

By: Johnson, et al.

S.B. No. 1332

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to sales and use taxes on e-cigarette vapor products;  
3 imposing taxes; providing an administrative penalty.

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

5 SECTION 1. Subtitle E, Title 2, Tax Code, is amended by  
6 adding Chapter 164 to read as follows:

## CHAPTER 164. TAX ON E-CIGARETTE VAPOR PRODUCTS

Sec. 164.0001. DEFINITIONS. In this chapter:

14 Sec. 164.0002. E-CIGARETTE VAPOR PRODUCT SALES TAX. (a) A  
15 tax is imposed on each sale of a vapor product in this state.

16                   (b) The tax rate is five cents for each milliliter or  
17 fractional part of a milliliter of vapor product sold.

18       (c) The tax imposed under this section is in addition to the  
19 tax imposed under Subchapter C, Chapter 151. The tax imposed under  
20 this section does not apply to a sale unless the tax imposed under  
21 Subchapter C, Chapter 151, applies to the sale.

22 Sec. 164.0003. E-CIGARETTE VAPOR PRODUCT USE TAX. (a) A  
23 tax is imposed on the storage, use, or other consumption in this  
24 state of a vapor product purchased from a retailer for storage, use,

1 or other consumption in this state.

2       (b) The tax rate is five cents for each milliliter or  
3 fractional part of a milliliter of vapor product stored, used, or  
4 otherwise consumed in this state.

5       (c) The tax imposed under this section is in addition to the  
6 tax imposed under Subchapter D, Chapter 151. The tax imposed under  
7 this section does not apply to the storage, use, or other  
8 consumption of a vapor product unless the tax imposed under  
9 Subchapter D, Chapter 151, applies to the storage, use, or other  
10 consumption.

11       Sec. 164.0004. APPLICATION OF OTHER PROVISIONS OF CODE.

12       (a) Except as provided by this chapter:

13           (1) the taxes imposed under this chapter are  
14 administered, imposed, collected, and enforced in the same manner  
15 as the taxes under Chapter 151 are administered, imposed,  
16 collected, and enforced; and

17           (2) the provisions of Chapter 151 applicable to the  
18 sales tax imposed under Subchapter C, Chapter 151, and the use tax  
19 imposed under Subchapter D, Chapter 151, apply to the sales and use  
20 taxes imposed under this chapter.

21       (b) A change in the law relating to the taxation of the sale  
22 or use of a vapor product under Chapter 151 also applies to the  
23 sales or use tax imposed under this chapter.

24       Sec. 164.0005. REPORTS. (a) A person required to file a  
25 report under Section 151.403 who is also required to collect or pay  
26 a tax under this chapter shall file with the comptroller a report  
27 stating:

1                   (1) for sales tax purposes, the volume of vapor  
2 products sold by the seller during the reporting period;

3                   (2) for use tax purposes, the volume of vapor products  
4 sold by the retailer during the reporting period for storage, use,  
5 or other consumption in this state;

6                   (3) the volume of vapor products subject to the use tax  
7 that were acquired during the reporting period for storage, use, or  
8 other consumption in this state by a purchaser who did not pay the  
9 tax to a retailer;

10                   (4) the amount of the taxes due under this chapter for  
11 the reporting period; and

12                   (5) any other information required by the comptroller.

13                   (b) The report required by this section for a reporting  
14 period is due on the same date that the tax payment for the period is  
15 due.

16                   Sec. 164.0006. RECORDS. A person required to file a report  
17 under Section 151.403 who is also required to collect or pay a tax  
18 under this chapter shall keep a complete record of:

19                   (1) the volume of vapor products sold in this state  
20 during each reporting period;

21                   (2) the volume of vapor products, including the  
22 constituent parts of vapor products, purchased from every source  
23 during each reporting period;

24                   (3) all sales and use taxes, and any money represented  
25 to be sales or use tax, collected during each reporting period; and

26                   (4) any other information required by the comptroller.

27                   Sec. 164.0007. DISPOSITION OF PROCEEDS. The comptroller

1 shall deposit the proceeds from taxes imposed under this chapter to  
2 the credit of the general revenue fund.

3 Sec. 164.0008. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS.

4 (a) A person required to file a report under Section 151.403 who is  
5 also required to collect or pay a tax under this chapter is subject  
6 to disciplinary action as provided by this section if:

7 (1) an agent or employee of the person commits an  
8 offense under Subchapter H, Chapter 161, Health and Safety Code;  
9 and

10 (2) the person, with criminal negligence, failed to  
11 prevent the offense through adequate supervision and training of  
12 the agent or employee.

13 (b) If the comptroller finds, after notice and an  
14 opportunity for a hearing, that a person described by Subsection  
15 (a) has violated Subchapter H, Chapter 161, Health and Safety Code,  
16 at a place of business for which a sales tax permit under Chapter  
17 151 has been issued, the comptroller may suspend the permit for that  
18 place of business or administratively assess a fine as follows:

19 (1) if the person has not been found to have violated  
20 Subchapter H, Chapter 161, Health and Safety Code, at that place of  
21 business during the preceding 12 months, the comptroller may  
22 require the person to pay a fine in an amount not to exceed \$500;

23 (2) if the person has been found to have violated  
24 Subchapter H, Chapter 161, Health and Safety Code, at that place of  
25 business once during the preceding 12 months, the comptroller may  
26 require the person to pay a fine in an amount not to exceed \$750; and

27 (3) if the person has been found to have violated

1 Subchapter H, Chapter 161, Health and Safety Code, at that place of  
2 business at least twice during the preceding 12 months, the  
3 comptroller may require the person to pay a fine in an amount not to  
4 exceed \$1,000 or suspend the sales tax permit for that place of  
5 business for not more than three days.

6       (c) Except as provided by Section 164.0009, if the person  
7 has been found to have violated Section 161.082(b), Health and  
8 Safety Code, on four or more previous and separate occasions at the  
9 same place of business during the preceding 24 months, the  
10 comptroller shall revoke the sales tax permit for that place of  
11 business.

12       (d) A person whose sales tax permit has been revoked under  
13 this section may not apply for a sales tax permit under Chapter 151  
14 for the same place of business before the expiration of six months  
15 after the effective date of the revocation.

16       Sec. 164.0009. ACTIONS OF EMPLOYEE. (a) For purposes of  
17 Subchapter H, Chapter 161, Health and Safety Code, and the  
18 provisions of this code relating to the sale or delivery of  
19 e-cigarettes to a minor, the comptroller may suspend a sales tax  
20 permit of a person required to file a report under Section 151.403  
21 who is also required to collect or pay a tax under this chapter but  
22 may not revoke the permit under Section 164.0008 if the comptroller  
23 finds that:

24           (1) the person has not violated Section 161.082(b),  
25 Health and Safety Code, more than four times at the place of  
26 business for which the permit is issued in the 24-month period  
27 preceding the violation in question;

S.B. No. 1332

3 (3) the employee has actually attended a  
4 comptroller-approved seller training program; and

21 SECTION 2. This Act takes effect September 1, 2019.