

1-1 By: Parker S.B. No. 1698
1-2 (In the Senate - Filed February 27, 2025; March 11, 2025,
1-3 read first time and referred to Committee on State Affairs;
1-4 May 5, 2025, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; May 5, 2025, sent
1-6 to printer.)

1-7	COMMITTEE VOTE				
1-8		Yea	Nay	Absent	PNV
1-9	Hughes	X			
1-10	Paxton	X			
1-11	Bettencourt			X	
1-12	Birdwell	X			
1-13	Hall	X			
1-14	Hinojosa of Nueces	X			
1-15	Middleton	X			
1-16	Parker	X			
1-17	Perry	X			
1-18	Schwertner			X	
1-19	Zaffirini	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1698 By: Parker

1-21 A BILL TO BE ENTITLED
1-22 AN ACT

1-23 relating to the sale of certain e-cigarettes in this state and a
1-24 directory of e-cigarette manufacturers and their products;
1-25 authorizing fees; authorizing administrative and civil penalties;
1-26 creating a criminal offense.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-28 SECTION 1. Section 161.0876(b), Health and Safety Code, is
1-29 amended to read as follows:

1-30 (b) A person commits an offense if the person markets,
1-31 advertises, sells, or causes to be sold an e-cigarette product, if
1-32 the product's container:

1-33 (1) depicts a cartoon-like fictional character that
1-34 mimics a character primarily aimed at entertaining minors;

1-35 (2) imitates or mimics trademarks or trade dress of
1-36 products that are or have been primarily marketed to minors;

1-37 (3) includes a symbol that is primarily used to market
1-38 products to minors;

1-39 (4) includes an image of a celebrity; ~~or~~

1-40 (5) includes an image that resembles a food product,
1-41 including candy or juice; or

1-42 (6) attempts to conceal the nature of the e-cigarette
1-43 product from consumers or falsely represents that the product does
1-44 not contain nicotine.

1-45 SECTION 2. Subchapter H, Chapter 161, Health and Safety
1-46 Code, is amended by adding Section 161.0904 to read as follows:

1-47 Sec. 161.0904. E-CIGARETTE DISTRIBUTOR REGISTRATION
1-48 REQUIRED; CRIMINAL OFFENSE. (a) In this section, "distributor"
1-49 has the meaning assigned by Section 161.0951.

1-50 (b) A person may not engage in business as an e-cigarette
1-51 distributor in this state unless the person is registered with the
1-52 comptroller in accordance with this section.

1-53 (c) A person must register each place of business the person
1-54 owns or operates as an e-cigarette distributor. The comptroller
1-55 may not register as an e-cigarette distributor a place of business
1-56 located at a residence or in a public storage facility unit.

1-57 (d) The comptroller shall prescribe the form and content of
1-58 the e-cigarette distributor registration application. An
1-59 applicant shall accurately complete all information required on the
1-60 application and provide to the comptroller any additional

information the comptroller considers necessary.

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

SECTION 3. 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 is not an interstate warehouse and 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 retail sale, use, or consumption in this state;

(B) manufactures or produces e-cigarette products for retail sale in this state; 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) "Interstate warehouse" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(5) "Retailer" means a person who engages in the sale of e-cigarettes to consumers, including an e-cigarette retailer as defined by Section 147.0001.

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

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

Sec. 161.0953. CERTIFICATION AND FEES. (a) 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, 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 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) 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.

(e) 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.

(f) 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, the manufacturer must provide to the comptroller proof satisfactory to the comptroller of the manufacturer's compliance with the law, regulation, or guidance.

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

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

(i) The information a manufacturer submits under this section is exempt from disclosure under Chapter 552, Government Code. A manufacturer may 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) 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 the certifications 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 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) A manufacturer not registered with the secretary of state to conduct business in this state shall designate and continually engage the services of an agent registered with the secretary of state.

(b) A manufacturer not located in the United States may only employ or contract with an importer who designates an agent registered with the secretary of 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 the comptroller requests about the newly appointed registered agent,

including the name, address, and telephone number.

(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 registered agent has been appointed.

(f) A manufacturer not registered with the secretary of state 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 for an e-cigarette;

(2) sold in this state an e-cigarette 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 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 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. 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 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. 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) An e-cigarette seized under this section may be inventoried and preserved as evidence.

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

Sec. 161.0960. INSPECTIONS. (a) The comptroller or the comptroller's designee, including a state or local law enforcement official, shall, at least annually, 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. The comptroller, or the comptroller's designee, shall 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) The comptroller shall annually publish the results of the inspections on the comptroller's Internet website.

(c) An inspection under this section may be combined with an inspection under Section 161.088.

(d) The comptroller may presume an e-cigarette listed in the directory established under Section 161.0954 is not a prohibited e-cigarette product under Section 161.0876.

(e) Nothing in this section may 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) 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 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) 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 in addition to the practices described by 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 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) The comptroller shall 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) A manufacturer commits an offense if the manufacturer falsely represents information on a certification form under Section 161.0953.

(b) A person commits an offense if the person violates Section 161.0958.

(c) 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 4. (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 October 1, 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 January 1, 2026.

(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 May 31, 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 5. This Act takes effect September 1, 2025.

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