

BILL ANALYSIS

Senate Research Center
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S.B. 1698
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The sale and distribution of e-cigarettes have grown significantly in recent years, raising concerns regarding public health, regulatory compliance, and consumer safety. Currently, the e-cigarette market in Texas operates with limited oversight, allowing unregulated and potentially harmful products to enter the marketplace. Many e-cigarette products lack proper authorization from the U.S. Food and Drug Administration (FDA), creating challenges in ensuring product safety and compliance with federal regulations.

Moreover, the absence of a centralized system to track and verify the legitimacy of e-cigarette manufacturers and their products has made it difficult for retailers, distributors, and consumers to differentiate between compliant and non-compliant products. This lack of oversight increases the risk of minors accessing unregulated e-cigarettes and exposes consumers to potential health risks associated with unauthorized products.

Other states have implemented directory systems to track and regulate tobacco-related products, ensuring that only approved manufacturers and products are legally sold. Establishing a similar system in Texas will strengthen enforcement mechanisms, improve public health protections, and provide greater transparency in the e-cigarette marketplace.

S.B. 1698 aims to enhance the regulation of e-cigarettes in Texas by creating an official e-cigarette directory maintained by the Comptroller of Public Accounts of the State of Texas. This bill ensures that only authorized e-cigarette products from compliant manufacturers are legally sold in the state.

As proposed, S.B. 1698 amends current law relating to the sale of certain e-cigarettes in this state and a directory of e-cigarette manufacturers and their products, authorizes fees, authorizes administrative and civil penalties, and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 161.0967, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 161, Health and Safety Code, by adding Subchapter I, as follows:

SUBCHAPTER I. E-CIGARETTE DIRECTORY

Sec. 161.0951. DEFINITIONS. Defines "directory," "distributor," "e-cigarette," "retailer," and "wholesaler."

Sec. 161.0952. APPLICABILITY. Provides that this subchapter applies only to an e-cigarette that contains nicotine.

Sec. 161.0953. CERTIFICATION AND FEES. (a) Requires each manufacturer of e-cigarettes sold in this state, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary, to annually certify under penalty of perjury,

on a form the Comptroller of Public Accounts of the State of Texas (comptroller) prescribes, that the manufacturer agrees to comply with this subchapter and the manufacturer holds for the manufacturer's e-cigarettes a marketing authorization or similar order issued by the United States Food and Drug Administration under 21 U.S.C. Section 387j, or the e-cigarette manufactured by the manufacturer was marketed in the United States as of August 8, 2016, and the manufacturer submitted a premarket tobacco product application for the e-cigarette to the United States Food and Drug Administration under 21 U.S.C. Section 387j before September 8, 2020, and either the application is under review by the United States Food and Drug Administration or a final decision on the application has not taken effect.

(b) Requires each manufacturer of e-cigarettes to submit a separate certification form under Subsection (a) for each e-cigarette product the manufacturer sells in this state.

(c) Requires a manufacturer required to submit a certification form under Subsection (a) to, at the time of certification, submit to the comptroller:

(1) either, as applicable, a copy of the marketing authorization or other order for the e-cigarette issued by the United States Food and Drug Administration under 21 U.S.C. Section 387j or evidence the premarket tobacco product application for the e-cigarette was submitted to the United States Food and Drug Administration and a final authorization or order has not taken effect; and

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

(d) Requires a manufacturer required to submit a certification form under Subsection (a) to notify the comptroller not later than the 30th day after the date the certification form is submitted of any material change to the information included in the certification form, including the subsequent issuance or denial of a marketing authorization or other order by the United States Food and Drug Administration under 21 U.S.C. Section 387j and any other order issued or action taken by the 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) Requires that the form the comptroller prescribes under this section include the brand name, product name, flavor, and category of the e-cigarette product certified by the manufacturer.

(f) Provides that the information a manufacturer submits under this section is exempt from disclosure under Chapter 552 (Public Information), Government Code. Authorizes a manufacturer to redact certain confidential commercial or financial information on the documents required under Subsection (c).

Sec. 161.0954. E-CIGARETTE DIRECTORY. (a) Requires the comptroller to 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) Requires the comptroller to post the directory on the comptroller's publicly accessible Internet website and update the directory monthly to comply with this subchapter.

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

Sec. 161.0955. OUT-OF-STATE MANUFACTURERS AND IMPORTERS. (a) Requires a manufacturer not registered to conduct business in this state to designate and continually engage the services of a registered agent in this state.

(b) Provides that a manufacturer not located in the United States is authorized only to employ or contract with an importer who designates a registered agent in this state whose services the importer continually engages.

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

(d) Requires a manufacturer to provide written notice to the comptroller not later than the 30th day before the date the manufacturer or the manufacturer's importer, as applicable, terminates a registered agent's designation. Requires the manufacturer, not later than the fifth day before the date the termination is effective, to provide to the comptroller any information about the replacement the comptroller requests, including the name, address, and telephone number of the newly appointed registered agent.

(e) Requires the manufacturer, if the registered agent terminates an agency designation, to notify the comptroller not later than the fifth day after the date of the termination and include proof satisfactory to the comptroller that a new agent has been appointed.

(f) Requires a manufacturer not registered to conduct business in this state to file with the comptroller a surety bond or other cash security payable to this state in the amount of \$25,000. Requires that the bond be posted by a corporate surety located in the United States. Requires that the surety bond or cash security be conditioned on the performance by the manufacturer of all requirements and obligations under this subchapter.

(g) Prohibits the liability of the surety of a bond described by Subsection (f) from exceeding the amount of the bond for the payment of fines, penalties, and costs of seizure, destruction, and disposal imposed on a manufacturer under this subchapter.

(h) Authorizes the comptroller, if payment executed from a bond under Subsection (g) is required, to require a manufacturer to submit to the comptroller an additional bond or cash security.

(i) Prohibits the comptroller from including in the directory a manufacturer who has not complied with this section or the manufacturer's e-cigarettes.

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

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

(c) Requires the comptroller, promptly on receipt of the request under Subsection (a), to notify the manufacturer who furnished the bond that unless the manufacturer, before the expiration date of the existing security, files with the comptroller a new bond with a surety company located in the United States, or other authorized security, in the amount required by Section 161.0955, the

comptroller is required to remove the manufacturer and the manufacturer's e-cigarettes from the directory.

Sec. 161.0957. EXCLUSION AND REMOVAL FROM DIRECTORY. (a) Prohibits the comptroller from including or retaining in the directory a manufacturer or a specific e-cigarette produced by that manufacturer if the manufacturer:

- (1) failed to provide a complete and accurate certification form, including the fee, required under Section 161.0953 with respect to an e-cigarette;
- (2) sold an e-cigarette in this state for which either the e-cigarette or the manufacturer was not certified in accordance with this subchapter; or
- (3) provided in the manufacturer's certification form or other submitted documents information the comptroller determined to be false or to contain a material misrepresentation or omission.

(b) Prohibits the comptroller from removing a manufacturer or specific e-cigarette from the directory for a reason described by Subsection (a) unless:

- (1) the comptroller provides to the manufacturer notice that the manufacturer or an e-cigarette produced by the manufacturer will be removed from the directory if the manufacturer fails to cure the deficiencies; and
- (2) the manufacturer fails to cure the deficiencies before the 15th day after the date the manufacturer received notice under Subdivision (1).

(c) Prohibits the comptroller from removing a manufacturer or e-cigarette produced by the manufacturer from the directory before the 30th day after the date the comptroller provides the notice under Subsection (b)(1).

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

Sec. 161.0958. DIRECTORY LISTING REQUIRED FOR RETAIL SALE OF E-CIGARETTES. (a) Prohibits an importer, distributor, wholesaler, retailer, or similar intermediary from selling in this state at retail an e-cigarette not included in the directory.

(b) Prohibits a retailer from selling an e-cigarette that was removed from the directory or that is produced by a manufacturer that was removed from the directory after the 30th day following the date the e-cigarette or manufacturer was removed from the directory.

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

(b) Provides that an e-cigarette intended for sale or distribution in this state that was removed from the directory or that was certified by a manufacturer that was removed from the directory is subject to seizure, destruction, and disposal after the 30th day following the date on which the e-cigarette or manufacturer was removed from the directory. Provides that the importer, distributor, wholesaler, retailer, or similar intermediary from whom the e-cigarette is seized is responsible for the cost of the seizure, destruction, and disposal.

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

(b) Requires the comptroller to annually publish the results of the audits on the comptroller's Internet website.

Sec. 161.0961. CIVIL PENALTIES. (a) Provides that an importer, distributor, wholesaler, retailer, or similar intermediary who violates Section 161.0958 is subject to a civil penalty in an amount for a first violation, equal to \$1,000 for each individual e-cigarette sold or offered for sale, for a second violation occurring before the first anniversary of the date of the first violation, not less than \$1,250 and not more than \$1,500 for each individual e-cigarette sold or offered for sale, and for a third or subsequent violation occurring before the first anniversary of the date of the first violation, not less than \$1,750 and not more than \$2,000 for each individual e-cigarette sold or offered for sale.

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

(c) Authorizes the attorney general to bring an action to recover a civil penalty imposed under this section.

(d) Authorizes the attorney general to recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing an action under this section.

Sec. 161.0962. DECEPTIVE TRADE PRACTICE. Provides that a violation of Section 161.0958 is a deceptive trade practice under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, and is actionable under that subchapter.

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

(b) Requires the comptroller to revoke the permit, registration, certificate, or other authority of an importer, distributor, wholesaler, retailer, or similar intermediary who violates Section 161.0958 a third time before the first anniversary of the date of the first violation.

Sec. 161.0964. CRIMINAL OFFENSE. Provides that a manufacturer commits an offense if the manufacturer falsely represents information on a certification form under Section 161.0953. Provides that an offense under this section is a Class B misdemeanor.

Sec. 161.0965. FEES COLLECTED. Provides that a fee or civil penalty the comptroller collects under this subchapter is authorized to be used only for the administration and enforcement of this subchapter.

Sec. 161.0966. REPORT TO LEGISLATURE. Requires the comptroller to prepare and submit to the legislature not later than September 1 of each year a report that contains certain information.

Sec. 161.0967. RULES. Requires the comptroller to adopt rules necessary to implement this subchapter.

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

(b) Provides that, notwithstanding Section 161.0954, Health and Safety Code, as added by this Act, the comptroller is not required to maintain the directory until November 1, 2025.

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

(d) Provides that, notwithstanding Section 161.0966, Health and Safety Code, as added by this Act, the comptroller is not required to submit a report until September 1, 2026.

SECTION 3. Effective date: September 1, 2025.