition for "retailer" because the pertinent part of Section 161.081 is revised as that section.

(2) Section 161.124(a), Health and Safety Code, defines "retailer" as having the meaning assigned by Section 161.081 of that code. The provision of Section 161.081 that defines the term is revised as Section 161B.051 of this chapter, and the revised law is drafted accordingly.

SUBCHAPTER H. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Revised Law

Sec. 161B.351. PURPOSE. The purpose of this subchapter is to:

(1) recover health care costs to the state imposed by non-settling manufacturers;

(2) prevent non-settling manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs funded wholly or partly by payments to the state under the tobacco settlement agreement and recoup for the state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;

(4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers making payments on Texas sales under the master

settlement agreement until the effective date of a credit amendment to that agreement that provides those manufacturers with a credit for payments to the state; and

(5) provide funding for any purpose the legislature determines. (H&S Code, Sec. 161.601.)

Source Law

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) recover health care costs to the state imposed by non-settling manufacturers;

(2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;

(4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and

(5) provide funding for any purpose the legislature determines.

Revised Law

Sec. 161B.352. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products with a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than

tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161B.355.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or

distribution. The term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement.

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement.

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B).

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on

March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date. (H&S Code, Secs. 161.602(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) (part), (15).)

Source Law

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter, the

term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (15).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement described by Subdivision (15).

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B). . . .

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date.

Revised Law

Sec. 161B.353. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to any law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code. (H&S Code, Sec. 161.613.)

Source Law

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code.

Revised Law

Sec. 161B.354. RULES. The comptroller may adopt rules as necessary to implement or enforce this subchapter. (H&S Code, Sec. 161.614.)

Source Law

Sec. 161.614. RULES. The comptroller may issue rules and regulations as necessary to carry out or enforce this subchapter.

Revised Law

Sec. 161B.355. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section is:

(1) in addition to any other privilege, license, fee, or tax required or imposed by state law; and

(2) except as otherwise provided by this subchapter, imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(c) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which the fee

is due.

(d) The fee imposed by this section does not apply to:

(1) cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161B.352(15)(A); or

(2) cigarettes or cigarette tobacco products sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376. (H&S Code, Sec. 161.603.)

Source Law

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(15)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(f) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Revised Law

Sec. 161B.356. RATE OF FEE. (a) In January of each year, the comptroller shall adjust the rate of the fee for cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161B.355, by increasing the rate in effect on the date the adjustment is made by the greater of:

(1) three percent; or

(2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for December a year earlier.

(b) The adjusted rate of the fee determined under Subsection (a) takes effect on February 1 of the year in which the adjusted rate is determined and remains in effect until January 31 of the following year.

(c) The fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer is, for calendar months beginning before the effective date of a credit amendment, imposed at the rate of 0.75 cents for:

(1) each non-settling manufacturer cigarette; and

(2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product.

(d) For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

(e) A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Subsections (c) and (d) unless the manufacturer has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that

the manufacturer is a subsequent participating manufacturer. (H&S Code, Secs. 161.602(14) (part), 161.604(b), (b-1), (c); New.)

Source Law

[Sec. 161.602]

(14) . . . A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

[Sec. 161.604]

(b) Beginning in January 2014, and in January of each subsequent year, the comptroller shall adjust the rate of the fee by increasing the rate in effect on the date the adjustment is made by the greater of:

(1) three percent; or

(2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for December a year earlier.

(b-1) The adjusted rate of the fee determined under Subsection (b) takes effect on February 1 of the year in which the adjusted rate is determined and remains in effect until January 31 of the following year.

(c) Notwithstanding Subsection (a), the rate of the fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer shall, for calendar months beginning before the effective date of a credit amendment, be calculated by substituting 0.75 cents for 2.75 cents in Subsection (a). For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

Revisor's Note

(1) Section 161.604(a), Health and Safety Code, provides a rate calculation for fees for the 2013 calendar year. Accordingly, the revised law omits that provision, and references to that provision, as executed. The omitted law reads:

> Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603, during the 2013 calendar year, the fee is imposed at the rate of 2.75 cents for:
>
> (1) each non-settling manufacturer cigarette; and

(2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product described by Section 161.602(3).

(2) Section 161.604(b), Health and Safety Code, refers to "the fee." In the context of Section 161.604, the fee is clearly a secondary reference to the fee "[f]or cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603" described in Subsection (a) of that section, which is omitted as executed. For clarity and convenience of the reader, the revised law adds a cross-reference to revised Section 161B.355.

(3) Section 161.604(c), Health and Safety Code, provides that, for a subsequent participating manufacturer during the calendar months before the effective date of a credit amendment, the manufacturer's rate of the fee is calculated by "substituting 0.75 cents for 2.75 cents in Subsection (a)." Because Subsection (a) of Section 161.604 is omitted as executed for the reason stated in Revisor's Note (1), for clarity and convenience of the reader, the revised law substitutes for the quoted language the substance of the fee calculation in Subsection (a) and incorporates the 0.75-cent modification.

Revised Law

Sec. 161B.357. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211,

Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161B.355 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Sections 161B.356(a), (b), (c), and (d).

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the

manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer showing whether that manufacturer:

(A) is a subsequent participating manufacturer; or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment. (H&S Code, Sec. 161.605.)

Source Law

Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of

business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer showing whether that manufacturer:

(A) is a subsequent participating manufacturer; or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment.

Revised Law

Sec. 161B.358. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the non-settling manufacturer's complete name, address, and telephone number;

(2) the date the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products the non-settling manufacturer will offer for sale or distribution in this state;

(4) a statement that the non-settling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller. (H&S Code, Sec. 161.606.)

Source Law

> Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:
>
> (1) the non-settling manufacturer's complete name, address, and telephone number;
>
> (2) the date that the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;
>
> (3) the names of the brand families of the cigarettes or cigarette tobacco products that the non-settling manufacturer will offer for sale or distribution in this state;
>
> (4) a statement that the non-settling manufacturer intends to comply with this subchapter; and
>
> (5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.
>
> (b) The attorney general shall make the information provided under this section available to the comptroller.

Revised Law

Sec. 161B.359. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161B.355 is not made, shall be treated in the same manner as cigarettes or cigarette tobacco products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid,

and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters. (H&S Code, Sec. 161.607.)

Source Law

> Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161.603 is not made, shall be treated as cigarettes or cigarette tobacco products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

Revised Law

Sec. 161B.360. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process. (H&S Code, Sec. 161.608.)

Source Law

> Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process.

Revised Law

Sec. 161B.361. AUDIT OR INSPECTION OF FINANCIAL RECORDS. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and the manufacturer's distributors to ensure compliance with this subchapter. (H&S Code, Sec. 161.609.)

Source Law

> Sec. 161.609. AUDIT OR INSPECTION. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with this subchapter.

Revised Law

Sec. 161B.362. COMPTROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entity responsible for making calculations or

other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties to the agreement, the volume of cigarettes on which the fee required under Section 161B.355 is paid, itemized by cigarette manufacturer and brand family. (H&S Code, Sec. 161.610.)

Source Law

> Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties thereto, the volume of cigarettes on which the fee required under Section 161.603 is paid, itemized by cigarette manufacturer and brand family.

Revised Law

Sec. 161B.363. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment. (H&S Code, Sec. 161.612.)

Source Law

> Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Revised Law

Sec. 161B.364. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited in the state treasury to the credit of the general revenue fund. (H&S Code, Sec. 161.611.)

Source Law

> Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.