

Amend CSSB 1863 (house committee printing) by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE \_\_. NONSETTLING MANUFACTURER FEES

SECTION \_\_.01. Chapter 161, Health and Safety Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS  
MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) prevent nonsettling manufacturers from undermining this state's policy of discouraging underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(2) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of nonsettling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of nonsettling manufacturer cigarettes and cigarette tobacco products;

(3) provide funding to enforce and administer this subchapter and any legislation relating to nonsettling manufacturers; and

(4) provide funding for any other purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings," and "100s." The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable

with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(A) a roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(B) tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(C) a roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes and cigarette tobacco products manufactured outside the United States.

(5) "Master settlement agreement" means the settlement agreement and related documents entered into in 1998 by 46 states and leading United States tobacco manufacturers.

(6) "Nonsettling manufacturer" means a manufacturer of cigarettes that did not sign the tobacco settlement agreement.

(7) "Nonsettling manufacturer cigarette tobacco products" means cigarette tobacco products manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(8) "Nonsettling manufacturer cigarettes" means cigarettes manufactured, fabricated, assembled, or imported by a

nonsettling manufacturer.

(9) "Settling states" and "subsequent participating manufacturer" have the meanings assigned those terms in the master settlement agreement.

(10) "Tobacco settlement agreement" means the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91. The term includes the subsequent Clarification of Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in that litigation.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) nonsettling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Chapter 154, Tax Code;

(2) nonsettling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code; and

(3) nonsettling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(c) The fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(d) Except as otherwise provided by this subchapter, the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same manner, taking into account that the fee is imposed on nonsettling manufacturers, as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate.

(e) The fee imposed by this section does not apply to a subsequent participating manufacturer until the date on which the

National Association of Attorneys General provides notice to the attorney general of this state that the settling states have offered subsequent participating manufacturers a qualifying credit against their payments under the master settlement agreement. An offered credit shall be considered a qualifying credit if, in each year, it makes available to each subsequent participating manufacturer, other than any subsequent participating manufacturer that has an agreement described by Subsection (f) as of September 1, 2005, a credit against its payment obligations under the master settlement agreement that is equal to or greater than the product of the total number of individual cigarettes sold by that subsequent participating manufacturer in this state during the applicable year multiplied by at least 73.2 percent of the per-cigarette fee provided for in this section, and does not condition that credit on the subsequent participating manufacturer forfeiting wholly or partly other benefits or credits provided for in the master settlement agreement, except for a reduction in that subsequent participating manufacturer's "grandfather share" under the master settlement agreement as follows:

(1) the market share that is not subject to the subsequent participating manufacturer's payment obligations under Article IX(i) of the master settlement agreement shall be calculated by subtracting from either 125 percent of the subsequent participating manufacturer's 1997 volume or 100 percent of its 1998 volume, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations, the lesser of:

(A) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 2004; or

(B) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 1998 or 125 percent of the percentage of that subsequent participating manufacturer's nationwide sales made at retail in this state in 1997, depending on

which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations; and

(2) the effect of the proposed grandfather share reduction on the subsequent participating manufacturer's master settlement agreement payments shall be phased in according to the following schedule:

(A) one percent of the reduction shall be reflected in the payment due under the master settlement agreement on April 15, 2006; and

(B) in each subsequent April 15 payment, the following additional percentages of the reduction shall be reflected:

- (i) two percent;
- (ii) three percent;
- (iii) five percent;
- (iv) seven percent;
- (v) eight percent;
- (vi) nine percent;
- (vii) 10 percent;
- (viii) 12 percent;
- (ix) 13 percent;
- (x) 14 percent; and
- (xi) 16 percent.

(f) Subsection (e) does not apply to any subsequent participating manufacturer that as of September 1, 2005, had an agreement with the settling states, pursuant to which agreement the subsequent participating manufacturer has agreed to a different credit against its payment obligations under the master settlement agreement based on its cigarette sales in this state.

Sec. 161.604. RATE OF FEE. (a) Except as provided by Subsection (b), the fee is imposed at the rate of two cents for:

- (1) each nonsettling manufacturer cigarette; and
- (2) each 0.09 ounce of nonsettling manufacturer cigarette tobacco product.

(b) On January 1 of each year, the comptroller shall increase the rate of the tax prescribed by Subsection (a) by the greater of:

(1) three percent; or

(2) the percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

Sec. 161.605. DISTRIBUTOR'S REPORT. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of nonsettling manufacturer cigarettes during the preceding month;

(2) the number of individual packages of nonsettling manufacturer cigarettes sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(3) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) The information required by Subsections (a)(1) and (2) must be itemized for each place of business and by manufacturer and brand family.

(c) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month, not later than the 10th day after the date the comptroller receives the information required by Section 161.605, the comptroller shall:

(1) compute the amount of the fee imposed by this subchapter that each nonsettling manufacturer owes for that reporting period based on that information and any other information available to the comptroller; and

(2) mail to each nonsettling manufacturer a notice of the amount of fee the manufacturer owes.

(b) Not later than the 15th day of the month after the month in which the comptroller mails a nonsettling manufacturer a notice

under Subsection (a), the nonsettling manufacturer shall send to the comptroller the amount of the fee due according to the notice.

Sec. 161.607. CERTIFICATION TO ATTORNEY GENERAL. (a) Not later than the first day of each month, a nonsettling manufacturer who is required to pay the fee imposed by this subchapter shall certify to the attorney general that the manufacturer is in compliance with this subchapter and has paid in full the fee imposed by this subchapter.

(b) The attorney general shall develop, maintain, and publish on the attorney general's Internet website a directory listing of all nonsettling manufacturers that have provided current, accurate, and complete certifications.

(c) The attorney general shall provide the list described by Subsection (b) to any person on request.

Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a nonsettling manufacturer are not offered for sale or distribution in this state on September 1, 2005, the nonsettling manufacturer may not offer those cigarettes or cigarette tobacco products for sale or distribution in this state after that date unless the manufacturer first prepays the fee imposed by this subchapter for sales of cigarettes and cigarette tobacco products that will occur in the first calendar month in which they are sold or distributed in this state.

(b) The amount a nonsettling manufacturer is required to prepay under this section is equal to the greater of:

(1) the rate prescribed by Section 161.604 in effect on that date multiplied by:

(A) the number of cigarettes the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; and

(B) each 0.09 ounce of nonsettling manufacturer cigarette tobacco products the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; or

(2) \$50,000.

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(d) The comptroller may require a nonsettling manufacturer to provide any information reasonably necessary to determine the prepayment amount.

(e) The comptroller shall establish procedures to:

(1) reimburse a nonsettling manufacturer if the actual sales or distributions in the first calendar month are less than the projected sales or distributions; and

(2) require additional payments if the actual sales or distributions in the first calendar month are greater than the projected sales or distributions.

(f) A nonsettling manufacturer shall pay the fee imposed by this subchapter in the manner provided by Section 161.606 beginning in the second calendar month in which the manufacturer offers the cigarettes or cigarette tobacco products for sale or distribution in this state.

Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to prepaying the fee required by Section 161.608, a nonsettling manufacturer described by Section 161.608(a) shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer will offer for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with this subchapter; and



(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes and cigarette tobacco products of a nonsettling manufacturer that has not complied with this subchapter, including full payment of the fee imposed by this subchapter, shall be treated as cigarettes for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

(b) The comptroller shall provide to a nonsettling manufacturer a notice of noncompliance with this subchapter if the manufacturer:

(1) does not pay in full the fee imposed by this subchapter; or

(2) is not included on the list described by Section 161.607(b).

(c) On receipt of the notice of noncompliance, the nonsettling manufacturer may not:

(1) pay the tax imposed by Chapter 154 or 155, Tax Code, as appropriate;

(2) affix to a package of cigarettes the stamp required by Section 154.041, Tax Code; or

(3) otherwise purchase, sell, or distribute cigarettes in this state.

Sec. 161.611. APPLICATION OF SUBCHAPTER. This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION \_\_.02. (a) Not later than September 30, 2005, a nonsettling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this article, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on September 1, 2005, shall provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer began offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer offers for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with Subchapter U, Chapter 161, Health and Safety Code, as added by this article; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under Subsection (a) of this section available to the comptroller.

SECTION \_\_.03. This article takes effect September 1, 2005.