

**SUBJECT:** Regulating e-cigarettes and alternative nicotine products

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 11 ayes — Klick, Campos, Collier, Jetton, A. Johnson, J. Jones, V. Jones, Oliverson, Price, Smith, Tinderholt

0 nays

**WITNESSES:** For — Holly Veale, Core-Mark; J.R. Gonzales, Texas Association of Mexican American Chambers of Commerce; Desiree Castro, Texas Food and Fuel Association (*Registered, but did not testify*: Charlie Gagen, American Lung Association; Karen Reagan, McLane Company, Inc.; Tom Banning, Texas Academy of Family Physicians; Matt Abel, Texas Association of Business; Pauline Anton, Texas Association of Mexican American Chambers of Commerce; David Reynolds, Texas Chapter American College of Physicians Services; Matt Dowling, Texas Medical Association; Jill Sutton, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Suzi Kennon, Texas PTA; John McCord, Texas Retailers Association)

Against — Charlotte Owen, American Vapor Manufacturers Association; Darrell Suriff, Pastel Cartel / American Vape Company LLC; Schell Hammel, Smoke Free Alternatives Trade Association; Kathleen Russell (*Registered, but did not testify*: Pedro J. Solis, American Vapor Manufacturers)

On — Greg Wilson, Altria Client Services

**BACKGROUND:** Concerns have been raised that current enforcement may be insufficient for the selling of illegal nicotine products.

**DIGEST:** HB 4481 would establish provisions regulating alternative nicotine products and e-cigarettes sold in the state. The bill would define “alternative nicotine product” as any noncombustible product containing nicotine intended for human consumption and would not include any

cigarette, e-cigarette, tobacco product, or any product regulated as a drug or device by the US Food and Drug Administration (FDA).

**Regulating alternative nicotine products.** The bill would prohibit the sale of alternative nicotine products to a person younger than 21 years old. A person would commit an offense if the person, with criminal negligence, sold, gave, or caused to be sold or given an alternative nicotine product to a person younger than 21 or a person who intended to deliver the product to a person younger than 21. The offense would be a class C misdemeanor (maximum fine of \$500).

The bill would include alternative nicotine products in other provisions regulating the sale and distribution of cigarettes, e-cigarettes, and other tobacco products.

**Certification forms.** A manufacturer of e-cigarettes or alternative nicotine products sold in the state would be required to annually certify under penalty of perjury that the manufacturer agreed to comply with applicable state law and had received a marketing authorization or similar order for the e-cigarette or alternative nicotine product from the FDA or met certain other requirements related to marketing authorization.

A manufacturer would have to submit a separate certification form for each e-cigarette or alternative nicotine product sold in the state. Each form would have to be accompanied by certain information related to marketing authorization and a payment of \$1,000. A manufacturer required to submit such a certification form would have to notify the comptroller within 30 days of any material change to the certification form.

**Directory.** The comptroller would be required to maintain a directory that listed all e-cigarettes and alternative nicotine product manufacturers and e-cigarette and alternative nicotine products for which certification forms had been submitted. The comptroller would have to update the directory as necessary to ensure accuracy.

A person or manufacturer could not sell or offer for sale an e-cigarette or

alternative nicotine product in the state that was not included in the directory. Retailers would be required to notify certain employees that state law prohibited the sale or offer for sale of e-cigarettes or alternative nicotine products that were not included in the e-cigarette and alternative nicotine products directory. The comptroller would be required to make the e-cigarette and alternative nicotine products directory available to the public.

The comptroller would have to provide notice and an opportunity to cure deficiencies before removing manufacturers or products from the directory. The comptroller could not remove the manufacturer or its products from the directory until at least 15 days after giving notice of an intended action.

The comptroller's determination to not include or remove a manufacturer or product from the directory would be subject to review by the filing of a civil action for prospective declaratory or injunctive relief. If a product was removed from the directory, each retailer and wholesaler would have 21 days to remove the product from its inventory and return the product to the manufacturer for disposal.

**Enforcement.** A retailer who sold or offered for sale a product not included in the directory would be subject to disciplinary action. A manufacturer whose e-cigarettes or alternative nicotine products were not listed in the directory and were sold in the state, whether directly or through a wholesaler, retailer, or similar intermediary, would be subject to a civil penalty of \$1,000. Each unlisted e-cigarette or alternative nicotine product sale would constitute a separate violation. The comptroller could seize and destroy unlisted e-cigarettes and alternative nicotine products.

**Use of funds.** Funds collected under the bill would have to be used to administer the bill's provisions or for block grants to municipalities or counties to reduce the extent to which cigarettes, e-cigarettes, alternative nicotine products, and tobacco products were sold to people under 21.

The bill would take effect September 1, 2023.

NOTES:

According to the Legislative Budget Board, there would be an indeterminate revenue gain to the state from the payments submitted with each e-cigarette and alternative nicotine product certification form and any administrative penalties assessed. However, the fiscal impact of the bill cannot be determined because the number of each is unknown.