

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1698
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State Affairs
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Committee Report (Substituted)

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.

(Original Author's/Sponsor's Statement of Intent)

C.S.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 3 (Section 161.0967, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.0876(b), Health and Safety Code, as follows:

(b) Provides that a person commits an offense if the person markets, advertises, sells, or causes to be sold an e-cigarette product, if the product's container meets certain criteria, including attempting to conceal the nature of the e-cigarette product from consumers or falsely representing that the product does not contain nicotine. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0904, as follows:

Sec. 161.0904. E-CIGARETTE DISTRIBUTOR REGISTRATION REQUIRED; CRIMINAL OFFENSE. (a) Defines "distributor."

(b) Prohibits a person from engaging in business as an e-cigarette distributor in this state unless the person is registered with the comptroller in accordance with this section.

(c) Requires a person to register each place of business the person owns or operates as an e-cigarette distributor. Prohibits the Comptroller of Public Accounts of the State of Texas (comptroller) from registering as an e-cigarette distributor a place of business located at a residence or in a public storage facility unit.

(d) Requires the comptroller to prescribe the form and content of the e-cigarette distributor registration application. Requires an applicant to accurately complete all information required on the application and provide to the comptroller any additional information the comptroller considers necessary.

(e) Provides that a person who engages in business as an e-cigarette distributor without registering with the comptroller as required by this section commits an offense. Provides that an offense under this subsection is a Class B misdemeanor.

SECTION 3. 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," "interstate warehouse," "retailer," and "wholesaler."

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

Sec. 161.0953. CERTIFICATION AND FEES. (a) Requires each manufacturer of e-cigarettes sold for retail sale, use, or consumption 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 prescribes, that the manufacturer agrees to comply with this subchapter and:

(1) 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

(2) 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) Provides that a manufacturer is not required to submit an additional marketing authorization or similar order or premarket tobacco product application for an e-cigarette for which the manufacturer previously submitted a marketing authorization or similar order or premarket tobacco product application for a change in the name, brand style, or packaging of the e-cigarette.

(d) 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) 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

(B) 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.

(e) 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:

(1) 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

(2) 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.

(f) Requires the manufacturer, not later than the 30th day after the effective date of a federal law, regulation, or guidance changing a standard or requirement for an e-cigarette manufacturer, to provide to the comptroller proof satisfactory to the comptroller of the manufacturer's compliance with the law, regulation, or guidance.

(g) Authorizes the comptroller to remove from the directory as provided by Section 161.0957 the e-cigarettes of a manufacturer who fails to comply with Subsection (f).

(h) Requires that the certification form the comptroller prescribes under this section require a manufacturer to list the brand name, product name, flavor, and category of the e-cigarette the manufacturer is certifying.

(i) 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 in the manner prescribed by the comptroller confidential commercial or financial information included on the documents required under Subsection (d).

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 the certifications 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 to notify importers, distributors, wholesalers, retailers, and other relevant parties of directory updates for the preceding month.

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

(b) Authorizes a manufacturer not located in the United States to only employ or contract with an importer who designates an agent registered with the secretary of 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 the comptroller requests about the newly appointed registered agent, including the name, address, and telephone number.

(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 registered agent has been appointed.

(f) Requires a manufacturer not registered with SOS 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 performs certain actions.

(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 a 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 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 retail sale or distribution for use or consumption 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 retail sale or distribution for use or consumption 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.

(c) Authorizes an e-cigarette seized under this section to be inventoried and preserved as evidence.

(d) Authorizes any product seized under this section to be disposed of in any manner consistent with state or federal law, including by incineration.

Sec. 161.0960. INSPECTIONS. (a) Requires the comptroller or the comptroller's designee, including a state or local law enforcement official, at least annually, to provide for random, unannounced inspections of various importers, distributors, wholesalers, and retailers who sell or distribute e-cigarettes in this state to ensure compliance with this subchapter. Requires the comptroller, or the comptroller's designee, to provide for a subsequent inspection not later than the 30th day after the date on which an importer, distributor, wholesaler, or retailer was inspected and determined not to be in compliance with this subchapter.

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

(c) Authorizes an inspection under this section to be combined with an inspection under Section 161.088 (Enforcement; Unannounced Inspections).

(d) Authorizes the comptroller to presume an e-cigarette listed in the directory established under Section 161.0954 is not a prohibited e-cigarette product under Section 161.0876 (Prohibited E-Cigarette Products).

(e) Provides that nothing in this section is authorized to be construed to prevent the attorney general from conducting an audit or inspection of an importer, distributor, wholesaler, or retailer who sells or distributes e-cigarettes in this state to ensure compliance with this subchapter or in furtherance of an action brought under Section 161.0961.

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 certain amounts.

(b) Provides that a manufacturer who causes an e-cigarette removed from or not included in the directory to be sold for retail sale, use, or consumption or offered for retail sale, use, or consumption 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 in addition to the practices described by 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 any permit, registration, certificate, or other authority issued by the comptroller 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 any permit, registration, certificate, or other authority issued by the comptroller 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 OFFENSES. (a) Provides that a manufacturer commits an offense if the manufacturer falsely represents information on a certification form under Section 161.0953.

(b) Provides that a person commits an offense if the person violates Section 161.0958.

(c) Provides that an offense under this section is a Class B misdemeanor.

Sec. 161.0965. FEES COLLECTED. Authorizes a fee or civil penalty the comptroller collects under this subchapter 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 4. (a) Provides that a manufacturer, notwithstanding Section 161.0953, Health and Safety Code, as added by this Act, is not required to comply with the requirements of that section until October 1, 2025.

(b) Provides that the comptroller, notwithstanding Section 161.0954, Health and Safety Code, as added by this Act, is not required to maintain the directory until January 1, 2026.

(c) Provides that an importer, distributor, wholesaler, retailer, or similar intermediary, notwithstanding Section 161.0958, Health and Safety Code, as added by this Act, is not required to comply with the requirements of that section until May 31, 2026.

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

SECTION 5. Effective date: September 1, 2025.