By: Kuempel H.B. No. 2575

A BILL TO BE ENTITLED

AN ACT

relating to cigarettes; providing penalties.

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

SECTION 1. Section 154.001, Tax Code, is amended by amending Subdivisions (1), (7), (10), (17), and (18), and by adding Subdivisions (10-a) and (10-b) to read as follows:

(1) "Bonded agent" means a person in this state who is an agent of a manufacturer or importer [~~person~~] outside this state and receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer or importer [~~person~~] outside this state.

(7) "Distributor" means a person who:

(A) is authorized to purchase for the purpose of making a first sale in this state cigarettes in unstamped packages from manufacturers, importers, or bonded agents who distribute cigarettes in this state and to stamp cigarette packages; or

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state[~~,~~

[~~(C) manufactures or produces cigarettes; or~~

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

(10) "Importer" or "import broker" means a person who ships, transports, or imports [~~into this state~~] cigarettes into

[~~manufactured or produced outside~~] the United States [~~for the purpose of making a first sale in this state~~].

(10-a) "Indian country" has the meaning assigned by 18 U.S.C. Section 1151, as amended.

(10-b) "Indian tribal entity" means a federally recognized Indian tribe, a tribal entity, or any other person doing business as a distributor or retailer of cigarettes on the Indian country of that tribe in this state.

(17) "Retailer" means a person, regardless of location, who engages in the practice of selling cigarettes to consumers and includes the owner of a coin-operated cigarette vending machine.

(18) "Stamp" includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by this chapter or that the cigarettes are intended for a sale or distribution in this state that is exempt from taxation under Section 154.026(a); and

(C) is consecutively numbered and uniquely identifiable as a Texas tax stamp or tax-exempt stamp.

SECTION 2. Subchapter B, Chapter 154, Tax Code, is amended by adding Section 154.026 to read as follows:

Sec. 154.026. APPLICATION OF TAX ON TRIBAL LANDS. (a) Cigarettes sold to or received by members of a federally recognized Indian tribe on the tribe's Indian country are not subject to the tax imposed by this chapter.

(b) The tax rate applicable to cigarettes sold to or received by nontribal members on Indian country is equal to the rate provided by Section 154.021 minus any tribal tax rate. If the resulting rate is a negative number, the tax rate under this subsection is zero. Cigarettes sold to nontribal members on Indian country must bear a tax stamp as required by Section 154.041(a) in an amount equal to the full tax imposed under Section 154.021.

(c) The comptroller shall periodically rebate to an Indian tribal entity that is in compliance with this chapter an amount equal to the tribal tax imposed on sales under Subsection (b) or the face value of the tax stamps affixed to cigarettes sold under this section, whichever amount is less.

SECTION 3. Section 154.041, Tax Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A person who pays a tax imposed by this chapter shall securely affix a stamp to each individual package of cigarettes to show payment of the tax. A tax-exempt stamp shall be applied to all cigarette packages intended for sale or distribution to consumers not subject to the tax imposed by this chapter. A stamp may not be applied to a cigarette package exempt from taxation under 26 U.S.C. Section 5701, as amended, that is distributed by a manufacturer in accordance with federal regulations.

(a-1) Only a distributor with a permit issued under Subchapter D may purchase or obtain cigarette stamps. A distributor may not sell or provide stamps to any other person, including another distributor.

SECTION 4. Subchapter C, Chapter 154, Tax Code, is amended by adding Section 154.0416 to read as follows:

Sec. 154.0416. UNSTAMPED CIGARETTES. (a) Except as provided by this section and Section 154.024, a person, other than a distributor or bonded agent that receives unstamped cigarette packages directly from a cigarette manufacturer in accordance with Section 154.042, may not hold an unstamped cigarette package.

(b) A person may not ship unstamped cigarette packages into this state, other than to a distributor or bonded agent holding a permit issued under Subchapter D, unless the person first files with the comptroller notice of that shipment. A person transporting unstamped cigarette packages into or within this state shall carry, in the vehicle used to convey the shipment, invoices or equivalent documentation of the shipment for all cigarettes in the shipments. The invoices or documentation must show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the transported cigarettes. This subsection does not apply to a common or contract carrier transporting cigarettes through this state to another location under a proper bill of lading or freight bill that states the quantity, source, and destination of the cigarettes.

SECTION 5. Section 154.042, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) A distributor shall affix the required tax stamps to each individual package that is to be sold, offered for sale, consumed, distributed, handled, or transported. A distributor is

not required to affix a stamp to cigarettes that may be maintained without stamps under Section 154.152. A distributor may apply stamps only to cigarette packages that the distributor received directly from a manufacturer, bonded agent, or importer of cigarettes who has a permit issued under Subchapter D.

(b) Except as permitted by Section 154.152 or as provided by Subsection (c), each distributor in this state shall affix the required stamps within 96 hours after receiving the cigarettes, excluding Saturdays, Sundays, and legal holidays.

(e) A distributor who maintains stocks of unstamped cigarette packages as permitted under Subsection (a) shall store the unstamped packages separately from stamped product packages.

SECTION 6. Subchapter C, Chapter 154, Tax Code, is amended by adding Section 154.0425 to read as follows:

Sec. 154.0425. RETAIL SALES. (a) A retailer shall report to the comptroller each sale or distribution of more than 1,000 cigarettes to a person in a single transaction. The report must include:

(1) the name, address, destination, including street address, vehicle license number, driver's license number, and signature of the person receiving the cigarettes and the name of the purchaser;

(2) a declaration of the specific purpose for which the person receives the cigarettes, such as personal use, resale, or delivery to another; and

(3) if the recipient is acting as an agent, the name and address of the recipient's principal.

(b) A retailer who knowingly sells more than 1,000 cigarettes to a person in a series of transactions in any two-day period shall file the report required by Subsection (a).

SECTION 7. Section 154.043, Tax Code, is amended to read as follows:

Sec. 154.043. SALE OF STAMPS. Only [~~Except as provided in Section 154.044 of this code, only~~] the comptroller may sell cigarette stamps. The stamps may be sold only to a distributor holding a permit issued under Subchapter D and only in quantities made available by the comptroller. The purchaser shall place the order for stamps directly with the comptroller.

SECTION 8. Sections 154.053(a) and (c), Tax Code, are amended to read as follows:

(a) The comptroller shall design and have printed or manufactured cigarette tax stamps and tax-exempt stamps. If the comptroller determines that it is necessary for the best enforcement of this chapter, the comptroller may change the design, color, or denomination of the stamps. The comptroller shall determine the size, design, color, or denomination, and quantity of stamps manufactured. The stamps shall be manufactured so that they may be easily and securely attached to an individual package of cigarettes. The comptroller may designate the method of identification for the stamps and shall award the contract for the printing or manufacturing to the person submitting the bid that will give the best protection to the state in enforcing this chapter.

(c) The comptroller shall design and furnish stamps in a

manner that permits identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp. The comptroller shall maintain for at least four years the information identifying the person that affixed the stamp to each package of cigarettes. If the comptroller permits distributors to purchase partial rolls or sheets, the comptroller shall ensure that stamps bearing the same serial number are not sold to more than one distributor. The comptroller shall either destroy the remainder of a roll or sheet or retain the remainder for later purchases by the same distributor.

SECTION 9. Sections 154.101(b), (d), and (e), Tax Code, are amended to read as follows:

(b) Each distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall obtain a permit for each place of business located in this state that is owned or operated by the distributor, wholesaler, bonded agent, manufacturer, importer, or retailer. If the person does not have a place of business in this state, the person shall obtain a permit for the person's principal place of business regardless of location.

(d) An application for a permit under this section must state:

(1) the name and address of the applicant;

(2) the address of the applicant's principal place of business;

(3) each place of business at which the applicant's business will be conducted; and

(4) any [~~The applicant shall accurately complete all~~

~~information required by the application and provide the comptroller with such~~] additional information as the comptroller deems necessary.

(e) The comptroller shall [~~may~~] require each corporation, association, joint venture, syndicate, partnership, or proprietorship to furnish financial information regarding the applicant and to provide the identity and address of each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, or managing employee.

SECTION 10. Section 154.1015(a), Tax Code, is amended to read as follows:

(a) A manufacturer, manufacturer's representative, bonded agent, or importer may not sell or distribute cigarettes to a person located or doing business in this state, including on Indian country located within this state, unless the person to whom the cigarettes are sold or distributed is a distributor who has a permit issued under this subchapter. A distributor may not sell or distribute cigarettes to a person located or doing business in this state, including on Indian country located in this state, unless the person to whom the cigarettes are sold or distributed is a distributor, wholesaler, or retailer who has a permit issued under this subchapter. An importer may obtain cigarettes only from a manufacturer who has a permit issued under this subchapter. A distributor may obtain cigarettes only from a manufacturer, importer, or bonded agent who has a permit issued under this subchapter. A retailer may obtain cigarettes only from a distributor or wholesaler who has a permit issued under this

subchapter. A person who has a permit in more than one capacity may engage in activities permitted under each permit when acting under that permit. [~~Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders.~~]

SECTION 11. Section 154.107, Tax Code, is amended to read as follows:

Sec. 154.107. DENIAL OF PERMIT. The comptroller may not grant or renew a permit to engage in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer [~~The comptroller may reject an application and deny a permit~~] if the comptroller finds, after notice and opportunity for hearing, any of the following:

(1) the premises where business will be conducted are not adequate to protect the cigarettes or cigarette stamps; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any information required by Sections 154.101(d), (e), and (f), including prior business experience, financial condition of the permit holder, present or previous business affiliations, prior employment, and any conviction of a felony, or has made a false statement in the application; [~~or~~]

(B) has previously violated provisions of this chapter;

(C) owes $500 or more in delinquent cigarette taxes;

(D) had a cigarette manufacturer, importer, retailer, or distributor permit revoked by the comptroller during the previous two years;

(E) has been convicted of a crime relating to cigarettes, including the sale of stolen or counterfeit cigarettes, the receipt of stolen cigarettes, or involvement in the smuggling or counterfeiting of cigarettes;

(F) has been convicted of a felony;

(G) is a cigarette manufacturer or importer that has imported cigarettes into the United States in violation of 19 U.S.C. Section 1681a, as amended; or

(H) is a cigarette manufacturer or importer that has imported or manufactured for sale or distribution in the United States cigarettes that do not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Section 1331 et seq.), as amended.

SECTION 12. Subchapter D, Chapter 154, Tax Code, is amended by adding Section 154.11405 to read as follows:

Sec. 154.11405. MAINTENANCE OF LIST OF PERMIT HOLDERS. The comptroller shall maintain a website identifying persons who hold permits issued under this subchapter and the types of permits each person holds. The comptroller shall update the website at least once each month.

SECTION 13. Section 154.152(a), Tax Code, is amended to read as follows:

(a) A distributor shall set aside unstamped cigarette packages for interstate sale and for which no tax is due under federal law in a separate part of the building from the stamped packages. If the unstamped packages for interstate sale or for which no tax is due under federal law are not stored separately, the cigarettes are subject to the same requirements as cigarettes possessed for the purpose of a first sale in this state. A distributor may not transfer unstamped cigarette packages from one facility of the distributor in this state to another facility of the distributor in this state or to another person other than a common carrier for shipment outside this state.

SECTION 14. Section 154.201, Tax Code, is amended to read as follows:

Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. (a) Each distributor, wholesaler, bonded agent, and export warehouse shall keep records at each place of business of all cigarettes sold, purchased, transferred, consigned, or received, including records of those cigarettes for which no tax is due under federal law. [~~Each retailer shall keep records at a single location, which the retailer shall designate as its principal place of business in this state, of all cigarettes purchased and received.~~] These records must include:

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

(1-a) the name and address of the other party involved in the transaction and the quantity by brand style of the cigarettes;

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

(3) the date and the name of the place of origin of the cigarette shipment;

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

(5) a statement of the number, kind, brand style, and price paid for cigarettes, including cigarettes in stamped and unstamped packages;

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

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

(8) any other information required by rules of the comptroller.

(b) The records required by this section shall be preserved on the premises described in the relevant permit in a manner that ensures permanency and accessibility for inspection at reasonable hours by authorized personnel of the comptroller. With the comptroller's permission, a person with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business not later than the 24th hour after the hour the comptroller or the comptroller's designee requests the transmission.

SECTION 15. Section 154.202(b), Tax Code, is amended to read as follows:

(b) The records must show:

(1) the date of receipt of stamps purchased;

(2) the beginning and ending serial numbers and the quantity of stamps purchased;

(3) the design, color, or denomination of stamps purchased;

(4) the amount paid for the stamps;

(5) [~~if stamps were sold under Section 154.044, the name of the purchaser, the beginning and ending numbers and quantity of stamps purchased, and the design, color, or denomination and amount paid for the stamps;~~

[~~(6)~~] the beginning and ending serial numbers and quantity, design, color, or denomination of and amount paid for stamps sent to or received from the comptroller as an exchange; and

(6) [~~(7)~~] the inventory of stamps on hand on the first day of each month, showing the beginning and ending serial numbers and quantity, design, color, or denomination of, and amount paid for, the stamps.

SECTION 16. Section 154.204, Tax Code, is amended to read as follows:

Sec. 154.204. MANUFACTURER'S RECORDS AND REPORTS. (a) A manufacturer who sells cigarettes to a permit holder in this state shall keep records showing:

(1) the number, brand style, and kind of cigarettes in unstamped packages sold;

(2) the number, brand style, and kind of cigarettes in stamped packages sold, if any;

(3) the date the cigarettes were sold;

(4) the manufacturer's list price for the cigarettes;

(5) the account number and the location where the cigarettes were shipped, if any; and

(6) the name of the common carrier.

(a-1) A manufacturer shall maintain copies of invoices or equivalent documentation for, or itemized for, each of the manufacturer's facilities for each transaction, other than a retail transaction with a consumer, involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The invoices or documentation must show the name and address of the other party involved in the transaction and the quantity by brand style of the cigarettes.

(b) A manufacturer who sells cigarettes to a permit holder in this state shall file with the comptroller, on or before the end of each month, a report showing the following information [~~listed in Subdivisions (1), (2), (3), and (5) of Subsection (a)~~] for the previous month:

(1) the quantities of cigarettes, by brand style, on hand at the beginning and end of the reporting period;

(2) the quantities of cigarettes, by brand style and transaction, that were received during the reporting period and the name and address of each person from whom those products were received; and

(3) the quantities of cigarettes, by brand style and

transaction, distributed or shipped during the reporting period, other than sales directly to consumers, and the name and address of each person to whom those products were distributed or shipped.

(c) The information required by Subsection (b) must be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state, and stamps of another state, the quantity of unstamped cigarettes, and if known, the portion of the unstamped cigarettes that are intended for sale or distribution in this state.

(d) Information related to the manufacturer's list prices must be submitted by the manufacturer 15 days prior to any scheduled changes.

(e) The comptroller by rule may require additional information in the monthly reports that the comptroller determines is necessary or appropriate to enforce this chapter.

(f) The records required by this section shall be preserved on the premises described in the relevant permit in a manner that ensures permanency and accessibility for inspection at reasonable hours by authorized personnel of the comptroller. With the comptroller's permission, a person with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business not later than the 24th hour after the hour the comptroller or the comptroller's designee requests the transmission.

SECTION 17. Subchapter F, Chapter 154, Tax Code, is amended by adding Section 154.2045 to read as follows:

Sec. 154.2045. IMPORTER'S RECORDS AND REPORTS. (a) An

importer who ships cigarettes to a permit holder in this state shall file with the comptroller, on or before the end of each month, a report showing the following information for the previous month:

(1) the quantities of cigarettes, by brand style, on hand at the beginning and end of the reporting period;

(2) the quantities of cigarettes, by brand style and transaction, that were received during the reporting period and the name and address of each person from whom those products were received; and

(3) the quantities of cigarettes, by brand style and transaction, distributed or shipped during the reporting period, other than sales directly to consumers, and the name and address of each person to whom those products were distributed or shipped.

(b) The information required by Subsection (a) must be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state, and stamps of another state, the quantity of unstamped cigarettes, and if known, the portion of the unstamped cigarettes that are intended for sale or distribution in this state.

(c) The comptroller by rule may require additional information in the monthly reports that the comptroller determines is necessary or appropriate to enforce this chapter.

SECTION 18. Section 154.210, Tax Code, is amended to read as follows:

Sec. 154.210. DISTRIBUTOR'S AND WHOLESALER'S REPORTS [~~REPORT~~]. (a) A distributor or wholesaler shall deliver to the comptroller, on or before the last day of each month, a report for

the preceding month.

(b) The report must show the following information, itemized and submitted separately for each place of business:

(1) the date the report was made;

(2) the distributor's or wholesaler's name and address;

(3) the month the report covers;

(4) the number of cigarettes in stamped packages, by brand style, and the number of cigarettes in unstamped packages, by brand style, on hand at the beginning of the month;

(5) the number of cigarettes in stamped packages, by brand style and transaction, and the number of cigarettes in unstamped packages, by brand style and transaction, purchased and received during the month;

(6) the number of cigarettes in stamped packages, by brand style and transaction, and the number of cigarettes in unstamped packages, by brand style and transaction, returned by customers or received from any other source;

(7) the number of cigarettes in stamped packages, by brand style and transaction, and the number of cigarettes in unstamped packages, by brand style and transaction, sold, used, lost, stolen, returned to the factory, or disposed of in any other manner;

(8) the number of cigarettes in stamped packages, by brand style, and the number of cigarettes in unstamped packages, by brand style, on hand at the end of the month;

(9) the number of cigarettes, by brand style and

transaction, sold or distributed in interstate commerce, other than directly to consumers, and the name and address of each person to whom those products were sold or distributed;

(10) the number of cigarettes, by brand style and transaction, sold or distributed in intrastate commerce, other than directly to consumers, and the name and address of each person to whom those products were sold or distributed;

(11) for distributors, the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, unused tax stamps and tax-exempt stamps on hand at the beginning of the month;

(12) for distributors, the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, tax stamps and tax-exempt stamps purchased and received;

(13) for distributors, the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, tax stamps and tax-exempt stamps sold, used, lost, stolen, exchanged, returned, or disposed of in any other manner;

(14) for distributors, the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, tax stamps and tax-exempt stamps on hand at the end of the month;

(15) a summary schedule, on a form prescribed by the comptroller, identifying each receipt of cigarettes, the date of receipt, the shipper, the invoice number, and the quantity of cigarettes received; and

(16) any other information the comptroller requires relating to cigarettes and to the payment of taxes due on them.

(b-1) The information required by Subsection (b) must be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state, and stamps of another state, the quantity of unstamped cigarettes, and if known, the portion of the unstamped cigarettes that are intended for sale or distribution in this state.

(c) The comptroller shall prescribe the form and content of the report.

(d) The comptroller by rule may require additional information in the monthly reports that the comptroller determines is necessary or appropriate to enforce this chapter.

SECTION 19. Subchapter F, Chapter 154, Tax Code, is amended by adding Sections 154.2103, 154.2105, and 154.212 to read as follows:

Sec. 154.2103. RETAILER REPORTS. (a) A retailer shall submit to the comptroller monthly reports showing the following information itemized or submitted separately for each place of business:

(1) the quantities of cigarettes, by brand style, on hand at the beginning and end of the reporting period;

(2) the quantities of cigarettes, by brand style and transaction, that were received during the reporting period and the name and address of each person from whom those products were received; and

(3) the quantities of cigarettes, by brand style and transaction, distributed or shipped during the reporting period, other than sales directly to consumers, and the name and address of

each person to whom those products were distributed or shipped.

(b) The information required by Subsection (a) must be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state, and stamps of another state, the quantity of unstamped cigarettes, and if known, the portion of the unstamped cigarettes that are intended for sale or distribution in this state.

(c) The comptroller by rule may require additional information in the monthly reports that the comptroller determines is necessary or appropriate to enforce this chapter.

Sec. 154.2105. INDIAN TRIBAL ENTITIES REPORTS. An Indian tribal entity engaged in the retail sale or distribution of cigarettes shall include in a report submitted under Section 154.210 or 154.2103 the name and addresses of each nontribal member that purchased cigarettes during the reporting period and the quantity of those cigarettes, by brand style, that were purchased by that person.

Sec. 154.212. ACCESS TO RECORDS AND REPORTS. (a) The United States secretary of the treasury or the secretary's designee, on request, is entitled through the comptroller to access to records and reports required by this subchapter. The comptroller at the comptroller's sole discretion may share records and reports required by this subchapter with law enforcement officials of the federal government or other states. The authority granted by this subsection is in addition to the authority of the comptroller to enter into agreements under Section 154.414.

(b) A report submitted under this subchapter by a person who

has a permit issued under Subchapter D is public information subject to Chapter 552, Government Code, except that information relating to quantities of cigarettes by brand or brand style may not be released to a person other than a person authorized to have access to that information under Subsection (a).

SECTION 20. Section 154.304, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) To determine the tax liability of a person dealing in cigarettes or compliance by the person with this chapter, the comptroller may:

(1) enter and inspect, without a warrant during business hours and with a warrant during nonbusiness hours, any premises, including a vending machine and its contents, where cigarettes are manufactured, produced, distributed, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability or compliance with this chapter;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the comptroller determines are necessary for conducting a complete examination; and

(4) examine stocks of cigarettes and cigarette stamps.

(c) If the comptroller, the comptroller's authorized agent, or a peace officer of this state knows or has reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the comptroller, agent, or peace officer

may stop the vehicle and inspect the vehicle for contraband cigarettes.

SECTION 21. Section 154.403, Tax Code, is amended to read as follows:

Sec. 154.403. SEIZURE. (a) The comptroller with or without process may seize cigarettes held for sale or distribution in this state in violation of this chapter[~~:~~

[~~(1) cigarettes taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the cigarettes in violation of this chapter;~~

[~~(2) cigarettes that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;~~

[~~(3) an automobile, boat, conveyance, or other type of vehicle used to remove or transport cigarettes by a person intending to avoid payment of taxes imposed by this chapter; and~~

[~~(4) equipment, paraphernalia, or other tangible personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the cigarettes are found~~].

(a-1) The comptroller with or without process may seize a fixture, equipment, or other material or personal property on the premises of a distributor or retailer if the distributor or retailer, with the intent to defraud this state:

(1) fails to keep or make a record, return, report, or inventory;

(2) keeps or makes a false or fraudulent record,

return, report, or inventory required by this chapter;

(3) refuses to pay a tax imposed by this chapter; or

(4) attempts in any manner to evade or defeat the requirements of this chapter.

(b) An item seized under this section is forfeited to the state [~~and remains in the custody of the comptroller for disposition as provided by this chapter~~]. The seized item is not subject to replevin.

SECTION 22. Section 154.4045, Tax Code, is amended to read as follows:

Sec. 154.4045. DESTRUCTION [~~SALE~~] OF FORFEITED [~~SEIZED~~] CIGARETTES. Cigarettes forfeited to this state under this chapter shall be destroyed [~~(a) Cigarettes are perishable items~~].

[~~(b) If the seized cigarettes are in a salable condition, the comptroller may:~~

[~~(1) sell the cigarettes, return the cigarettes to the manufacturer for credit, or destroy or dispose of the cigarettes; or~~

[~~(2) if the seized cigarettes are in packages described by Section 154.0415 or stamped in violation of that section, the comptroller may not sell the cigarettes but may destroy or dispose of the cigarettes or return the cigarettes, solely for the purpose of export, to the manufacturer for credit.~~

[~~(c) The price obtained at the sale is the market value for the cigarettes sold.~~

[~~(d) The comptroller shall place the proceeds from the sale of seized cigarettes in escrow in a treasury suspense account~~

~~pending the outcome of the forfeiture proceeding provided for in this chapter.~~

[~~(e) If a determination is made that the comptroller wrongfully seized the cigarettes, the person entitled to the cigarettes at the time of seizure may recover the money held in escrow in the treasury suspense account.~~]

SECTION 23. Sections 154.405(c) and (d), Tax Code, are amended to read as follows:

(c) After providing the notice and a hearing, if a hearing is requested under Subsection (b), the comptroller may order the forfeiture to the state of any property seized under this chapter [~~or the proceeds of the sale of any cigarettes seized under this chapter~~] if the property was used, controlled, possessed, or concealed in violation [~~for the purpose of violating any provision~~] of this chapter, regardless of whether the owner knew the use, control, possession, or concealment violated this chapter.

(d) The comptroller shall hold property [~~or proceeds~~] forfeited under this section in escrow until the comptroller's determination is final and the period for filing a petition for judicial review has expired.

SECTION 24. Section 154.406(a), Tax Code, is amended to read as follows:

(a) The comptroller may sell property, other than cigarettes, forfeited to the state at public or private sale in any commercially reasonable manner.

SECTION 25. Section 154.410, Tax Code, is amended to read as follows:

Sec. 154.410. SEIZURE, FORFEITURE, OR SALE NO DEFENSE. The seizure and [~~,~~] forfeiture of cigarettes or the seizure, forfeiture, and sale of [~~cigarettes or~~] property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter.

SECTION 26. Section 154.501, Tax Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b) A person who violates this section forfeits and shall pay to the state a penalty of not more than the greater of $4,000 or five times the retail value of the cigarettes involved [~~$2,000~~] for each violation.

(b-1) A distributor who fails to timely pay a tax imposed by this chapter when due shall pay five percent of the amount of tax then due as a penalty, and if the distributor fails to pay the tax within 30 days after the day on which the tax is due, the distributor shall pay an additional five percent. The minimum penalty imposed by this subsection is $50.

(b-2) A person who fails to timely pay a tax imposed by this chapter when due, shall, in addition to any other penalty provided by this chapter, including the penalty provided by Subsection (b-1), pay to the state a penalty in an amount equal to five times the amount of tax then due.

(b-3) The dishonor of a check delivered to the treasury for payment of taxes constitutes a failure to pay the tax when due.

SECTION 27. Section 154.509, Tax Code, is amended to read as

follows:

Sec. 154.509. PERMITS. A person commits an offense if the person:

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

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

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

(4) as a distributor, wholesaler, manufacturer, importer, or retailer, sells cigarettes without having a valid permit; or

(5) as a bonded agent, stores, distributes, or delivers cigarettes in unstamped packages without having a valid permit.

SECTION 28. Section 154.510, Tax Code, is amended to read as follows:

Sec. 154.510. MISDEMEANOR. An offense under Sections 154.502 through [~~,~~] 154.503, or 154.505 through 154.509 is a Class A misdemeanor.

SECTION 29. Section 154.516, Tax Code, is amended to read as follows:

Sec. 154.516. BOOKS AND RECORDS. A person commits an offense if the person:

(1) knowingly makes, delivers to, and files with the comptroller a false or fraudulent return or report or an incomplete

return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter or the rules adopted under this chapter;

(3) destroys, mutilates, or conceals a book or record required by this chapter or the rules adopted under this chapter;

(4) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required by this chapter or that are incidental to the conduct of the cigarette business;

(5) knowingly makes a false or fraudulent entry or fails to make entries in the books and records as required by this chapter or the rules adopted under this chapter; or

(6) fails to keep books and records for four years as required by this chapter.

SECTION 30. Subchapter I, Chapter 154, Tax Code, is amended by adding Section 154.5165 to read as follows:

Sec. 154.5165. PAYMENT OF TAXES. A person commits an offense if the person with intent to defraud this state refuses to pay a tax imposed by this chapter or attempts in any manner to evade or defeat the tax or the payment of the tax.

SECTION 31. Subchapter I, Chapter 154, Tax Code, is amended by adding Sections 154.5201 and 154.5202 to read as follows:

Sec. 154.5201. COUNTERFEIT CIGARETTES. (a) Notwithstanding any other law, the comptroller or a law enforcement agency may seize counterfeit cigarettes that are sold or possessed by a manufacturer, importer, bonded agent, distributor, or retailer

and any related machinery.

(b) A manufacturer, importer, bonded agent, distributor, or retailer commits an offense if the person sells or possesses counterfeit cigarettes.

(c) An offense under Subsection (b) is a felony of the third degree.

(d) For purposes of this section, counterfeit cigarettes include cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit cigarette seized by the board shall be destroyed.

(e) The comptroller shall revoke the permit of a manufacturer, importer, bonded agent, distributor, or retailer who is convicted of more than one offense under this section.

Sec. 154.5202. OTHER OFFENSES. (a) A person who violates a provision of this chapter for which a criminal penalty is not otherwise provided by this chapter commits an offense.

(b) An offense under this section is a Class A misdemeanor.

SECTION 32. Chapter 161, Health and Safety Code, is amended by adding Subchapters R and S to read as follows:

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes are delivered by use of the mails or another delivery service. A

sale of cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(3) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456;

(5) the tax collection requirements prescribed by Section 161.457; and

(6) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax;

(B) prescribing a permitting or tax-stamping requirement; or

(C) imposing an escrow payment obligation as prescribed by an MSA statute, as that term is defined by Section 161.502.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 18 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good-faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required by Section 161.453(a)(3) must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453;

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid

with respect to the delivery sale; and

(4) includes one of the warnings prescribed by Section 4(a)(1), Federal Cigarette Labeling and Advertising Act (15 U.S.C. Section 1333(a)(1)), as amended, rotated on a quarterly basis.

Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who mails or ships cigarettes in connection with a delivery sale order shall:

(1) include as part of the shipping documents a clear and conspicuous statement: "CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

(2) use a method of mailing or shipping that obligates the delivery service to require:

(A) the purchaser placing the delivery sale order, or an adult who is at least 18 years of age and who resides at the purchaser's address, to sign to accept delivery of the shipping container; and

(B) the person signing to accept delivery of the shipping container to provide proof, in the form of a government-issued identification bearing a photograph that the person is:

(i) the addressee or an adult who is at least 18 years of age and who resides at the purchaser's address; and

(ii) at least 18 years of age if the person appears to be younger than 27 years of age; and

(3) provide to the delivery service retained to make

the delivery evidence of full compliance with Section 161.457.

(b) A person taking a delivery sale order who delivers the cigarettes without using a third-party delivery service shall comply with the requirements prescribed by this subchapter that apply to a delivery service.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS (a) A person may not make a delivery sale or ship cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and

(2) the address of the person's principal place of business and any other place of business.

(b) Not later than the 10th day of each month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name and address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes that were sold; and

(3) the quantity of cigarettes that were sold.

(c) A person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is

not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Sec. 161.461. FORFEITURE. (a) Cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal

property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Sec. 161.462. ENFORCEMENT. The attorney general, the attorney general's designee, or a person who holds a permit under 26 U.S.C. Section 5713, as amended, may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person. The attorney general or the attorney general's designee shall bring an action under this section at the request of the comptroller.

SUBCHAPTER S. CIGARETTE ANTI-CONDUIT PROVISIONS

Sec. 161.501. PURPOSE. (a) In 1997 and 1998, leading United States cigarette manufacturers entered into a settlement agreement with this state, and into settlement agreements with other states, that resolve various lawsuits brought by those states against those manufacturers.

(b) In accordance with the settlement agreement, known as the Master Settlement Agreement, or MSA, entered into on November 23, 1998, 46 states and six territories have enacted statutes, known as the MSA statutes, that require tobacco product manufacturers to:

(1) sign the Master Settlement Agreement and become participating manufacturers responsible for making settlement payments to those states and territories as specified in the agreement; or

(2) remain nonparticipating manufacturers and become responsible for making specified payments into escrow accounts for

sales of their cigarettes to consumers within those states in order to provide a source of recovery if the states and territories assert claims against them in the future and to prevent those manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

(c) The MSA statutes enacted by the MSA states directly benefit the people of this state by requiring each tobacco product manufacturer that is a nonparticipating manufacturer under the Master Settlement Agreement to make escrow payments that, by establishing sources of recovery for future claims by those states, deter tortuous and irresponsible behavior by those manufacturers that could be detrimental to the residents of this state.

(d) Some nonparticipating manufacturers either are circumventing or may attempt to circumvent the escrow payment requirements of the MSA statute enacted by MSA states by using this state as a conduit, selling their cigarettes to distributors in this state for transshipment to states and territories covered by the Master Settlement Agreement, and then claiming that the MSA statute does not require them to make escrow payments for sales of the transshipped cigarettes in those states and territories.

(e) The use of this state as a conduit to circumvent the laws of other states and territories not only could be detrimental to residents of this state, but also is generally contrary to the public policy of this state.

(f) Prohibiting the shipment or sale of cigarettes of a nonparticipating manufacturer that has not made all escrow payments required by the MSA statutes enacted by the MSA states will help

ensure that the nonparticipating manufacturer will make those payments, thereby serving this state's policies and the needs of the residents of this state.

Sec. 161.502. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings," and "100s."

(2) "Master Settlement Agreement" or "MSA" means the settlement agreement and related documents entered into on November 23, 1998, by the MSA states and certain tobacco product manufacturers, and subsequently entered into by certain other tobacco product manufacturers. The term includes any amendments to the agreement or related documents.

(3) "MSA state" means a "settling state" as that term is defined by Section II(qq) of the Master Settlement Agreement.

(4) "MSA statute" means the statute enacted by an MSA state to implement Exhibit T of the Master Settlement Agreement.

(5) "Nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning assigned by Section II(jj) of the Master Settlement Agreement.

(7) "Permit holder" means a person who holds a permit under Subchapter D, Chapter 154, Tax Code, to operate as a distributor, wholesaler, bonded agent, manufacturer, or importer.

(8) "Tobacco product manufacturer" has the meaning assigned by Section II(uu) of the Master Settlement Agreement.

Sec. 161.503. PROHIBITED ACTIVITIES. A permit holder may not:

(1) ship to a person in this state or another state cigarettes that belong to a brand family that is not included on the list provided by the comptroller to the permit holder under Section 161.504; or

(2) sell or possess for sale to a person in this state or another state, for resale to a consumer in this state or another state, cigarettes described by Subdivision (1).

Sec. 161.504. COMPTROLLER'S LIST. Not later than July 15 of each year, the comptroller shall annually prepare and transmit to each permit holder and post on the comptroller's website a list of all brand families manufactured for sale to consumers within the United States by:

(1) each tobacco product manufacturer that by May 1 of that year provided to the comptroller the certification and information prescribed by Section 161.505(a); and

(2) each tobacco product manufacturer in respect to which the comptroller has made the determination described by Section 161.506(b).

Sec. 161.505. CONTENT OF COMPTROLLER'S LIST. (a) The comptroller shall include on the list described by Section 161.504 each brand family manufactured for sale to consumers within the United States by each tobacco product manufacturer that provided the comptroller previously or not later than May 1 of the year in which the list is prepared:

(1) a certification under penalty of perjury that the

manufacturer is a participating manufacturer; and

(2) the name of each brand family that is to be counted, in the unit volume and market shares determined under Subsections II(z) and II(mm) of the Master Settlement Agreement and Exhibit E of that agreement, in computing the manufacturer's annual payments under the Master Settlement Agreement.

(b) The comptroller shall include on the list described by Section 161.504 each brand family manufactured for sale to consumers within the United States that is to be counted in computing the manufacturer's escrow payments under one or more MSA statutes by each nonparticipating manufacturer that provided the comptroller previously or not later than May 1 of the year in which the list is prepared:

(1) the certification described by Section 161.506, but only if the comptroller has determined that the certification is true and correct; and

(2) the name of each brand family.

(c) A nonparticipating manufacturer is considered to be the manufacturer of all cigarettes as to which the manufacturer is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer of those cigarettes did not intend to be sold in the United States.

Sec. 161.506. REQUIREMENTS FOR NONPARTICIPATING MANUFACTURERS. (a) A brand family of a nonparticipating manufacturer that sells cigarettes, directly or through a distributor or similar intermediary, to a permit holder is not eligible for inclusion in the list described by Section 161.504

unless the manufacturer, not later than May 1 of the year in which the list is prepared, provides to the comptroller under penalty of perjury:

(1) a certification that the manufacturer:

(A) will make all escrow payments required by the MSA statute of each MSA state for all cigarettes of the nonparticipating manufacturer that are sold to consumers within each such MSA state through April 30 of the year following the year in which the certification is provided; and

(B) has made all escrow payments required by the MSA statute of each MSA state for cigarettes of the nonparticipating manufacturer that were sold to consumers within each such MSA state during the preceding calendar year; and

(2) information the comptroller requires to determine whether the certification is true and correct.

(b) A nonparticipating manufacturer is determined to have made a true and correct certification under Subsection (a) if the comptroller determines that the total amount of the escrow payments made by the nonparticipating manufacturer in all MSA states for cigarettes of the nonparticipating manufacturer that were sold to consumers within all MSA states during the preceding year is equal to the product of:

(1) the applicable per-unit amount specified by the MSA statutes of those states, including all adjustments for inflation; and

(2) the number of units of cigarettes manufactured by the nonparticipating manufacturer that were sold to consumers

within all MSA states during the preceding year.

(c) The comptroller shall promptly notify the nonparticipating manufacturer and the attorney general of a determination made under this section.

(d) For purposes of this section, a reference to cigarettes "sold to consumers within" a state includes any cigarettes sold to consumers within the state, whether sold directly by the manufacturer or sold by a distributor, retailer, or similar intermediary.

Sec. 161.507. REPORTS. Not later than the 30th day after the end of each fiscal quarter, or more frequently if directed by the comptroller, each permit holder shall report to the comptroller any shipment to persons in this state and other states of cigarettes produced or imported by a nonparticipating manufacturer during the preceding quarter. The permit holder shall indicate in the report the quantity, by brand family, of the cigarettes.

Sec. 161.508. CIVIL PENALTY. (a) A permit holder who violates Section 161.503 is subject to a civil penalty in an amount of not more than the greater of $5,000 or 500 percent of the retail value of the cigarettes shipped in violation of that section.

(b) A permit holder who violates Section 161.507 is subject to a civil penalty in an amount of not more than $5,000.

Sec. 161.509. PERMIT REVOCATION. If the comptroller determines that a permit holder has violated Section 161.503 or 161.507 more than once, the comptroller may revoke the person's permit in accordance with the procedures prescribed by Section 154.114, Tax Code.

Sec. 161.510. INJUNCTION. (a) The attorney general, on behalf of the comptroller, shall seek an injunction to restrain a permit holder from shipping cigarettes in violation of Section 161.503 or to compel a permit holder to submit the information required by Section 161.507.

(b) The attorney general, based on credible information provided by authorities in an MSA state or other credible information, shall bring an action in a district court of Travis County against a nonparticipating manufacturer for filing a false certification in violation of Section 161.506. If the court finds that the nonparticipating manufacturer has filed a false certification under Section 161.506(a)(1)(B) or has fraudulently or intentionally filed a false certification under Section 161.506(a)(1)(A), the court shall issue a permanent injunction prohibiting the nonparticipating manufacturer from selling cigarettes, directly or through a distributor or other intermediary, to permit holders or consumers within this state for not more than two years.

Sec. 161.511. REMEDIES. (a) If the comptroller determines to exclude or remove from the list described by Section 161.504 the brand families of a nonparticipating manufacturer that timely submitted to the comptroller the certification and information described by Section 161.506(a), the nonparticipating manufacturer may challenge the determination as erroneous and request relief from the determination by bringing an action in a district court of Travis County to challenge the comptroller's determination.

(b) On the filing of an action under Subsection (a), the

comptroller's determination is automatically stayed for 20 days. The district court in which the action is filed may extend the stay on a showing by the nonparticipating manufacturer, after notice to the comptroller, that the manufacturer has a substantial probability of success in the action and would suffer irreparable injury in the absence of a stay.

Sec. 161.512. POWERS AND DUTIES OF COMPTROLLER AND ATTORNEY GENERAL. (a) The comptroller shall update monthly the list described by Section 161.504 to correct mistakes and to remove or add brand families, including brand families of nonparticipating manufacturers that have failed to make escrow payments required by the MSA statute of an MSA state or that have corrected those failures and new brand families of participating manufacturers.

(b) The comptroller and attorney general may share with each other, with other authorities within this state, and with authorities in other states the information they receive under this subchapter, including audits under Subsection (c), and may combine that information with information received from authorities in other states for purposes of analysis and enforcement.

(c) The attorney general and the comptroller may audit or engage others to audit information supplied by a nonparticipating manufacturer under Section 161.506(a). The comptroller may audit the information supplied by a permit holder under Section 161.507.

(d) The comptroller shall require a nonparticipating manufacturer seeking inclusion of a brand family in the list described by Section 161.504 to pay a fee for inclusion. The comptroller shall set the fee in an amount sufficient to cover the

costs incurred by the comptroller in carrying out the functions of the comptroller described by Section 161.506.

Sec. 161.513. CERTIFICATION OF COMPLIANCE. The comptroller may not issue a permit to a person under Subchapter D, Chapter 154, Tax Code, unless the person certifies under penalty of perjury that the person will comply fully with this subchapter.

SECTION 33. The following provisions of the Tax Code are repealed:

(1) Section 154.041(d);

(2) Section 154.044;

(3) Section 154.061;

(4) Section 154.409; and

(5) Section 154.514.

SECTION 34. (a) This Act takes effect September 1, 2003.

(b) The comptroller shall establish the website identifying permit holders as required by Section 154.11405, Tax Code, as added by this Act, not later than December 1, 2003.

(c) Each permit holder shall submit a report as required by Section 161.507, Health and Safety Code, as added by this Act, not later than October 1, 2003.

(d) Each participating manufacturer and nonparticipating manufacturer shall submit the certification required by Sections 161.505(a) and 161.506(a), Health and Safety Code, as added by this Act, respectively, not later than October 15, 2003.

(e) The comptroller shall transmit to permit holders the list required by Section 161.504, Health and Safety Code, as added by this Act, and post that information on the comptroller's website

as required by that section not later than December 1, 2003.