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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.

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

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

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

Sec. 161.0953.  CERTIFICATION AND FEES. (a) Each manufacturer of e-cigarettes sold in this state, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary, shall 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:

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

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

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

(c)  A manufacturer required to submit a certification form under Subsection (a) shall, 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.

(d)  A manufacturer required to submit a certification form under Subsection (a) shall 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.

(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.

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

(c)  A manufacturer described by Subsection (a) or (b) must 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)  A manufacturer shall 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. Not later than the fifth day before the date the termination is effective, the manufacturer shall 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)  If the registered agent terminates an agency designation, the manufacturer shall:

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

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

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

(g)  The liability of the surety of a bond described by Subsection (f) may not exceed 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)  If payment executed from a bond under Subsection (g) is required, the comptroller may require a manufacturer to submit to the comptroller an additional bond or cash security.

(i)  The comptroller may not include 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) The comptroller shall 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)  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)  The comptroller, promptly on receipt of the request under Subsection (a), shall 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 shall remove the manufacturer and the manufacturer's e-cigarettes from the directory.

Sec. 161.0957.  EXCLUSION AND REMOVAL FROM DIRECTORY. (a) The comptroller may not include or retain 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)  The comptroller may not remove 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)  The comptroller may not remove 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)  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) An importer, distributor, wholesaler, retailer, or similar intermediary may not sell in this state at retail an e-cigarette not included in the directory.

(b)  A retailer may not sell 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) 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. 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)  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. 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) The comptroller shall 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. The comptroller shall 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)  The comptroller shall annually publish the results of the audits on the comptroller's Internet website.

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

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

(2)  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

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

(d)  The attorney general may 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. A violation of Section 161.0958 is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

Sec. 161.0963.  ADMINISTRATIVE SANCTIONS. (a) The comptroller shall 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)  The comptroller shall 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. A manufacturer commits an offense if the manufacturer falsely represents information on a certification form under Section 161.0953. An offense under this section is a Class B misdemeanor.

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

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

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

(2)  issues related to updating the directory;

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

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

(5)  the most recent version of the directory.

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

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

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

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