

By: Craddick

H.B. No. 3772

A BILL TO BE ENTITLED

AN ACT

relating to the sale of certain e-cigarettes in this state and a directory of e-cigarette manufacturers and their products; authorizing fees; authorizing administrative and civil penalties; creating a criminal offense.

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

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. E-CIGARETTE DIRECTORY

Sec. 161.0951. DEFINITIONS. In this subchapter:

(1) "Directory" means the e-cigarette directory maintained by the comptroller under Section 161.0954.

(2) "Distributor" means a person who:

(A) receives from a manufacturer e-cigarette products for a first sale in this state or otherwise brings or causes to be brought into this state e-cigarette products for sale, use, or consumption;

(B) manufactures or produces e-cigarette products; or

(C) ships, transports, or imports into this state e-cigarette products manufactured or produced outside the United States for a first sale in this state.

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

1           (4) "Retailer" means a person who engages in the sale  
2 of e-cigarettes to consumers and includes the owner of a  
3 coin-operated e-cigarette vending machine. The term includes an  
4 e-cigarette retailer as defined by Section 147.0001.

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

9           Sec. 161.0952. APPLICABILITY. This subchapter applies only  
10 to an e-cigarette that contains nicotine.

11           Sec. 161.0953. CERTIFICATION AND FEES. (a) Each  
12 manufacturer of e-cigarettes sold in this state, whether directly  
13 or through an importer, distributor, wholesaler, retailer, or  
14 similar intermediary, shall annually certify under penalty of  
15 perjury, on a form the comptroller prescribes, that the  
16 manufacturer agrees to comply with this subchapter and:

17           (1) the manufacturer holds for the manufacturer's  
18 e-cigarettes a marketing authorization or similar order issued by  
19 the United States Food and Drug Administration under 21 U.S.C.  
20 Section 387j; or

21           (2) the e-cigarette manufactured by the manufacturer  
22 was marketed in the United States as of August 8, 2016, and the  
23 manufacturer submitted a premarket tobacco product application for  
24 the e-cigarette to the United States Food and Drug Administration  
25 under 21 U.S.C. Section 387j before September 8, 2020, and either:

26           (A) the application is under review by the United  
27 States Food and Drug Administration; or

1                   (B) a final decision on the application has not  
2 taken effect.

3           (b) Each manufacturer of e-cigarettes shall submit a  
4 separate certification form under Subsection (a) for each  
5 e-cigarette product the manufacturer sells in this state.

6           (c) A manufacturer required to submit a certification form  
7 under Subsection (a) shall, at the time of certification, submit to  
8 the comptroller:

9                   (1) either, as applicable:

10                   (A) a copy of the marketing authorization or  
11 other order for the e-cigarette issued by the United States Food and  
12 Drug Administration under 21 U.S.C. Section 387j; or

13                   (B) evidence the premarket tobacco product  
14 application for the e-cigarette was submitted to the United States  
15 Food and Drug Administration and a final authorization or order has  
16 not taken effect; and

17                   (2) a fee of \$2,500.

18           (d) A manufacturer required to submit a certification form  
19 under Subsection (a) shall notify the comptroller not later than  
20 the 30th day after the date the certification form is submitted of  
21 any material change to the information included in the  
22 certification form, including:

23                   (1) the subsequent issuance or denial of a marketing  
24 authorization or other order by the United States Food and Drug  
25 Administration under 21 U.S.C. Section 387j; and

26                   (2) any other order issued or action taken by the  
27 United States Food and Drug Administration that affects the ability

of the e-cigarette to be introduced or delivered into interstate commerce for commercial distribution in the United States.

(e) The form the comptroller prescribes under this section must include the brand name, product name, flavor, and category of the e-cigarette product certified by the manufacturer.

(f) The information a manufacturer submits under this section is exempt from disclosure under Chapter 552, Government Code. A manufacturer may redact certain confidential commercial or financial information on the documents required under Subsection (c).

Sec. 161.0954. E-CIGARETTE DIRECTORY. (a) The comptroller shall maintain a directory listing all e-cigarette manufacturers and e-cigarettes, including the brand name, product name, flavor, and category of e-cigarette product, for which the required forms, fees, and certifications have been submitted to the comptroller under Section 161.0953.

(b) The comptroller shall post the directory on the comptroller's publicly accessible Internet website and update the directory monthly to comply with this subchapter.

(c) The comptroller shall establish a process by which importers, distributors, wholesalers, retailers, and other relevant parties may receive notification of directory updates for the preceding month.

Sec. 161.0955. OUT-OF-STATE MANUFACTURERS AND IMPORTERS.

(a) A manufacturer not registered to conduct business in this state must designate and continually engage the services of a registered agent in this state.

1       (b) A manufacturer not located in the United States may only  
2 employ or contract with an importer who designates a registered  
3 agent in this state whose services the importer continually  
4 engages.

5       (c) A manufacturer described by Subsection (a) or (b) must  
6 provide to the comptroller any information the comptroller requests  
7 about the registered agent designated by the manufacturer or the  
8 manufacturer's importer, as applicable, including the agent's name,  
9 address, and telephone number.

10       (d) A manufacturer shall provide written notice to the  
11 comptroller not later than the 30th day before the date the  
12 manufacturer or the manufacturer's importer, as applicable,  
13 terminates a registered agent's designation. Not later than the  
14 fifth day before the date the termination is effective, the  
15 manufacturer shall provide to the comptroller any information about  
16 the replacement the comptroller requests, including the name,  
17 address, and telephone number of the newly appointed registered  
18 agent.

19       (e) If the registered agent terminates an agency  
20 designation, the manufacturer shall:

21               (1) notify the comptroller not later than the fifth  
22 day after the date of the termination; and

23               (2) include proof satisfactory to the comptroller that  
24 a new agent has been appointed.

25       (f) A manufacturer not registered to conduct business in  
26 this state must file with the comptroller a surety bond or other  
27 cash security payable to this state in the amount of \$25,000. The

1 bond must be posted by a corporate surety located in the United  
2 States. The surety bond or cash security must be conditioned on the  
3 performance by the manufacturer of all requirements and obligations  
4 under this subchapter.

5 (g) The liability of the surety of a bond described by  
6 Subsection (f) may not exceed the amount of the bond for the payment  
7 of fines, penalties, and costs of seizure, destruction, and  
8 disposal imposed on a manufacturer under this subchapter.

9 (h) If payment executed from a bond under Subsection (g) is  
10 required, the comptroller may require a manufacturer to submit to  
11 the comptroller an additional bond or cash security.

12 (i) The comptroller may not include in the directory a  
13 manufacturer who has not complied with this section or the  
14 manufacturer's e-cigarettes.

15 Sec. 161.0956. SURETY RELEASE FROM LIABILITY. (a) The  
16 comptroller shall release and discharge from liability to this  
17 state a surety on a bond a manufacturer furnishes in accordance with  
18 Section 161.0955 on the 60th day after the date the surety company  
19 files with the comptroller a written request to be released and  
20 discharged.

21 (b) A request described by Subsection (a) does not relieve,  
22 release, or discharge the surety company from a liability accrued  
23 before expiration of the 60 days.

24 (c) The comptroller, promptly on receipt of the request  
25 under Subsection (a), shall notify the manufacturer who furnished  
26 the bond that unless the manufacturer, before the expiration date  
27 of the existing security, files with the comptroller a new bond with

1 a surety company located in the United States, or other authorized  
2 security, in the amount required by Section 161.0955, the  
3 comptroller shall remove the manufacturer and the manufacturer's  
4 e-cigarettes from the directory.

5 Sec. 161.0957. EXCLUSION AND REMOVAL FROM DIRECTORY. (a)  
6 The comptroller may not include or retain in the directory a  
7 manufacturer or a specific e-cigarette produced by that  
8 manufacturer if the manufacturer:

9 (1) failed to provide a complete and accurate  
10 certification form, including the fee, required under Section  
11 161.0953 with respect to an e-cigarette;

12 (2) sold an e-cigarette in this state for which either  
13 the e-cigarette or the manufacturer was not certified in accordance  
14 with this subchapter; or

15 (3) provided in the manufacturer's certification form  
16 or other submitted documents information the comptroller  
17 determined to be false or to contain a material misrepresentation  
18 or omission.

19 (b) The comptroller may not remove a manufacturer or  
20 specific e-cigarette from the directory for a reason described by  
21 Subsection (a) unless:

22 (1) the comptroller provides to the manufacturer  
23 notice that the manufacturer or an e-cigarette produced by the  
24 manufacturer will be removed from the directory if the manufacturer  
25 fails to cure the deficiencies; and

26 (2) the manufacturer fails to cure the deficiencies  
27 before the 15th day after the date the manufacturer received notice

1 under Subdivision (1).

2 (c) The comptroller may not remove a manufacturer or  
3 e-cigarette produced by the manufacturer from the directory before  
4 the 30th day after the date the comptroller provides the notice  
5 under Subsection (b)(1).

6 (d) Notice provided under Subsection (b)(1) is considered  
7 sufficient and immediately received if the comptroller sends the  
8 notice by facsimile or electronically to an e-mail address or  
9 facsimile number provided by the manufacturer in the manufacturer's  
10 most recent certification submitted under this subchapter.

11 Sec. 161.0958. DIRECTORY LISTING REQUIRED FOR RETAIL SALE  
12 OF E-CIGARETTES. (a) An importer, distributor, wholesaler,  
13 retailer, or similar intermediary may not sell in this state at  
14 retail an e-cigarette not included in the directory.

15 (b) A retailer may not sell an e-cigarette that was removed  
16 from the directory or that is produced by a manufacturer that was  
17 removed from the directory after the 30th day following the date the  
18 e-cigarette or manufacturer was removed from the directory.

19 Sec. 161.0959. DISPOSITION OF PROHIBITED E-CIGARETTES. (a)  
20 An e-cigarette intended for sale or distribution in this state that  
21 is not included in the directory is subject to seizure,  
22 destruction, and disposal. The importer, distributor, wholesaler,  
23 retailer, or similar intermediary from whom the e-cigarette is  
24 seized is responsible for the cost of the seizure, destruction, and  
25 disposal.

26 (b) An e-cigarette intended for sale or distribution in this  
27 state that was removed from the directory or that was certified by a



1 manufacturer that was removed from the directory is subject to  
2 seizure, destruction, and disposal after the 30th day following the  
3 date on which the e-cigarette or manufacturer was removed from the  
4 directory. The importer, distributor, wholesaler, retailer, or  
5 similar intermediary from whom the e-cigarette is seized is  
6 responsible for the cost of the seizure, destruction, and disposal.

7 Sec. 161.0960. AUDITS. (a) The comptroller shall provide  
8 for two annual random audits of each importer, distributor,  
9 wholesaler, and retailer who sells or distributes e-cigarettes in  
10 this state to ensure compliance with this subchapter. The  
11 comptroller shall provide for a subsequent audit not later than the  
12 30th day after the date on which an importer, distributor,  
13 wholesaler, or retailer was audited and determined not to be in  
14 compliance with this subchapter.

15 (b) The comptroller shall annually publish the results of  
16 the audits on the comptroller's Internet website.

17 Sec. 161.0961. CIVIL PENALTIES. (a) An importer,  
18 distributor, wholesaler, retailer, or similar intermediary who  
19 violates Section 161.0958 is subject to a civil penalty in an  
20 amount:

21 (1) for a first violation, equal to \$1,000 for each  
22 individual e-cigarette sold or offered for sale;

23 (2) for a second violation occurring before the first  
24 anniversary of the date of the first violation, not less than \$1,250  
25 and not more than \$1,500 for each individual e-cigarette sold or  
26 offered for sale; and

27 (3) for a third or subsequent violation occurring

1 before the first anniversary of the date of the first violation, not  
2 less than \$1,750 and not more than \$2,000 for each individual  
3 e-cigarette sold or offered for sale.

4 (b) A manufacturer who causes an e-cigarette removed from or  
5 not included in the directory to be sold or offered for sale in this  
6 state, whether directly or through an importer, distributor,  
7 wholesaler, retailer, or similar intermediary is subject to a civil  
8 penalty in an amount equal to \$10,000 for each individual  
9 e-cigarette sold or offered for sale in violation of Section  
10 161.0958.

11 (c) The attorney general may bring an action to recover a  
12 civil penalty imposed under this section.

13 (d) The attorney general may recover reasonable attorney's  
14 fees and other reasonable expenses incurred in investigating and  
15 bringing an action under this section.

16 Sec. 161.0962. DECEPTIVE TRADE PRACTICE. A violation of  
17 Section 161.0958 is a deceptive trade practice under Subchapter E,  
18 Chapter 17, Business & Commerce Code, and is actionable under that  
19 subchapter.

20 Sec. 161.0963. ADMINISTRATIVE SANCTIONS. (a) The  
21 comptroller shall suspend for a period of 30 days the permit,  
22 registration, certificate, or other authority of an importer,  
23 distributor, wholesaler, retailer, or similar intermediary who  
24 violates Section 161.0958 a second time before the first  
25 anniversary of the date of the first violation.

26 (b) The comptroller shall revoke the permit, registration,  
27 certificate, or other authority of an importer, distributor,

1 wholesaler, retailer, or similar intermediary who violates Section  
2 161.0958 a third time before the first anniversary of the date of  
3 the first violation.

4 Sec. 161.0964. CRIMINAL OFFENSE. A manufacturer commits an  
5 offense if the manufacturer falsely represents information on a  
6 certification form under Section 161.0953. An offense under this  
7 section is a Class B misdemeanor.

8 Sec. 161.0965. FEES COLLECTED. A fee or civil penalty the  
9 comptroller collects under this subchapter may be used only for the  
10 administration and enforcement of this subchapter.

11 Sec. 161.0966. REPORT TO LEGISLATURE. The comptroller  
12 shall prepare and submit to the legislature not later than  
13 September 1 of each year a report that contains:

14 (1) the current status of the directory, including the  
15 dates of the initial and updated versions;

16 (2) issues related to updating the directory;

17 (3) revenue received and expenses incurred in  
18 administering this subchapter;

19 (4) enforcement activities taken in accordance with  
20 this subchapter; and

21 (5) the most recent version of the directory.

22 Sec. 161.0967. RULES. The comptroller shall adopt rules  
23 necessary to implement this subchapter.

24 SECTION 2. (a) Notwithstanding Section 161.0953, Health and  
25 Safety Code, as added by this Act, a manufacturer is not required to  
26 comply with the requirements of that section until September 15,  
27 2025.

1           (b) Notwithstanding Section 161.0954, Health and Safety  
2 Code, as added by this Act, the comptroller of public accounts is  
3 not required to maintain the directory until November 1, 2025.

4           (c) Notwithstanding Section 161.0958, Health and Safety  
5 Code, as added by this Act, an importer, distributor, wholesaler,  
6 retailer, or similar intermediary is not required to comply with  
7 the requirements of that section until January 1, 2026.

8           (d) Notwithstanding Section 161.0966, Health and Safety  
9 Code, as added by this Act, the comptroller of public accounts is  
10 not required to submit a report until September 1, 2026.

11           SECTION 3. This Act takes effect September 1, 2025.