

By: Harris of Anderson

H.B. No. 4865

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the taxation of cigars and pipe tobacco sold by certain
3 remote retail sellers; requiring an occupational permit.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 155.001, Tax Code, is amended by
6 amending Subdivisions (2), (8), and (12) and adding Subdivisions
7 (12-a), (13-b), (13-c), and (14-a) to read as follows:

8 (2) "Cigar" means a roll of ~~[fermented]~~ tobacco ~~[that~~
9 ~~is]~~ wrapped in tobacco leaf or in another substance containing
10 tobacco ~~[and the main stream of smoke from which produces an~~
11 ~~alkaline reaction to litmus paper]~~.

12 (8) "First sale" means, except as otherwise provided
13 by this chapter:

14 (A) the first transfer of possession in
15 connection with a purchase, sale, or any exchange for value of
16 tobacco products in or into this state, which:

17 (i) includes the sale of tobacco products
18 by:

19 (a) a distributor in or outside this
20 state to a distributor, wholesaler, or retailer in this state; and

21 (b) a manufacturer in this state who
22 transfers the tobacco products in this state; and

23 (ii) does not include:

24 (a) the sale of tobacco products by a

1 manufacturer outside this state to a distributor in this state;

2 (b) the transfer of tobacco products
3 from a manufacturer outside this state to a bonded agent in this
4 state; or

5 (c) the sale of tobacco products by a
6 manufacturer, bonded agent, distributor, or importer to an
7 interstate warehouse in this state;

8 (B) the first transfer of possession in
9 connection with a remote retail sale of cigars or pipe tobacco by a
10 remote retail seller outside this state to a consumer in this state;

11 (C) the first use or consumption of tobacco
12 products in this state; or

13 (D) [~~C~~] the loss of tobacco products in this
14 state whether through negligence, theft, or other unaccountable
15 loss.

16 (12) "Permit holder" means a bonded agent, interstate
17 warehouse, distributor, wholesaler, manufacturer, importer, export
18 warehouse, remote retail seller, or retailer who obtains a permit
19 under Section 155.041.

20 (12-a) "Pipe tobacco" means a tobacco product that,
21 because of its appearance, type, packaging, or labeling, is
22 suitable for use and is likely to be offered to or purchased by
23 consumers as tobacco to be smoked in a pipe.

24 (13-b) "Remote retail sale":

25 (A) means any sale of cigars or pipe tobacco by a
26 person located outside this state to a consumer in this state if:

27 (i) the consumer submits the order by means

1 of a telephone or another method of voice transmission, the mail,
2 the Internet or another online service, or by other means where the
3 seller is otherwise not in the physical presence of the consumer
4 when the order is made; and

5 (ii) the cigars or pipe tobacco is
6 delivered to the consumer by common carrier, private delivery
7 service, or other method of remote delivery or the seller is
8 otherwise not in the physical presence of the consumer when the
9 consumer obtains possession of the cigar or pipe tobacco; and

10 (B) does not include a delivery sale as defined
11 by 15 U.S.C. Section 375.

12 (13-c) "Remote retail seller" means a person located
13 outside this state who makes remote retail sales of cigars or pipe
14 tobacco. The term does not include a delivery seller as defined by
15 15 U.S.C. Section 375.

16 (14-a) "Sale" means any transfer, exchange, or barter
17 for consideration. The term includes:

18 (A) a gift by a person engaged in the business of
19 selling tobacco products for advertising, as a means of evading
20 this chapter, or for any other purpose;

21 (B) the solicitation of orders for future
22 delivery; and

23 (C) a sale for future delivery.

24 SECTION 2. Sections 155.021(a) and (c), Tax Code, are
25 amended to read as follows:

26 (a) A tax is imposed and becomes due and payable when:

27 (1) a permit holder receives cigars for the purpose of

1 making a first sale in this state; or

2 (2) a remote retail seller makes a first sale of cigars
3 to a consumer in this state.

4 (c) Cigars taxed under Subsections (b)(3) and (b)(4) of this
5 section are presumed to contain a substantial amount of nontobacco
6 ingredients unless the report on the cigars required by Section
7 155.111 [~~of this code~~] is accompanied by an affidavit stating that
8 specific cigars described in the report do not contain sheet
9 wrapper, sheet binder, or sheet filler. If the manufacturer
10 prepares the report, the manufacturer shall make the affidavit. If
11 the distributor prepares the report, the manufacturer and the
12 distributor shall make the affidavit. If the remote retail seller
13 prepares the report, the manufacturer and the remote retail seller
14 shall make the affidavit.

15 SECTION 3. Section 155.0211(a), Tax Code, is amended to
16 read as follows:

17 (a) A tax is imposed and becomes due and payable when:

18 (1) a permit holder receives tobacco products, other
19 than cigars, for the purpose of making a first sale in this state;
20 or

21 (2) a remote retail seller makes a first sale of pipe
22 tobacco to a consumer in this state.

23 SECTION 4. Subchapter B, Chapter 155, Tax Code, is amended
24 by adding Section 155.0235 to read as follows:

25 Sec. 155.0235. REMOTE RETAIL SELLERS: LIABILITY FOR AND
26 PAYMENT OF TAX. (a) A permitted remote retail seller who makes a
27 first sale of cigars or pipe tobacco to a consumer in this state is

1 liable for and shall pay the tax imposed by this chapter.

2 (b) A remote retail seller shall pay the tax on cigars and
3 pipe tobacco sold to consumers in this state at the time the remote
4 retail seller files the report required by Section 155.1115. The
5 remote retail seller shall pay the tax by cashier's check payable to
6 the comptroller, by electronic funds transfer to the comptroller,
7 or by any other method of payment authorized by the comptroller.

8 SECTION 5. Section 155.026(a), Tax Code, is amended to read
9 as follows:

10 (a) A distributor or remote retail seller who fails to
11 timely pay the tax when due shall pay five percent of the amount of
12 tax then due as a penalty, and if the distributor or remote retail
13 seller fails to pay the tax on or before the 30th day after the day
14 on which the tax is due, the distributor or remote retail seller
15 shall pay an additional five percent of the amount of tax then due.

16 SECTION 6. Sections 155.041(a), (b), and (h), Tax Code, are
17 amended to read as follows:

18 (a) A person may not engage in business as a distributor,
19 wholesaler, bonded agent, interstate warehouse, manufacturer,
20 export warehouse, importer, remote retail seller, or retailer
21 unless the person has applied for and received the applicable
22 permit from the comptroller.

23 (b) Each distributor, wholesaler, bonded agent, interstate
24 warehouse, manufacturer, export warehouse, importer, remote retail
25 seller, or retailer shall obtain a permit for each place of business
26 owned or operated by the distributor, wholesaler, bonded agent,
27 interstate warehouse, manufacturer, export warehouse, importer,

1 remote retail seller, or retailer.

2 (h) Permits for engaging in business as a distributor,
3 wholesaler, bonded agent, interstate warehouse, manufacturer,
4 export warehouse, importer, remote retail seller, or retailer shall
5 be governed exclusively by the provisions of this code.

6 SECTION 7. Section [155.0415](#), Tax Code, is amended by adding
7 Subsection (k) to read as follows:

8 (k) A permitted remote retail seller may sell cigars and
9 pipe tobacco only to a consumer in this state.

10 SECTION 8. Subchapter C, Chapter [155](#), Tax Code, is amended
11 by adding Section 155.0416 to read as follows:

12 Sec. 155.0416. REMOTE RETAIL SELLER PERMIT. (a) A person
13 may not make a remote retail sale of cigars or pipe tobacco to a
14 consumer in this state unless the person holds a remote retail
15 seller permit.

16 (b) Unless a remote retail seller is exempt under
17 comptroller rule from the requirement to obtain a permit under
18 Section [151.201](#) based on annual revenue from sales to persons in
19 this state, the remote retail seller shall:

20 (1) apply for and obtain a permit under Section
21 [151.201](#); and

22 (2) collect and remit the taxes imposed under this
23 chapter and Chapter [151](#).

24 (c) A remote retail seller shall use an independent,
25 third-party age verification service that compares information
26 available from a commercially available database, or aggregate of
27 databases, that is regularly used by government agencies and

1 businesses for the purpose of age and identity verification to
2 verify the personal information entered by the individual during
3 the ordering process and establish that the individual is of age.

4 SECTION 9. Section 155.048(a), Tax Code, is amended to read
5 as follows:

6 (a) The comptroller shall issue a permit to a distributor,
7 wholesaler, bonded agent, interstate warehouse, manufacturer,
8 importer, remote retail seller, or retailer if the comptroller:

9 (1) has received an application and fee, if required;

10 (2) does not reject the application and deny the
11 permit under Section 155.0481; and

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

14 SECTION 10. Section 155.049(b), Tax Code, is amended to
15 read as follows:

16 (b) An application for a permit required by this chapter
17 must be accompanied by a fee of:

18 (1) \$300 for a bonded agent's permit;

19 (1-a) \$300 for an interstate warehouse's permit;

20 (2) \$300 for a distributor's permit;

21 (3) \$200 for a wholesaler's permit;

22 (4) \$15 for each permit for a vehicle if the applicant
23 is also applying for a permit as a bonded agent, distributor, or
24 wholesaler or has received a current permit from the comptroller
25 under Sections 155.041 and 155.048; ~~and~~

26 (5) \$180 for a retailer's permit; and

27 (6) \$180 for a remote retail seller's permit.

1 SECTION 11. Section 155.053, Tax Code, is amended by adding
2 Subsection (d) to read as follows:

3 (d) This section does not apply to a remote retail seller
4 permit holder.

5 SECTION 12. Section 155.058(a), Tax Code, is amended to
6 read as follows:

7 (a) Except as provided by Subsection (b), revenue from the
8 sale of permits to distributors, wholesalers, bonded agents, remote
9 retail sellers, and interstate warehouses is allocated in the same
10 manner that other revenue is allocated by Subchapter H.

11 SECTION 13. Section 155.101, Tax Code, is amended to read as
12 follows:

13 Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. (a) Each
14 distributor, wholesaler, bonded agent, interstate warehouse, and
15 export warehouse shall keep records at each place of business of all
16 tobacco products purchased or received.

17 (b) Each retailer shall keep records at a single commercial
18 business location, which the retailer shall designate as its
19 principal place of business in the state, of all tobacco products
20 purchased and received.

21 (c) Each remote retail seller shall keep records at the
22 principal place of business location identified on the permit.

23 (d) The [These] records required by this section must
24 include:

25 (1) the name and address of the shipper or carrier and
26 the mode of transportation;

27 (2) all shipping records or copies of records,

1 including invoices, bills of lading, waybills, freight bills, and
2 express receipts;

3 (3) the date and the name of the place of origin of the
4 tobacco product shipment;

5 (4) the date and the name of the place of arrival of
6 the tobacco product shipment;

7 (5) a statement of the number, kind, and price paid for
8 the tobacco products;

9 (6) the name, address, permit number, and tax
10 identification number of the seller;

11 (7) in the case of a distributor, the manufacturer's
12 list price for the tobacco products;

13 (8) for tobacco products other than cigars, the net
14 weight as listed by the manufacturer for each unit; and

15 (9) any other information required by rules of the
16 comptroller.

17 SECTION 14. Subchapter D, Chapter 155, Tax Code, is amended
18 by adding Section 155.1115 to read as follows:

19 Sec. 155.1115. REMOTE RETAIL SELLERS: RECORDS AND REPORT.

20 (a) Each remote retail seller shall keep records of the sale or
21 other disposition of cigars and pipe tobacco as required by
22 comptroller rule.

23 (b) A remote retail seller shall file with the comptroller
24 on or before the 25th day of each month a report for the preceding
25 month. The report must show:

26 (1) the date the report was made;

27 (2) the remote retail seller's name and address;

1 (3) the month the report covers;

2 (4) the amount of cigars and pipe tobacco sold to
3 consumers in this state; and

4 (5) any other information the comptroller requires
5 relating to cigars and pipe tobacco and to the payment of taxes due
6 on cigars and pipe tobacco.

7 (c) The comptroller shall prescribe the form and content of
8 the report under Subsection (b).

9 SECTION 15. Section 155.201(a), Tax Code, is amended to
10 read as follows:

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

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

16 (2) engages in the business of a bonded agent,
17 interstate warehouse, distributor, wholesaler, manufacturer,
18 export warehouse, importer, remote retail seller, or retailer
19 without a valid permit;

20 (3) is a distributor, wholesaler, manufacturer,
21 export warehouse, importer, bonded agent, interstate warehouse,
22 remote retail seller, or retailer and fails to make a report
23 required by this chapter to the comptroller or makes a false or
24 incomplete report or application required by this chapter to the
25 comptroller; or

26 (4) is a person affected by this chapter and fails or
27 refuses to abide by or violates a provision of this chapter or a

1 rule adopted by the comptroller under this chapter.

2 SECTION 16. Section 155.207, Tax Code, is amended to read as
3 follows:

4 Sec. 155.207. PERMITS. A person commits an offense if the
5 person acting:

6 (1) as a distributor, interstate warehouse,
7 wholesaler, or retailer, receives or possesses tobacco products
8 without having a valid permit;

9 (2) as a distributor, interstate warehouse,
10 wholesaler, or retailer, receives or possesses tobacco products
11 without having a permit posted where it can be easily seen by the
12 public;

13 (3) as a distributor, interstate warehouse, or
14 wholesaler, does not deliver an invoice to the purchaser as
15 required by Section 155.102;

16 (4) as a distributor, interstate
17 warehouse, wholesaler, remote retail seller, or retailer, sells
18 tobacco products without having a valid permit; or

19 (5) as a bonded agent, interstate warehouse, or
20 export warehouse, stores, distributes, or delivers tobacco
21 products on which the tax has not been paid without having a valid
22 permit.

23 SECTION 17. Section 155.211(b), Tax Code, is amended to
24 read as follows:

25 (b) This section does not prohibit transportation of
26 tobacco products by a common carrier, including as part of a remote
27 retail sale made by a permit holder.

1 SECTION 18. Not later than January 1, 2024, the comptroller
2 of public accounts shall adopt rules necessary to implement the
3 changes in law made by this Act.

4 SECTION 19. Notwithstanding Section 155.0416, Tax Code, as
5 added by this Act, a person who makes a remote retail sale of cigars
6 or pipe tobacco is not required to hold a permit as a remote retail
7 seller before April 1, 2024.

8 SECTION 20. The changes in law made by this Act do not
9 affect tax liability accruing before the effective date of this
10 Act. That liability continues in effect as if this Act had not been
11 enacted, and the former law is continued in effect for the
12 collection of taxes due and for civil and criminal enforcement of
13 the liability for those taxes.

14 SECTION 21. This Act takes effect September 1, 2023.