BILL ANALYSIS

C.S.H.B. 3141
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1997, Texas, along with four other states, agreed to individual state tobacco settlements. By 1998 the remaining states had joined into a Master Settlement Agreement (MSA) that calculated the tobacco settlement payments to the states. These payments were based on the total nationwide sales by cigarette manufacturers that are parties to the agreement. However, sales by manufacturers that are not parties to the agreement, or nonparticipating manufacturers (NPM), do not result in payments to the states.

Since 1998 the 46 MSA states have required those NPM's that refused to sign the MSA to instead escrow funds that could be used to satisfy the judgments that might be entered against them in lawsuits brought by the states.

Some NPM's attempt to evade making these escrow payments by using the four non-escrow states, Mississippi, Florida, Minnesota & Texas as a first point of shipment. They will then ship the product to other states and as they do not make escrow payments, they are able to sell the product at a substantially lower price. Companies that comply with the state requirements often have reduced sales due to these illegal practices. This in turn costs the State of Texas settlement money.

C.S.H.B. 3141 would require companies that pass tobacco products through Texas for sale in another state to have a state tax stamp on those products. It allows a distributor in this state to transfer to that distributor's location in another state or to an affiliated entity. It will also require companies to submit reports to the attorney general identifying the shipments of products and the destinations of the product.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Section 154.152, Tax Code, by requiring state cigarette tax stamps to be affixed to cigarettes being shipped from Texas to other states for sales. It would require companies selling cigarettes to fully comply with all state laws and tax requirements prior to affixing a tax stamp on the products for sale. It allows a distributor in this state to transfer to that distributor's location in another state or to an affiliated entity. It also requires companies to provide to the Attorney General quarterly reports of products that are transported to other states for sale.

EFFECTIVE DATE

Immediate if the bill receives two-thirds vote in both houses. If not, effective date is September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3141 differs from the original bill by adding language in Subsection (c) that nothing in this section shall prohibit a distributor from transporting from this state cigarettes to the distributor's location in another state or to the distributor's affiliated entity located in another state without first affixing stamps to the cigarettes.

Adds new subsection (d) to define "affiliated entity" which tracks the language from the sales tax intercorporate services exemption found in Sec. 151.346, Tax Code, as defined under 26 U.S.C. Section 1504, Internal Revenue Code.

Subsections (d) and (e) in HB 3141 as filed become new subsections (e) and (f) respectively.