

1-1 By: Guillen (Senate Sponsor - Hinojosa) H.B. No. 4614
 1-2 (In the Senate - Received from the House May 6, 2019;
 1-3 May 7, 2019, read first time and referred to Committee on Finance;
 1-4 May 13, 2019, reported favorably by the following vote: Yeas 14,
 1-5 Nays 0; May 13, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22			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 cigarette tax; requiring a permit.

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

1-28 SECTION 1. Section 154.001, Tax Code, is amended by
 1-29 amending Subdivisions (1), (7), (9), (10), (11), (12), (14), (15),
 1-30 (17), and (18) and adding Subdivisions (7-a) and (17-a) to read as
 1-31 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 cigarettes in interstate commerce and stores
 1-35 the cigarettes for distribution or delivery to distributors under
 1-36 orders from the manufacturer [person outside this state].

1-37 (7) "Distributor" means a person who:

1-38 (A) is authorized to purchase for the purpose of
 1-39 making a first sale in this state cigarettes in unstamped packages
 1-40 from manufacturers who distribute cigarettes in this state and to
 1-41 stamp cigarette packages;

1-42 (B) ships, transports, imports into this state,
 1-43 acquires, or possesses cigarettes and makes a first sale of the
 1-44 cigarettes in this state;

1-45 (C) manufactures or produces cigarettes; or

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

1-47 (7-a) "Engage in business" means, in relation to
 1-48 cigarettes, engaging by a person, either directly or through a
 1-49 representative, in any of the following activities:

1-50 (A) selling cigarettes in or into this state;

1-51 (B) using a warehouse or another location to
 1-52 store cigarettes; or

1-53 (C) otherwise conducting through a physical
 1-54 presence cigarette-related business in this state.

1-55 (9) "First sale" means, except as otherwise provided
 1-56 by this chapter:

1-57 (A) the first transfer of possession in
 1-58 connection with a purchase, sale, or any exchange for value of
 1-59 cigarettes in or into this state, which:

1-60 (i) includes the sale of cigarettes by:

1-61 (a) a distributor in or outside this

2-1 state to a distributor, wholesaler, or retailer in this state; and
 2-2 (b) a manufacturer in this state who
 2-3 transfers the cigarettes in this state; and
 2-4 (ii) does not include:
 2-5 (a) the sale of cigarettes by a
 2-6 manufacturer outside this state to a distributor in this state; or
 2-7 (b) the transfer of cigarettes from a
 2-8 manufacturer outside this state to a bonded agent in this state [~~in~~
 2-9 intrastate commerce];
 2-10 (B) the first use or consumption of cigarettes in
 2-11 this state; or
 2-12 (C) the loss of cigarettes in this state whether
 2-13 through negligence, theft, or other unaccountable loss.
 2-14 (10) "Importer" [~~or "import broker"~~] means a person
 2-15 who ships, transports, or imports into this state cigarettes
 2-16 manufactured or produced outside the United States for the purpose
 2-17 of making a first sale in this state.
 2-18 (11) "Individual package of cigarettes" means a
 2-19 package that contains at least 20 [~~not fewer than 10~~] cigarettes.
 2-20 (12) "Manufacturer" means a person who manufactures,
 2-21 fabricates, or assembles cigarettes, or causes or arranges for the
 2-22 manufacture, fabrication, or assembly of cigarettes, for sale or
 2-23 distribution [~~and sells cigarettes to a distributor~~].
 2-24 (14) "Permit holder" means a bonded agent,
 2-25 distributor, wholesaler, manufacturer, importer, export warehouse,
 2-26 or retailer who obtains [~~required to obtain~~] a permit under Section
 2-27 154.101.
 2-28 (15) "Place of business" means:
 2-29 (A) a commercial business location where
 2-30 cigarettes are sold;
 2-31 (B) a commercial business location where
 2-32 cigarettes are kept for sale or consumption or otherwise stored;
 2-33 [~~or~~]
 2-34 (C) a vehicle from which cigarettes are sold; or
 2-35 (D) a vending machine from which cigarettes are
 2-36 sold.
 2-37 (17) "Retailer" means a person who engages in the
 2-38 business [~~practice~~] of selling cigarettes to consumers and includes
 2-39 the owner of a [~~coin-operated~~] cigarette vending machine.
 2-40 (17-a) "Roll-your-own machine" means a machine for
 2-41 commercial use at a retail premise that is capable of producing
 2-42 cigarettes only in quantities for personal use.
 2-43 (18) "Stamp" includes only a stamp that:
 2-44 (A) is printed, manufactured, or made by
 2-45 authority of the comptroller;
 2-46 (B) shows payment of the tax imposed by this
 2-47 chapter; [~~and~~]
 2-48 (C) is consecutively numbered and uniquely
 2-49 identifiable as a Texas tax stamp; and
 2-50 (D) is legible and undamaged.
 2-51 SECTION 2. Section 154.002, Tax Code, is amended to read as
 2-52 follows:
 2-53 Sec. 154.002. STORAGE. (a) The commercial business
 2-54 location where cigarettes are stored or kept cannot be a residence
 2-55 or a unit in a public storage facility.
 2-56 (b) For the purpose of Subsection (a), the vehicle of a
 2-57 manufacturer's representative is not a residence or public storage
 2-58 facility.
 2-59 SECTION 3. Section 154.022, Tax Code, is amended to read as
 2-60 follows:
 2-61 Sec. 154.022. TAX IMPOSED ON FIRST SALE OF CIGARETTES. The
 2-62 cigarette tax is imposed and becomes due and payable when a person
 2-63 [~~in this state~~] receives cigarettes to make a first sale.
 2-64 SECTION 4. Subchapter B, Chapter 154, Tax Code, is amended
 2-65 by adding Section 154.0225 to read as follows:
 2-66 Sec. 154.0225. LIABILITY OF PERMITTED DISTRIBUTOR. A
 2-67 permitted distributor who makes a first sale to a permitted
 2-68 distributor in this state is liable for and shall pay the tax
 2-69 imposed by this chapter.

3-1 SECTION 5. Section 154.024(a), Tax Code, is amended to read
3-2 as follows:

3-3 (a) A person who imports and personally transports 200 or
3-4 fewer cigarettes into this state from another state or from an
3-5 Indian reservation under the jurisdiction of the United States
3-6 government is not required to pay the tax imposed by this chapter if
3-7 the person uses the cigarettes and does not sell them or offer them
3-8 for sale. A person who imports and personally transports 200 or
3-9 fewer cigarettes into this state from a foreign country shall pay
3-10 the tax imposed by this chapter and have affixed on each individual
3-11 package of cigarettes a stamp to show payment of the tax.

3-12 SECTION 6. Section 154.060, Tax Code, is amended to read as
3-13 follows:

3-14 Sec. 154.060. CANCELLATION. No person may cancel, mark,
3-15 alter, or mutilate a stamp on a package of cigarettes so that the
3-16 comptroller is prevented from or hindered in examining the
3-17 genuineness of the stamp.

3-18 SECTION 7. Section 154.101, Tax Code, is amended by
3-19 amending Subsections (a), (b), and (h) and adding Subsections (i)
3-20 and (j) to read as follows:

3-21 (a) A person may not engage in business as a distributor,
3-22 wholesaler, bonded agent, manufacturer, export warehouse,
3-23 importer, or retailer unless the person has applied for and
3-24 received the applicable permit from the comptroller.

3-25 (b) Each distributor, wholesaler, bonded agent,
3-26 manufacturer, export warehouse, importer, or retailer shall obtain
3-27 a permit for each place of business owned or operated by the
3-28 distributor, wholesaler, bonded agent, manufacturer, export
3-29 warehouse, importer, or retailer. The comptroller may not issue a
3-30 permit for a place of business that is a residence or a unit in a
3-31 public storage facility.

3-32 (h) Permits for engaging in business as a distributor,
3-33 wholesaler, bonded agent, manufacturer, export warehouse,
3-34 importer, or retailer shall be governed exclusively by the
3-35 provisions of this code.

3-36 (i) This section does not apply to a research facility that
3-37 possesses and uses cigarettes only for experimental purposes.

3-38 (j) A person engaged in the business of selling cigarettes
3-39 for commercial purposes who provides a roll-your-own machine
3-40 available for use by consumers must obtain manufacturer's,
3-41 distributor's, and retailer's permits.

3-42 SECTION 8. Section 154.1015, Tax Code, is amended by
3-43 amending Subsection (a) and adding Subsections (c), (d), (e), (f),
3-44 (g), (h), and (i) to read as follows:

3-45 (a) Except for retail sales to consumers, cigarettes may
3-46 only be sold or distributed by and between permit holders as
3-47 provided by this section.

3-48 (c) A manufacturer outside this state who is not a permitted
3-49 distributor may sell cigarettes only to a permitted distributor.

3-50 (d) A permitted distributor may sell cigarettes only to a
3-51 permitted distributor, wholesaler, or retailer.

3-52 (e) A permitted importer may sell cigarettes only to a
3-53 permitted distributor, wholesaler, or retailer.

3-54 (f) A permitted wholesaler may sell cigarettes only to a
3-55 permitted distributor, wholesaler, or retailer.

3-56 (g) A permitted retailer may sell cigarettes only to the
3-57 consumer and may purchase cigarettes only from a permitted
3-58 distributor or wholesaler in this state.

3-59 (h) A permitted export warehouse may sell cigarettes only to
3-60 persons authorized to sell or consume unstamped cigarettes outside
3-61 the United States.

3-62 (i) A manufacturer's representative may sell cigarettes
3-63 only to a permitted distributor, wholesaler, or retailer.

3-64 SECTION 9. Section 154.110(a), Tax Code, is amended to read
3-65 as follows:

3-66 (a) The comptroller shall issue a permit to a distributor,
3-67 wholesaler, bonded agent, manufacturer, export warehouse,
3-68 importer, or retailer if the comptroller:

3-69 (1) has received an application and fee, if required;

4-1 (2) believes that the applicant has complied with
 4-2 Section 154.101; and

4-3 (3) determines that issuing the permit will not
 4-4 jeopardize the administration and enforcement of this chapter.

4-5 SECTION 10. Section 154.111, Tax Code, is amended by adding
 4-6 Subsections (c) and (g) to read as follows:

4-7 (c) A fee is not required for an export warehouse permit.

4-8 (g) A person issued a permit for a place of business that
 4-9 permanently closes before the permit expiration date is not
 4-10 entitled to a refund of the permit fee.

4-11 SECTION 11. Section 154.201, Tax Code, is amended to read as
 4-12 follows:

4-13 Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each
 4-14 distributor, wholesaler, bonded agent, and export warehouse shall
 4-15 keep records at each place of business of all cigarettes purchased
 4-16 or received, including records of those cigarettes for which no tax
 4-17 is due under federal law. Each retailer shall keep records at a
 4-18 single commercial business location, which the retailer shall
 4-19 designate as its principal place of business in this state, of all
 4-20 cigarettes purchased and received. These records must include:

4-21 (1) the name and address of the shipper or carrier and
 4-22 the mode of transportation;

4-23 (2) all shipping records or copies of records,
 4-24 including invoices, bills of lading, waybills, freight bills, and
 4-25 express receipts;

4-26 (3) the date and the name of the place of origin of the
 4-27 cigarette shipment;

4-28 (4) the date and the name of the place of arrival of
 4-29 the cigarette shipment;

4-30 (5) a statement of the number, kind, and price paid for
 4-31 cigarettes, including cigarettes in stamped and unstamped
 4-32 packages;

4-33 (6) the name, address, permit number, and tax
 4-34 identification number of the seller;

4-35 (7) in the case of a distributor, copies of the customs
 4-36 certificates required by 19 U.S.C. Section 1681a(c), as amended,
 4-37 for all cigarettes imported into the United States to which the
 4-38 distributor has affixed a tax stamp; and

4-39 (8) any other information required by rules of the
 4-40 comptroller.

4-41 SECTION 12. Section 154.204(b), Tax Code, is amended to
 4-42 read as follows:

4-43 (b) A manufacturer who sells cigarettes to a permit holder
 4-44 in this state shall file with the comptroller, on or before the 25th
 4-45 ~~[end]~~ of each month, a report showing the information listed in
 4-46 Subsections (a)(1) [Subdivisions (1)], (2), (3), and (5) [of
 4-47 Subsection (a)] for the previous month. Information related to the
 4-48 manufacturer's list prices must be submitted by the manufacturer 15
 4-49 days prior to any scheduled changes.

4-50 SECTION 13. Section 154.207(b), Tax Code, is amended to
 4-51 read as follows:

4-52 (b) The comptroller and the attorney general are entitled to
 4-53 access during regular business hours ~~[to]~~ all records pertaining to
 4-54 cigarettes that are transported.

4-55 SECTION 14. Section 154.208(a), Tax Code, is amended to
 4-56 read as follows:

4-57 (a) Each bonded agent shall keep, at each of the agent's
 4-58 places [place] of business in this state, records of all cigarettes
 4-59 received, distributed, and delivered.

4-60 SECTION 15. Subchapter F, Chapter 154, Tax Code, is amended
 4-61 by adding Section 154.2085 to read as follows:

4-62 Sec. 154.2085. EXPORT WAREHOUSE'S RECORDS. (a) Each export
 4-63 warehouse shall keep, at each of the warehouse's places of business
 4-64 in this state, records of all cigarettes received, distributed, and
 4-65 delivered.

4-66 (b) The records must include:

4-67 (1) invoices for receipts and deliveries;

4-68 (2) orders for receipts and deliveries;

4-69 (3) shipping records for receipts and deliveries; and

5-1 (4) shipping records for distribution and delivery.

5-2 SECTION 16. Section 154.209(b), Tax Code, is amended to
5-3 read as follows:

5-4 (b) If a permit holder's place of business is a vehicle or a
5-5 vending machine, the permit holder shall designate in the
5-6 application for a permit a permanent place of business to keep the
5-7 records. The permit holder shall keep the records in the designated
5-8 place.

5-9 SECTION 17. Sections 154.501(a), (b), and (d), Tax Code,
5-10 are amended to read as follows:

5-11 (a) A person violates this chapter if the person:

5-12 (1) is a distributor, wholesaler, manufacturer,
5-13 export warehouse, importer, bonded agent, manufacturer's
5-14 representative, or retailer and fails to keep records required by
5-15 this chapter;

5-16 (2) engages in the business of a bonded agent,
5-17 distributor, wholesaler, manufacturer, export warehouse, importer,
5-18 or retailer without a valid permit;

5-19 (3) is a distributor, wholesaler, manufacturer,
5-20 export warehouse, importer, bonded agent, or retailer and fails to
5-21 make a report or makes a false or incomplete report or application
5-22 required by this chapter to the comptroller; or

5-23 (4) is a person affected by this chapter and fails or
5-24 refuses to abide by or violates a provision of this chapter or a
5-25 rule adopted by the comptroller under this chapter.

5-26 (b) A person who violates this section [~~forfeits and~~] shall
5-27 pay to the state a penalty of not more than \$2,000 for each
5-28 violation.

5-29 (d) The attorney general shall bring a suit [~~suits~~] to
5-30 recover penalties under this section.

5-31 SECTION 18. Section 154.502, Tax Code, is amended to read as
5-32 follows:

5-33 Sec. 154.502. UNSTAMPED CIGARETTES. Except as provided by
5-34 Section 154.026(b), a person commits an offense if the person:

5-35 (1) makes a first sale of unstamped cigarettes;

5-36 (2) sells, offers for sale, or presents as a prize or
5-37 gift unstamped cigarettes; or

5-38 (3) knowingly consumes, uses, or smokes cigarettes
5-39 subject to the tax [~~taxed~~] under this chapter without a stamp
5-40 affixed to each individual package.

5-41 SECTION 19. Section 154.509, Tax Code, is amended to read as
5-42 follows:

5-43 Sec. 154.509. PERMITS. A person commits an offense if the
5-44 person acting:

5-45 (1) as a distributor, wholesaler, or retailer,
5-46 receives or possesses cigarettes without having a valid permit;

5-47 (2) as a distributor, wholesaler, or retailer,
5-48 receives or possesses cigarettes without having a permit posted
5-49 where it can be easily seen by the public;

5-50 (3) as a distributor or wholesaler, does not deliver
5-51 an invoice to the purchaser as required by Section 154.203;

5-52 (4) as a distributor, wholesaler, or retailer, sells
5-53 cigarettes without having a valid permit; or

5-54 (5) as a bonded agent or export warehouse, stores,
5-55 distributes, or delivers cigarettes in unstamped packages without
5-56 having a valid permit.

5-57 SECTION 20. Section 154.520(a), Tax Code, is amended to
5-58 read as follows:

5-59 (a) A person commits an offense if the person:

5-60 (1) prints, engraves, makes, duplicates, issues,
5-61 sells, or circulates counterfeit stamps;

5-62 (2) possesses, with intent to use, sell, circulate, or
5-63 pass, a counterfeit stamp;

5-64 (3) uses or consents to the use of a counterfeit stamp
5-65 in the sale or offering for sale of cigarettes; or

5-66 (4) places or causes to be placed a counterfeit stamp
5-67 on an individual package of cigarettes.

5-68 SECTION 21. The changes in law made by this Act to Sections
5-69 154.502, 154.509, and 154.520, Tax Code, apply only to an offense

6-1 committed on or after the effective date of this Act. An offense
6-2 committed before the effective date of this Act is governed by the
6-3 law in effect on the date the offense was committed, and the former
6-4 law is continued in effect for that purpose. For purposes of this
6-5 section, an offense was committed before the effective date of this
6-6 Act if any element of the offense occurred before that date.

6-7 SECTION 22. The changes in law made by this Act do not
6-8 affect tax liability accruing before the effective date of this
6-9 Act. That liability continues in effect as if this Act had not been
6-10 enacted, and the former law is continued in effect for the
6-11 collection of taxes due and for civil and criminal enforcement of
6-12 the liability for those taxes.

6-13 SECTION 23. This Act takes effect September 1, 2019.

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