By:  Thierry H.B. No. 3218

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of e-cigarettes; requiring an occupational permit; authorizing fees; authorizing administrative penalties.

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

SECTION 1.  Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0873 to read as follows:

Sec. 161.0873.  SALE OF E-CIGARETTES WITH FLAVORING. A person may sell, in accordance with this chapter, an e-cigarette that contains a food-grade additive or synthetic flavoring substance that adds flavor, provided the additive or substance is not prohibited by the United States Food and Drug Administration.

SECTION 2.  Section 161.0875(a), Health and Safety Code, is amended to read as follows:

(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:

(A)  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

(B) [~~(2)  the container~~] is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer;

(2)  the container contains a tamper-evident feature:

(A)  with at least one indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence of tampering to consumers; and

(B)  that is designed to remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of the container; and

(3)  the container's label contains a nicotine addictiveness warning statement described by 21 C.F.R. Section 1143.3.

SECTION 3.  Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0877 to read as follows:

Sec. 161.0877.  SALE OF E-CIGARETTE CONTAINERS. A person may not sell or cause to be sold an e-cigarette container that:

(1)  includes a cartoon-like fictional character that mimics characters primarily aimed at entertaining minors;

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

(3)  includes a symbol or celebrity image that is primarily used to market products to minors; or

(4)  includes an image of an individual who appears to be younger than 27 years of age.

SECTION 4.  Section 161.124, Health and Safety Code, is amended to read as follows:

Sec. 161.124.  USE OF ADVERTISING FEE. (a) In this section, "e-cigarette" has the meaning assigned by Section 161.081.

(b)  The comptroller shall deposit the fee collected under Section 161.123 to a special account in the state treasury called the tobacco and e-cigarette education and enforcement [~~education~~] fund.

(c) [~~(b)~~]  Money in the account may be appropriated only for administration and enforcement of this section, enforcement of law relating to cigarettes, e-cigarettes, and tobacco products, and the education advertising campaign and grant program established under Subchapter O[~~, Chapter 161~~].

SECTION 5.  Section 161.452(c), Health and Safety Code, is amended to read as follows:

(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 payment requirements prescribed by Section 161.4535;

(3)  the disclosure requirements prescribed by Section 161.454;

(4) [~~(3)~~]  the shipping requirements prescribed by Section 161.455;

(5) [~~(4)~~]  the registration and reporting requirements prescribed by Section 161.456; and

(6) [~~(5)~~]  each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state, including a permit requirement under Subchapter Z.

SECTION 6.  Subchapter R, Chapter 161, Health and Safety Code, is amended by adding Sections 161.4525 and 161.4535 to read as follows:

Sec. 161.4525.  AUTHORIZED INFORMATION. A person taking a delivery sale order for e-cigarettes may request the prospective purchaser's e-mail address.

Sec. 161.4535.  PAYMENT REQUIREMENT. A person may not make a delivery sale for e-cigarettes unless the person receives full payment for the order before the e-cigarettes are mailed or shipped. The payment must be in the form of:

(1)  a check associated with a bank account in the prospective purchaser's name; or

(2)  a credit or debit card issued in the prospective purchaser's name.

SECTION 7.  Chapter 161, Health and Safety Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. PERMIT REQUIREMENTS FOR E-CIGARETTE MANUFACTURER, DISTRIBUTOR, AND RETAILER

Sec. 161.801.  DEFINITIONS. In this subchapter:

(1)  "Distributor" means a person who:

(A)  distributes, sells, barters, or exchanges an e-cigarette in this state for the purpose of resale; or

(B)  purchases an e-cigarette directly from a manufacturer or distributor for the purpose of resale in this state.

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

(3)  "Manufacturer" means a person located in this state who is engaged in manufacturing e-cigarettes.

(4)  "Retailer" means a person, other than a manufacturer or distributor, who in the ordinary course of the person's business:

(A)  acquires any form of an e-cigarette for the purpose of resale to the consumer; and

(B)  transfers an e-cigarette to another person for money or other consideration.

Sec. 161.802.  PERMIT REQUIRED. (a) A manufacturer or retailer may not sell an e-cigarette in this state unless the manufacturer or retailer holds a permit issued by the commission in accordance with this subchapter.

(b)  A distributor may not distribute an e-cigarette in this state unless the distributor holds a permit issued by the commission in accordance with this subchapter.

(c)  A person must hold a separate permit for each facility or location operated by the person for which a permit is required under this section.

Sec. 161.803.  APPLICATION; FEE. (a) An applicant for a manufacturer, distributor, or retailer permit under this subchapter shall submit to the commission:

(1)  an application on a form prescribed by commission rule that includes:

(A)  the name, telephone number, and address of the applicant; and

(B)  the name, telephone number, and address of the manufacturing facility, distribution facility, or retail location, as applicable, in this state and the person responsible for the facility or location;

(2)  a nonrefundable application fee in an amount not to exceed:

(A)  $1,000 for a manufacturer applicant;

(B)  $500 for a distributor applicant; or

(C)  $150 for a retailer applicant; and

(3)  any other information the commission determines is necessary.

(b)  The executive commissioner by rule shall set amounts for the application fees under this section. The amounts may not exceed the administrative costs incurred by the commission in implementing this subchapter.

(c)  The commission shall deposit a fee received under this section to the credit of the tobacco and e-cigarette education and enforcement fund established under Section 161.124.

Sec. 161.804.  ISSUANCE OR DENIAL. (a) The commission shall issue or deny issuance of a permit for an application submitted under Section 161.803 not later than the 60th day after the date the commission receives the completed application. The commission shall issue a permit to an applicant who the commission determines satisfies the requirements of this subchapter and rules adopted under this subchapter.

(b)  If the commission denies issuance of a permit under Subsection (a), the commission shall provide written reasons for the denial to the applicant.

(c)  An applicant whose initial application is denied may reapply without submitting an application fee not later than the 30th day after the date the initial application is denied.

Sec. 161.805.  PERMIT EXPIRATION. A permit issued under this subchapter expires on:

(1)  the fifth anniversary of the date the permit is issued for a manufacturer; or

(2)  the first anniversary of the date the permit is issued for a distributor or retailer.

Sec. 161.806.  TRANSFER. A permit holder may not transfer to another person a permit issued under Section 161.804 unless the commission approves the transfer. The commission shall approve a transfer if the transferee satisfies the requirements of this chapter and rules adopted under this chapter.

Sec. 161.807.  UPDATED INFORMATION. If the information provided in the permit application submitted under Section 161.803 changes, the permit holder shall provide written notice of the change in the form and manner prescribed by commission rule not later than the 10th business day after the date of the change.

Sec. 161.808.  RECORD REQUIREMENTS. A permit holder shall retain all e-cigarette invoices for at least two years and make the invoices available to the commission on request.

Sec. 161.809.  ENFORCEMENT. (a) The commission may revoke a permit of a permit holder who violates this chapter or a rule adopted under this chapter relating to e-cigarettes.

(b)  The commission may impose an administrative penalty against:

(1)  a permit holder who violates this subchapter or a rule adopted under this subchapter in an amount not to exceed $10,000 for each day a violation continues; or

(2)  a person who violates Section 161.082 in the amount of:

(A)  not less than $1,000 for the first violation;

(B)  not less than $5,000 for the second violation; and

(C)  $10,000 for a subsequent violation.

(c)  The commission shall deposit a penalty collected under this section to the credit of the tobacco and e-cigarette education and enforcement fund established under Section 161.124.

SECTION 8.  As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this Act.

SECTION 9.  A manufacturer, distributor, or retailer subject to Subchapter Z, Chapter 161, Health and Safety Code, as added by this Act, is not required to comply with that subchapter until January 1, 2020.

SECTION 10.  This Act takes effect September 1, 2019.