

By: Hinojosa

S.B. No. 2054

A BILL TO BE ENTITLED

AN ACT

relating to a directory of e-cigarettes and alternative nicotine products sold in this state, and regulation of the sale and distribution of e-cigarettes and alternative nicotine products; imposing fees; creating criminal offenses; imposing a civil penalty; imposing administrative penalties.

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

SECTION 1. Section 161.081, Health and Safety Code, is amended by amending Subdivisions (1), (1-a), (3), and (4) and adding Subdivision (1-a-1) to read as follows:

(1) "Alternative Nicotine Product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, ingested, inhaled, or consumed by any other means, and does not include any cigarette, e-cigarette, tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Subchapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Chapter 9, Subchapter V).

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

(1-a-1) ~~[(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

1 other substances to the individual inhaling from the device; or

2 (ii) a consumable liquid solution or other
3 material aerosolized or vaporized during the use of an electronic
4 cigarette or other device described by this subdivision.

5 (B) The term "e-cigarette" does not include a
6 prescription medical device unrelated to the cessation of smoking.

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

8 (i) a device described by this subdivision
9 regardless of whether the device is manufactured, distributed, or
10 sold as an e-cigarette, e-cigar, or e-pipe or under another product
11 name or description; and

12 (ii) a component, part, or accessory for
13 the device, regardless of whether the component, part, or accessory
14 is sold separately from the device.

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

19 (4) "Retailer" means a person who engages in the
20 practice of selling cigarettes, e-cigarettes, alternative nicotine
21 products, or tobacco products to consumers and includes the owner
22 of a coin-operated cigarette, e-cigarette, alternative nicotine
23 product, or tobacco product vending machine. The term includes a
24 retailer as defined by Section 154.001 or 155.001, Tax Code, and an
25 e-cigarette retailer as defined by Section 147.0001 of this code,
26 as applicable.

27 SECTION 2. Section 161.082, Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

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

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

24 (e) A proof of identification satisfies the requirements of
25 Subsection (d) if it contains a physical description and photograph
26 consistent with the person's appearance, purports to establish that
27 the person is 21 years of age or older, and was issued by a

1 governmental agency. The proof of identification may include a
2 driver's license issued by this state or another state, a passport,
3 or an identification card issued by a state or the federal
4 government.

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

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

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

12 SECTION 3. Section [161.083](#), Health and Safety Code, is
13 amended by amending Subsection (a) to read as follows:

14 (a) A person may not sell, give, or cause to be sold or given
15 a cigarette, e-cigarette, alternative nicotine product, or tobacco
16 product to someone who is younger than 30 years of age unless the
17 person to whom the cigarette, e-cigarette, or tobacco product was
18 sold or given presents an apparently valid proof of identification.

19 SECTION 4. Section [161.084](#), Health and Safety Code, is
20 amended by amending Subsections (a), (b) and (d) to read as follows:

21 (a) Each person who sells cigarettes, e-cigarettes,
22 alternative nicotine products, or tobacco products at retail or by
23 vending machine shall post a sign in a location that is conspicuous
24 to all employees and customers and that is close to the place at
25 which the cigarettes, e-cigarettes, alternative nicotine products,
26 or tobacco products may be purchased.

27 (b) The sign must include the statement:

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

14 (d) The comptroller on request shall provide the sign
 15 without charge to any person who sells cigarettes, e-cigarettes, or
 16 tobacco products. The comptroller may provide the sign without
 17 charge to distributors of cigarettes, e-cigarettes, alternative
 18 nicotine products, or tobacco products or wholesale dealers of
 19 cigarettes, e-cigarettes, alternative nicotine products, or
 20 tobacco products in this state for distribution to persons who sell
 21 cigarettes, e-cigarettes, alternative nicotine products, or
 22 tobacco products. A distributor or wholesale dealer may not charge
 23 for distributing a sign under this subsection.

24 SECTION 5. Section [161.085](#), Health and Safety Code, is
 25 amended by amending Subsections (a) and (b) to read as follows:

26 (a) Each retailer shall notify each individual employed by
 27 that retailer who is to be engaged in retail sales of cigarettes,

1 e-cigarettes, alternative nicotine products, or tobacco products
2 that state law:

3 (1) prohibits the sale or distribution of cigarettes,
4 e-cigarettes, alternative nicotine products, or tobacco products
5 to any person who is younger than 21 years of age as provided by
6 Section 161.082 and that a violation of that section is a Class C
7 misdemeanor; ~~and~~

8 (2) requires each person who sells cigarettes,
9 e-cigarettes, alternative nicotine products, or tobacco products
10 at retail or by vending machine to post a warning notice as provided
11 by Section 161.084, requires each employee to ensure that the
12 appropriate sign is always properly displayed while that employee
13 is exercising the employee's duties, and provides that a violation
14 of Section 161.084 is a Class C misdemeanor; and

15 (3) prohibits the sale or offer for sale of
16 e-cigarettes or alternative nicotine products that are not included
17 in the e-cigarette and alternative nicotine products directory
18 described by Section 161.0904.

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

27 SECTION 6. Section 161.086, Health and Safety Code, is

1 amended to read as follows:

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

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

9 (2) install or maintain a vending machine containing
10 cigarettes, e-cigarettes, alternative nicotine products, or
11 tobacco products.

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

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

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

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

22 (c) The comptroller or a peace officer may, with or without
23 a warrant, seize, seal, or disable a vending machine installed or
24 maintained in violation of this section. Property seized under this
25 subsection must be seized in accordance with, and is subject to
26 forfeiture to the state in accordance with, Subchapter H, Chapter
27 154, 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.

SECTION 7. Section 161.087, Health and Safety Code, is amended to read as follows:

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

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

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

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, alternative

1 nicotine products, or tobacco product if the recipient is younger
2 than 21 years of age.

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

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

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

12 SECTION 8. Section [161.088](#), Health and Safety Code, is
13 amended by amending Subsections (b) and (c) to read as follows:

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

27 (c) To facilitate the effective administration and

enforcement of this subchapter, the comptroller shall make the e-cigarette and alternative nicotine products directory described by Sec. 161.0904 available to the public and may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

SECTION 9. The heading to Section 161.0901, Health and Safety Code, is amended to read as follows:

Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE, E-CIGARETTE, ALTERNATIVE NICOTINE PRODUCT, AND TOBACCO PRODUCT RETAILERS.

SECTION 10. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0904 to read as follows:

Sec. 161.0904. E-CIGARETTE AND ALTERNATIVE NICOTINE PRODUCTS DIRECTORY. (a) A manufacturer of e-cigarettes or alternative nicotine products that are sold in this state, whether directly or through a wholesaler, retailer, or similar intermediary or intermediaries, shall annually certify under penalty of perjury on a form prescribed by the comptroller, that the manufacturer agrees to comply with this subchapter and that:

(1) the manufacturer has received a marketing authorization or similar order for the e-cigarette or alternative nicotine product from the United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j; or

(2) the e-cigarette or alternative nicotine product was marketed in the United States as of August 8, 2016, the manufacturer submitted a premarket tobacco product application for

1 the e-cigarette or alternative nicotine product to the United
2 States Food and Drug Administration pursuant to 21 U.S.C. Section
3 387j on or before September 9, 2020, and the application either
4 remains under review by the United States Food and Drug
5 Administration or a final decision on the application has not
6 otherwise taken effect.

7 (b) A manufacturer shall submit a separate certification
8 form for each e-cigarette or alternative nicotine product that is
9 sold in this state.

10 (c) Each annual certification form required by Subsection
11 (a) shall be accompanied by:

12 (1) a copy of the marketing authorization or other
13 order for the e-cigarette or alternative nicotine product issued by
14 the United States Food and Drug Administration pursuant to 21
15 U.S.C. Section 387j, or evidence that the premarket tobacco product
16 application for the e-cigarette or alternative nicotine product was
17 submitted to the United States Food and Drug Administration and a
18 final authorization or order has not yet taken effect; and

19 (2) payment of \$1,000 for each form submitted under
20 this section.

21 (d) A manufacturer required to submit a certification form
22 pursuant to Subsection (a) shall notify the comptroller within 30
23 days of any material change to the certification form, including
24 the issuance or denial of a marketing authorization or other order
25 by the United States Food and Drug Administration pursuant to 21
26 U.S.C. Section 387j, or any other order or action by the United
27 States Food and Drug Administration that affects the ability of the

1 e-cigarette or alternative nicotine product to be introduced or
2 delivered into interstate commerce for commercial distribution in
3 the United States.

4 (e) The comptroller shall maintain a directory that lists
5 all e-cigarette and alternative nicotine product manufacturers and
6 e-cigarettes and alternative nicotine products for which
7 certification forms have been submitted and shall update the
8 directory as necessary to ensure accuracy.

9 (f) A person may not sell or offer for sale an e-cigarette or
10 alternative nicotine product in this state that is not included in
11 the directory described by Subsection (e), and an e-cigarette or
12 alternative nicotine product manufacturer may not sell, either
13 directly or through a wholesaler, retailer, or similar intermediary
14 or intermediaries, an e-cigarette or alternative nicotine product
15 in this state that is not included in the directory described by
16 Subsection (e).

17 (g) The comptroller shall provide manufacturers notice and
18 an opportunity to cure deficiencies before removing manufacturers
19 or products from the directory.

20 (1) The comptroller may not remove the manufacturer or
21 its products from the directory until at least 15 days after the
22 manufacturer has been given notice of an intended action. Notice
23 shall be sufficient and be deemed immediately received by a
24 manufacturer if the notice is sent either electronically or by
25 facsimile to an electronic mail address or facsimile number, as the
26 case may be, provided by the manufacturer in its most recent
27 certification filed under Subsection (a) of this section.

1 (2) The e-cigarette or alternative nicotine product
2 manufacturer shall have 15 business days from the date of service of
3 the notice of the comptroller's intended action to establish that
4 the e-cigarette or alternative nicotine product manufacturer or its
5 products should be included in the directory.

6 (3) A determination by the comptroller to not include
7 or to remove from the directory a manufacturer or a manufacturer's
8 product shall be subject to review by the filing of a civil action
9 for prospective declaratory or injunctive relief.

10 (h) If a product is removed from the directory, each
11 retailer and wholesaler shall have twenty-one days from the day
12 such product is removed from the directory to remove the product
13 from its inventory and return the product to the manufacturer for
14 disposal.

15 (i) A retailer who sells or offers for sale an e-cigarette
16 or alternative nicotine product in this state that is not included
17 in the directory shall be subject to disciplinary action as
18 described by Section [161.0901](#).

19 (j) An e-cigarette or alternative nicotine product
20 manufacturer whose e-cigarettes or alternative nicotine products
21 are not listed in the directory and are sold in this state, whether
22 directly or through a wholesaler, retailer, or similar intermediary
23 or intermediaries, is subject to a civil penalty of \$1,000. Each
24 sale of an e-cigarette or alternative nicotine product that is not
25 listed in the directory shall constitute a separate violation.

26 (k) The comptroller or a person assisting the comptroller
27 with enforcement under Section [161.088](#) may seize and destroy

1 e-cigarettes and alternative nicotine products that are not listed
2 on the directory described by this section.

3 (1) Funds collected under this section or pursuant to
4 enforcement action under this section or a disciplinary action
5 under Section 161.0901 shall be used to administer this section or
6 for block grants as described by Section 161.088(b).

7 SECTION 11. This Act takes effect September 1, 2023.