

1-1 By: Guillen (Senate Sponsor - Hinojosa) H.B. No. 3475
 1-2 (In the Senate - Received from the House April 29, 2019;
 1-3 April 30, 2019, read first time and referred to Committee on
 1-4 Finance; May 13, 2019, reported favorably by the following vote:
 1-5 Yeas 14, Nays 0; May 13, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Nelson	X			
1-8 Hinojosa	X			
1-9 Bettencourt	X			
1-10 Birdwell	X			
1-11 Campbell	X			
1-12 Flores	X			
1-13 Hancock	X			
1-14 Huffman	X			
1-15 Kolkhorst	X			
1-16 Nichols	X			
1-17 Perry	X			
1-18 Taylor	X			
1-19 Watson	X			
1-20 West	X			
1-21 Whitmire			X	

1-23 A BILL TO BE ENTITLED
 1-24 AN ACT

1-25 relating to the administration, collection, and remittance of the
 1-26 cigars and tobacco products tax; requiring a permit.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 155.001, Tax Code, is amended by
 1-29 amending Subdivisions (1), (6), (7), (8), (9), (10), (11), (12),
 1-30 (13), (14), and (15) and adding Subdivisions (6-a) and (13-a) to
 1-31 read as follows:

1-32 (1) "Bonded agent" means a person in this state who is
 1-33 a third-party [an] agent of a manufacturer [person] outside this
 1-34 state and who receives [cigars and] tobacco products in interstate
 1-35 commerce and stores the [cigars and] tobacco products for
 1-36 distribution or delivery to distributors under orders from the
 1-37 manufacturer [person outside this state].

1-38 (6) "Distributor" means a person who:

1-39 (A) receives untaxed tobacco products for the
 1-40 purpose of making a first sale in this state from a manufacturer
 1-41 outside the state or within the state or otherwise brings or causes
 1-42 to be brought into this state untaxed tobacco products for sale,
 1-43 use, or consumption;

1-44 (B) manufactures or produces tobacco products;
 1-45 or

1-46 (C) is an importer [~~or import broker~~].

1-47 (6-a) "Engage in business" means, in relation to
 1-48 tobacco products, engaging by a person, either directly or through
 1-49 a representative, in any of the following activities:

1-50 (A) selling tobacco products in or into this
 1-51 state;

1-52 (B) using a warehouse or another location to
 1-53 store tobacco products; or

1-54 (C) otherwise conducting through a physical
 1-55 presence tobacco product-related business in this state.

1-56 (7) "Export warehouse" means a person in this state
 1-57 who receives untaxed tobacco products from manufacturers and stores
 1-58 the tobacco products for the purpose of making sales to authorized
 1-59 persons for resale, use, or consumption outside the United States.

1-60 (8) "First sale" means, except as otherwise provided
 1-61 by this chapter:

2-1 (A) the first transfer of possession in
 2-2 connection with a purchase, sale, or any exchange for value of
 2-3 tobacco products in or into this state, which:
 2-4 (i) includes the sale of tobacco products
 2-5 by:
 2-6 (a) a distributor in or outside this
 2-7 state to a distributor, wholesaler, or retailer in this state; and
 2-8 (b) a manufacturer in this state who
 2-9 transfers the tobacco products in this state; and
 2-10 (ii) does not include:
 2-11 (a) the sale of tobacco products by a
 2-12 manufacturer outside this state to a distributor in this state; or
 2-13 (b) the transfer of tobacco products
 2-14 from a manufacturer outside this state to a bonded agent in this
 2-15 state [in intrastate commerce];
 2-16 (B) the first use or consumption of tobacco
 2-17 products in this state; or
 2-18 (C) the loss of tobacco products in this state
 2-19 whether through negligence, theft, or other unaccountable loss.
 2-20 (9) "Importer" [~~or "import broker"~~] means a person who
 2-21 ships, transports, or imports into this state tobacco products
 2-22 manufactured or produced outside the United States for the purpose
 2-23 of making a first sale in this state.
 2-24 (10) "Manufacturer" means a person who manufactures,
 2-25 fabricates, or assembles tobacco products, or causes or arranges
 2-26 for the manufacture, fabrication, or assembly of tobacco products,
 2-27 for sale or distribution [~~or produces tobacco products and sells~~
 2-28 ~~tobacco products to a distributor~~].
 2-29 (11) "Manufacturer's representative" means a person
 2-30 employed by a manufacturer to sell or distribute the manufacturer's
 2-31 tobacco products for which the tax imposed under this chapter has
 2-32 been paid.
 2-33 (12) "Permit holder" means a bonded agent,
 2-34 distributor, wholesaler, manufacturer, importer, export warehouse,
 2-35 or retailer who obtains [~~required to obtain~~] a permit under Section
 2-36 155.041.
 2-37 (13) "Place of business" means:
 2-38 (A) a commercial business location where tobacco
 2-39 products are sold;
 2-40 (B) a commercial business location where tobacco
 2-41 products are kept for sale or consumption or otherwise stored; [~~or~~]
 2-42 (C) a vehicle from which tobacco products are
 2-43 sold; or
 2-44 (D) a vending machine from which tobacco products
 2-45 are sold.
 2-46 (13-a) "Raw tobacco" means any part of the tobacco
 2-47 plant, including the tobacco leaf or stem, that is harvested from
 2-48 the ground and is not a tobacco product as the term is defined in
 2-49 this chapter.
 2-50 (14) "Retailer" means a person who engages in the
 2-51 business [~~practice~~] of selling tobacco products to consumers and
 2-52 includes the owner of a [~~coin-operated~~] vending machine.
 2-53 (15) "Tobacco product" means:
 2-54 (A) a cigar;
 2-55 (B) smoking tobacco, including granulated,
 2-56 plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable
 2-57 for smoking in a pipe or as a cigarette;
 2-58 (C) chewing tobacco, including Cavendish, Twist,
 2-59 plug, scrap, and any kind of tobacco suitable for chewing;
 2-60 (D) snuff or other preparations of pulverized
 2-61 tobacco; or
 2-62 (E) an article or product that is made of tobacco
 2-63 or a tobacco substitute and that is not a cigarette or an
 2-64 e-cigarette as defined by Section 161.081, Health and Safety Code.
 2-65 SECTION 2. Subchapter B, Chapter 155, Tax Code, is amended
 2-66 by adding Sections 155.0212, 155.025, and 155.028 to read as
 2-67 follows:
 2-68 Sec. 155.0212. LIABILITY OF PERMITTED DISTRIBUTOR. A
 2-69 permitted distributor who makes a first sale to a permitted

3-1 distributor in this state is liable for and shall pay the tax
3-2 imposed by this chapter.

3-3 Sec. 155.025. MANUFACTURING EXEMPTION. Raw tobacco sold to
3-4 a permitted manufacturer in this state for the purpose of using the
3-5 tobacco in manufacturing is not subject to the taxes imposed by this
3-6 chapter.

3-7 Sec. 155.028. IMPACT OF TAX. The ultimate consumer or user
3-8 in this state bears the impact of the tax imposed by this chapter.

3-9 If another person pays the tax, the amount of the tax is added to the
3-10 price charged to the ultimate consumer or user.

3-11 SECTION 3. Sections 155.041(a), (b), and (h), Tax Code, are
3-12 amended to read as follows:

3-13 (a) A person may not engage in business as a distributor,
3-14 wholesaler, bonded agent, manufacturer, export warehouse,
3-15 importer, or retailer unless the person has applied for and
3-16 received the applicable permit from the comptroller.

3-17 (b) Each distributor, wholesaler, bonded agent,
3-18 manufacturer, export warehouse, importer, or retailer shall obtain
3-19 a permit for each place of business owned or operated by the
3-20 distributor, wholesaler, bonded agent, manufacturer, export
3-21 warehouse, importer, or retailer.

3-22 (h) Permits for engaging in business as a distributor,
3-23 wholesaler, bonded agent, manufacturer, export warehouse,
3-24 importer, or retailer shall be governed exclusively by the
3-25 provisions of this code.

3-26 SECTION 4. Section 155.0415, Tax Code, is amended by
3-27 amending Subsection (a) and adding Subsections (c), (d), (e), (f),
3-28 (g), (h), and (i) to read as follows:

3-29 (a) Except for retail sales to consumers, tobacco products
3-30 may only be sold or distributed by and between permit holders as
3-31 provided by this section.

3-32 (c) A manufacturer outside this state who is not a permitted
3-33 distributor may sell tobacco products only to a permitted
3-34 distributor.

3-35 (d) A permitted distributor may sell tobacco products only
3-36 to a permitted distributor, wholesaler, or retailer.

3-37 (e) A permitted importer may sell tobacco products only to a
3-38 permitted distributor, wholesaler, or retailer.

3-39 (f) A permitted wholesaler may sell tobacco products only to
3-40 a permitted distributor, wholesaler, or retailer.

3-41 (g) A permitted retailer may sell tobacco products only to
3-42 the consumer and may purchase tobacco products only from a
3-43 permitted distributor or wholesaler in this state.

3-44 (h) A permitted export warehouse may sell tobacco products
3-45 only to persons authorized to sell or consume untaxed tobacco
3-46 products outside the United States.

3-47 (i) A manufacturer's representative may sell tobacco
3-48 products only to a permitted distributor, wholesaler, or retailer.

3-49 SECTION 5. The heading to Section 155.049, Tax Code, is
3-50 amended to read as follows:

3-51 Sec. 155.049. PERMIT [~~LICENSING~~] YEAR; FEES.

3-52 SECTION 6. Section 155.049, Tax Code, is amended by adding
3-53 Subsections (c) and (g) to read as follows:

3-54 (c) A fee is not required for an export warehouse permit.

3-55 (g) A person issued a permit for a place of business that
3-56 permanently closes before the permit expiration date is not
3-57 entitled to a refund of the permit fee.

3-58 SECTION 7. Section 155.101, Tax Code, is amended to read as
3-59 follows:

3-60 Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each
3-61 distributor, wholesaler, bonded agent, and export warehouse shall
3-62 keep records at each place of business of all tobacco products
3-63 purchased or received. Each retailer shall keep records at a
3-64 single commercial business location, which the retailer shall
3-65 designate as its principal place of business in the state, of all
3-66 tobacco products purchased and received. These records must
3-67 include the following, except that Subdivision (7) applies to
3-68 distributors only and Subdivision (8) applies only to the purchase
3-69 or receipt of tobacco products other than cigars:

- 4-1 (1) the name and address of the shipper or carrier and
 4-2 the mode of transportation;
 4-3 (2) all shipping records or copies of records,
 4-4 including invoices, bills of lading, waybills, freight bills, and
 4-5 express receipts;
 4-6 (3) the date and the name of the place of origin of the
 4-7 tobacco product shipment;
 4-8 (4) the date and the name of the place of arrival of
 4-9 the tobacco product shipment;
 4-10 (5) a statement of the number, kind, and price paid for
 4-11 the tobacco products;
 4-12 (6) the name, address, permit number, and tax
 4-13 identification number of the seller;
 4-14 (7) the manufacturer's list price for the tobacco
 4-15 products;
 4-16 (8) the net weight as listed by the manufacturer for
 4-17 each unit; and
 4-18 (9) any other information required by rules of the
 4-19 comptroller.

4-20 SECTION 8. Subchapter D, Chapter 155, Tax Code, is amended
 4-21 by adding Section 155.109 to read as follows:

4-22 Sec. 155.109. EXPORT WAREHOUSE'S RECORDS. (a) Each export
 4-23 warehouse shall keep, at each of the warehouse's places of business
 4-24 in this state, records of all tobacco products received,
 4-25 distributed, and delivered.

4-26 (b) The records must include:

- 4-27 (1) invoices for receipts and deliveries;
 4-28 (2) orders for receipts and deliveries;
 4-29 (3) shipping records for receipts and deliveries; and
 4-30 (4) shipping records for distribution and delivery.

4-31 SECTION 9. Sections 155.201(a) and (b), Tax Code, are
 4-32 amended to read as follows:

4-33 (a) A person violates this chapter if the person:

4-34 (1) is a distributor, wholesaler, manufacturer,
 4-35 export warehouse, importer, bonded agent, manufacturer's
 4-36 representative, or retailer and fails to keep records required by
 4-37 this chapter;

4-38 (2) engages in the business of a bonded agent,
 4-39 distributor, wholesaler, manufacturer, export warehouse, importer,
 4-40 or retailer without a valid permit;

4-41 (3) is a distributor, wholesaler, manufacturer,
 4-42 export warehouse, importer, bonded agent, or retailer and fails to
 4-43 make a report required by this chapter to the comptroller or makes a
 4-44 false or incomplete report or application required by this chapter
 4-45 to the comptroller; or

4-46 (4) is a person affected by this chapter and fails or
 4-47 refuses to abide by or violates a provision of this chapter or a
 4-48 rule adopted by the comptroller under this chapter.

4-49 (b) A person who violates this chapter [~~forfeits and~~] shall
 4-50 pay to the state a penalty of not more than \$2,000 for each
 4-51 violation.

4-52 SECTION 10. Section 155.202, Tax Code, is amended to read as
 4-53 follows:

4-54 Sec. 155.202. NONPAYMENT OF TAX. A person commits an
 4-55 offense if the person, without the tax being paid:

4-56 (1) receives or possesses in this state tobacco
 4-57 products for the purpose of making a first sale;

4-58 (2) sells, offers for sale, or presents tobacco
 4-59 products as a prize or gift; or

4-60 (3) knowingly consumes, uses, or smokes tobacco
 4-61 products subject to the tax imposed by this chapter [~~in an amount on~~
 4-62 ~~which a tax of more than \$50 is due~~].

4-63 SECTION 11. Section 155.207, Tax Code, is amended to read as
 4-64 follows:

4-65 Sec. 155.207. PERMITS. A person commits an offense if the
 4-66 person acting:

4-67 (1) as a distributor, wholesaler, or retailer,
 4-68 receives or possesses tobacco products without having a valid
 4-69 permit;

5-1 (2) as a distributor, wholesaler, or retailer,
5-2 receives or possesses tobacco products without having a permit
5-3 posted where it can be easily seen by the public;

5-4 (3) as a distributor or wholesaler, does not deliver
5-5 an invoice to the purchaser as required by Section 155.102;

5-6 (4) as a distributor, wholesaler, or retailer, sells
5-7 tobacco products without having a valid permit; or

5-8 (5) as a bonded agent or export warehouse, stores,
5-9 distributes, or delivers tobacco products on which the tax has not
5-10 been paid without having a valid permit.

5-11 SECTION 12. Section 155.209, Tax Code, is amended to read as
5-12 follows:

5-13 Sec. 155.209. TRANSPORTATION OF TOBACCO PRODUCTS. A person
5-14 commits an offense if the person:

5-15 (1) knowingly transports tobacco products subject to
5-16 the tax [~~taxed~~] under this chapter without the tax being paid;

5-17 (2) wilfully refuses to stop a motor vehicle operated
5-18 to transport tobacco products after a request to stop from an
5-19 authorized representative of the comptroller; or

5-20 (3) while transporting tobacco products, refuses to
5-21 permit a complete inspection of the cargo by an authorized
5-22 representative of the comptroller.

5-23 SECTION 13. The heading to Section 155.211, Tax Code, is
5-24 amended to read as follows:

5-25 Sec. 155.211. POSSESSION: TAX DUE [~~MORE THAN \$50~~].

5-26 SECTION 14. Section 155.211(a), Tax Code, is amended to
5-27 read as follows:

5-28 (a) A person commits an offense if the person possesses, in
5-29 violation of this chapter, tobacco products on which a tax [~~of more~~
5-30 ~~than \$50~~] is required to be paid that has not been paid. The absence
5-31 of evidence of a tax payment is prima facie evidence of nonpayment.

5-32 SECTION 15. Sections 155.022, 155.112(b), and 155.203, Tax
5-33 Code, are repealed.

5-34 SECTION 16. The changes in law made by this Act to Sections
5-35 155.202, 155.207, 155.209, and 155.211, Tax Code, and the repeal by
5-36 this Act of Section 155.203, Tax Code, apply only to an offense
5-37 committed on or after the effective date of this Act. An offense
5-38 committed before the effective date of this Act is governed by the
5-39 law in effect on the date the offense was committed, and the former
5-40 law is continued in effect for that purpose. For purposes of this
5-41 section, an offense was committed before the effective date of this
5-42 Act if any element of the offense occurred before that date.

5-43 SECTION 17. The changes in law made by this Act do not
5-44 affect tax liability accruing before the effective date of this
5-45 Act. That liability continues in effect as if this Act had not been
5-46 enacted, and the former law is continued in effect for the
5-47 collection of taxes due and for civil and criminal enforcement of
5-48 the liability for those taxes.

5-49 SECTION 18. This Act takes effect September 1, 2019.

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