

By: Keffer of Eastland, Grusendorf

H.B. No. 3

Substitute the following for H.B. No. 3:

By: Keffer of Eastland

C.S.H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to property tax relief and protection of taxpayers, taxes and fees, and other matters relating to the financing of public schools; providing civil and criminal penalties.

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

ARTICLE 1. PROPERTY TAXATION

PART A. LIMITATION ON SCHOOL DISTRICT TAX RATE

SECTION 1A.01. Section 45.003, Education Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) A proposition submitted to authorize the levy of maintenance taxes must include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate, which may be not more than \$1.00 [~~\$1.50~~] on the \$100 valuation of taxable property in the district, stated in the proposition.

(e) An election held before September 1, 2005, authorizing a maintenance tax at a rate of at least \$1.00 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate not to exceed \$1.00.

(f) A district permitted by special law on January 1, 2005, to impose an ad valorem tax at a rate greater than \$1.50 may continue to impose a rate that is \$0.50 less than the rate

1 previously authorized.

2 PART B. BUY-DOWN OF SCHOOL DISTRICT TAXES

3 SECTION 1B.01. Chapter 403, Government Code, is amended by
4 adding Subchapter O to read as follows:

5 SUBCHAPTER O. DISTRIBUTION OF INCREASES

6 IN AVAILABLE STATE REVENUE FOR SCHOOL DISTRICT TAX RATE REDUCTION

7 Sec. 403.351. DEFINITIONS. In this subchapter:

8 (1) "Available state revenue" means state revenue from
9 any source other than federal funds or revenue that, under a
10 provision of the Texas Constitution, may be used only for a
11 particular purpose.

12 (2) "Increase in available state revenue" means the
13 amount by which the estimate made by the comptroller in advance of a
14 regular session of the legislature under Section 49a(a), Article
15 III, Texas Constitution, of available state revenue for the
16 succeeding fiscal biennium exceeds the estimate made by the
17 comptroller at that time under that section of available state
18 revenue for the current fiscal biennium.

19 Sec. 403.352. CERTIFICATION OF INCREASE IN AVAILABLE STATE
20 REVENUE. In the statement required by Section 49a, Article III,
21 Texas Constitution, in advance of a regular session of the
22 legislature, the comptroller shall certify:

23 (1) the amount, if any, of the increase in available
24 state revenue for the succeeding fiscal biennium; and

25 (2) the total amount of school district maintenance
26 and operations taxes levied under Section 3(e), Article VII, Texas
27 Constitution, for the tax year beginning in the second year of the

1 current fiscal biennium.

2 Sec. 403.353. DISTRIBUTION OF AVAILABLE STATE REVENUE FOR
3 TAX RATE REDUCTION. (a) For the fiscal biennium following a
4 certification under Section 403.352, the comptroller shall
5 distribute to the school districts in this state for tax rate
6 reduction an amount of available state revenue that is equal to the
7 sum of:

8 (1) 15 percent of the increase in available state
9 revenue for the current fiscal biennium certified under Section
10 403.352; and

11 (2) the amount of available state revenue distributed
12 in the preceding fiscal biennium under this section for school
13 district tax rate reduction.

14 (b) The comptroller shall distribute the amount required by
15 Subsection (a) in equal amounts in each fiscal year of the fiscal
16 biennium. The amount distributed in each fiscal year shall be
17 apportioned among the school districts in amounts that, applied to
18 the total taxable value of property in each district determined
19 under Subchapter M, for the most recent year for which the
20 information is available, would reduce the rate of each school
21 district's maintenance and operations tax by the same percentage,
22 except that a school district tax rate may not be reduced to less
23 than 75 cents for each \$100 of taxable value.

24 (c) The money received by each school district under this
25 section must be applied to reducing the rollback tax rate of the
26 district as provided by Section 26.08, Tax Code.

27 SECTION 1B.02. Subchapter E, Chapter 42, Education Code, is

1 amended by adding Section 42.2518 to read as follows:

2 Sec. 42.2518. ADDITIONAL STATE AID FOR PROPERTY TAX RELIEF.

3 (a) For any school year, a school district is entitled to
4 additional state aid to the extent that an increase in the
5 guaranteed level of state and local funds per weighted student per
6 cent of tax effort under Section 42.302 applicable to that school
7 year does not compensate the district for a reduction in district ad
8 valorem tax revenue caused by ad valorem tax rate reduction made
9 pursuant to Subchapter O, Chapter 403, Government Code.

10 (b) A determination by the commissioner under this section
11 is final and may not be appealed.

12 SECTION 1B.03. Sections 26.08(i) and (k), Tax Code, are
13 amended to read as follows:

14 (i) For purposes of this section, the rollback tax rate of a
15 school district is the sum of:

16 (1) the tax rate that, applied to the current total
17 value for the district, would impose taxes in an amount that, when
18 added to state funds that would be distributed to the district under
19 Chapter 42, Education Code, and state funds for property tax rate
20 relief that will be distributed to the district under Subchapter O,
21 Chapter 403, Government Code, for the school year beginning in the
22 current tax year using that tax rate, would provide the same amount
23 of state funds distributed under Chapter 42, Education Code, and
24 Subchapter O, Chapter 403, Government Code, and maintenance and
25 operations taxes of the district per student in weighted average
26 daily attendance for that school year that would have been
27 available to the district in the preceding year if the funding

1 elements for Chapters 41 and 42, Education Code, for the current
2 year had been in effect for the preceding year;

3 (2) the rate of \$0.06 per \$100 of taxable value; and

4 (3) the district's current debt rate.

5 (k) For purposes of this section, for the [~~2003, 2004,~~]
6 2005, 2006, 2007, or 2008 tax year, for a school district that is
7 entitled to state funds under Section 4(a-1), (a-2), (a-3), (a-4),
8 (a-5), or (a-6), Article 3.50-9, Insurance Code, the rollback tax
9 rate of the district is the sum of:

10 (1) the tax rate that, applied to the current total
11 value for the district, would impose taxes in an amount that, when
12 added to state funds that would be distributed to the district under
13 Chapter 42, Education Code, and state funds for property tax rate
14 relief that will be distributed to the district under Subchapter O,
15 Chapter 403, Government Code, for the school year beginning in the
16 current tax year using that tax rate, would provide the same amount
17 of state funds distributed under Chapter 42, Education Code, and
18 Subchapter O, Chapter 403, Government Code, and maintenance and
19 operations taxes of the district per student in weighted average
20 daily attendance for that school year that would have been
21 available to the district in the preceding year if the funding
22 elements for Chapters 41 and 42, Education Code, for the current
23 year had been in effect for the preceding year;

24 (2) the tax rate that, applied to the current total
25 value for the district, would impose taxes in the amount that, when
26 added to state funds that would be distributed to the district under
27 Chapter 42, Education Code, and Subchapter O, Chapter 403,

1 Government Code, for the school year beginning in the current tax
2 year using that tax rate, permits the district to comply with
3 Section 3, Article 3.50-9, Insurance Code;

4 (3) the rate of \$0.06 per \$100 of taxable value; and

5 (4) the district's current debt rate.

6 PART C. MANDATORY SALES PRICE DISCLOSURE

7 SECTION 1C.01. The heading to Subchapter C, Chapter 22, Tax
8 Code, is amended to read as follows:

9 SUBCHAPTER C. [~~OTHER~~] REPORTS OF POLITICAL SUBDIVISION ACTIONS

10 SECTION 1C.02. Chapter 22, Tax Code, is amended by adding
11 Subchapter D to read as follows:

12 SUBCHAPTER D. REPORT OF SALES PRICE

13 Sec. 22.61. SALES PRICE DISCLOSURE REPORT. (a) Except as
14 provided by Subsection (b), not later than the third day after the
15 date the deed is recorded in the county real property records, the
16 purchaser or grantee of real property under a recorded deed
17 conveying an interest in the real property shall file a sales price
18 disclosure report with the chief appraiser of the appraisal
19 district established for the county in which the property is
20 located.

21 (b) This section does not apply to a sale or other transfer
22 of real property if the sale or other transfer is made:

23 (1) pursuant to a court order;

24 (2) to or from a trustee in bankruptcy;

25 (3) pursuant to a power of sale under a deed of trust
26 or other encumbrance secured by the property;

27 (4) by a deed in lieu of foreclosure;

1 (5) by one co-owner to one or more other co-owners; or
2 (6) to a spouse or to a person or persons in the first
3 degree of lineal consanguinity of one or more of the sellers or
4 grantors.

5 (c) A sales price disclosure report must be signed by the
6 purchaser or grantee of the real property described in the report.

7 Sec. 22.62. REPORT FORM. (a) A sales price disclosure
8 report filed under this subchapter must read as follows, with the
9 appropriate information included in the blanks:

10 SALES PRICE DISCLOSURE REPORT

11 Section 22.61, Tax Code, requires a purchaser or grantee
12 under a deed to prepare this report, sign it, and file it with the
13 chief appraiser of the appraisal district established for the
14 county in which the property is located not later than the third day
15 after the date the deed is recorded. This report is not required to
16 be filed if the sale or transfer is made: (1) under a court order;
17 (2) to or from a trustee in bankruptcy; (3) under a deed of trust or
18 other encumbrance secured by the property; (4) by a deed in lieu of
19 foreclosure; (5) between co-owners; or (6) between spouses or
20 between family members in the first degree of lineal consanguinity.
21 Knowingly making a false statement on this form is grounds for
22 prosecution of a Class A misdemeanor or a state jail felony under
23 Section 37.10, Penal Code. The chief appraiser may not use the
24 information in this form as the sole basis on which to increase the
25 market value of the property.

26 Seller's or grantor's name: _____

27 Purchaser's or grantee's name: _____

1 Purchaser's or grantee's address: _____

2 Property description (as stated in deed): _____

3 Sales price or other consideration paid for the property:
4 _____

5 The method used to finance the sales price or consideration
6 was: none (cash sale) cash and third-party financing cash
7 and seller financing exchange of other property other,
8 describe: _____

9 Describe any unusual or extraordinary terms of the sale or
10 transfer that affected the amount of the sales price or
11 consideration: _____

12 To the best of my knowledge, this statement is true and
13 accurate.

14 Purchaser's or grantee's signature: _____

15 Date: _____

16 Return this form to: _____.

17 (b) The appraisal district shall include at the end of the
18 form instructions for the filing of the form by mail, hand delivery,
19 or, if permitted by the chief appraiser, facsimile machine or other
20 electronic means.

21 (c) Each appraisal district shall prepare and make
22 available sales price disclosure report forms that conform to the
23 requirements of this section. Except for instructions for the
24 filing of the form, no additional information may be required to be
25 included in a sales price disclosure report form.

26 Sec. 22.63. FILING AND RECEIPT OF REPORT. (a) A purchaser
27 or grantee may file a sales price disclosure report with a chief

1 appraiser by mail, hand delivery, or, if permitted by the chief
2 appraiser, facsimile machine or other electronic means.

3 (b) On receipt of the completed sales price disclosure
4 report, the chief appraiser shall provide to the purchaser or
5 grantee a written acknowledgement that the report has been
6 received. If the acknowledgement of receipt is mailed, the chief
7 appraiser shall mail it to the purchaser or grantee at the address
8 provided in the report.

9 Sec. 22.64. CONFIDENTIAL INFORMATION. (a) A sales price
10 disclosure report filed with a chief appraiser under this
11 subchapter is confidential and not open to public inspection. The
12 report and the information it contains may not be disclosed to
13 another person other than an employee of the appraisal district who
14 appraises property, except as provided by Subsection (b).

15 (b) Information that is confidential under Subsection (a)
16 may be disclosed:

17 (1) in a judicial or administrative proceeding under a
18 lawful subpoena;

19 (2) to a purchaser, grantee, seller, or grantor named
20 in the report or in the deed to which the report applies or to a
21 representative of the purchaser, grantee, seller, or grantor under
22 a written authorization signed by the purchaser, grantee, seller,
23 or grantor;

24 (3) to the comptroller or to an assessor for a taxing
25 unit in which the property described in the report is located;

26 (4) in a judicial or administrative proceeding related
27 to real property taxation:

1 (A) to which the purchaser, grantee, seller, or
2 grantor is a party;

3 (B) to which an owner of the property described
4 in the report is a party; or

5 (C) by the appraisal district for the purpose of
6 establishing a value of the property or of providing evidence of
7 comparable sales to appraise another property;

8 (5) for statistical purposes if the information is
9 provided in a form that does not identify a specific property or
10 specific purchaser, grantee, seller, or grantor;

11 (6) if and to the extent that the information is
12 required to be included in a public document or record that the
13 appraisal office is required to prepare or maintain; or

14 (7) to a taxing unit or its legal representative that
15 is engaged in the collection of delinquent taxes on the property
16 described in the report.

17 (c) Information that is disclosed under this section does
18 not lose its confidential character.

19 (d) A person, other than the purchaser, grantee, seller, or
20 grantor, who obtains a sales price disclosure report or information
21 from the report commits an offense if the person:

22 (1) discloses the report or information to a person
23 who is not authorized under this section to receive the report or
24 information; or

25 (2) permits such a person to view, read, or copy the
26 report or information.

27 (e) An offense under Subsection (d) is a Class B

1 misdemeanor.

2 (f) It is a defense to prosecution under Subsection (d) that
3 the person who received information contained in the sales price
4 disclosure report obtained the information from:

5 (1) a purchaser, grantee, seller, or grantor of the
6 property described in the report; or

7 (2) a document or record other than the sales price
8 disclosure report.

9 Sec. 22.65. PREPARATION OF REPORT; IMMUNITY FROM LIABILITY.

10 (a) A sales price disclosure report must be prepared by the
11 purchaser or grantee of the property described in the report or by a
12 title insurance company, lender, real estate agent, or attorney.

13 (b) A title insurance company, lender, real estate agent, or
14 attorney who prepares a sales price disclosure report is not liable
15 to any person for preparing the report or for any unintentional
16 errors or omissions in the report.

17 Sec. 22.66. ACTION TO COMPEL COMPLIANCE. The chief
18 appraiser may bring an action for an injunction to compel a person
19 to comply with the requirements of this subchapter. If the court
20 finds that this subchapter applies and that the person has failed to
21 fully comply with its requirements, the court:

22 (1) shall order the person to comply; and

23 (2) may assess costs and reasonable attorney's fees
24 against the person.

25 SECTION 1C.03. Section 23.013, Tax Code, is amended to read
26 as follows:

27 Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.

1 (a) If the chief appraiser uses the market data comparison method
2 of appraisal to determine the market value of real property, the
3 chief appraiser shall use comparable sales data and shall adjust
4 the comparable sales to the subject property.

5 (b) The chief appraiser may use information contained in a
6 sales price disclosure report filed under Subchapter D, Chapter 22,
7 in determining the market value of real property but may not
8 increase the market value of the real property described in the
9 report solely on the basis of the information contained in the
10 report.

11 PART D. CONFIDENTIALITY OF CERTAIN APPRAISAL INFORMATION

12 SECTION 1D.01. Chapter 25, Tax Code, is amended by adding
13 Section 25.027 to read as follows:

14 Sec. 25.027. CONFIDENTIALITY OF PHOTOGRAPHS OF CERTAIN
15 RESIDENTIAL PROPERTY. (a) Information in appraisal records is
16 confidential and is available only for the official use of the
17 appraisal district, this state, the comptroller, and taxing units
18 and political subdivisions of this state if the information is a
19 photograph or a floor plan of an improvement to real property that
20 is designed primarily for use as a human residence, including a
21 residence homestead.

22 (b) This section does not apply to an aerial photograph that
23 depicts five or more separately owned buildings.

24 PART E. PROCEDURES FOR ADOPTION OF TAX RATE

25 SECTION 1E.01. Section 26.05(d), Tax Code, is amended to
26 read as follows:

27 (d) The governing body of a taxing unit other than a school

1 district may not adopt a tax rate that exceeds the lower of the
2 rollback tax rate or [~~103 percent of~~] the effective tax rate
3 calculated as provided by this chapter until the governing body has
4 held a public hearing on the proposed tax rate and has otherwise
5 complied with Sections [~~Section~~] 26.06 and [~~Section~~] 26.065. The
6 governing body of a taxing unit shall reduce a tax rate set by law or
7 by vote of the electorate to the lower of the rollback tax rate or
8 [~~103 percent of~~] the effective tax rate and may not adopt a higher
9 rate unless it first complies with Section 26.06.

10 SECTION 1E.02. Section 26.06(e), Tax Code, is amended to
11 read as follows:

12 (e) The meeting to vote on the tax increase may not be
13 earlier than the third day or later than the 14th day after the date
14 of the public hearing. The meeting must be held inside the
15 boundaries of the taxing unit in a publicly owned building or, if a
16 suitable publicly owned building is not available, in a suitable
17 building to which the public normally has access. If the governing
18 body does not adopt a tax rate that exceeds the lower of the
19 rollback tax rate or [~~103 percent of~~] the effective tax rate by the
20 14th day, it must give a new notice under Subsection (d) before it
21 may adopt a rate that exceeds the lower of the rollback tax rate or
22 [~~103 percent of~~] the effective tax rate.

23 PART F. EFFECTIVE DATES

24 SECTION 1F.01. (a) As soon as practicable after the
25 effective date of this Act, but not later than September 1, 2005,
26 each appraisal district shall prepare and make available sales
27 price disclosure report forms as provided by Section 22.62, Tax

1 Code, as added by this article.

2 (b) Subchapter D, Chapter 22, Tax Code, as added by this
3 article, applies only to a sale of real property that occurs on or
4 after September 1, 2005.

5 SECTION 1F.02. Section 25.027, Tax Code, as added by this
6 article, prohibits the disclosure of information in appraisal
7 records made confidential under that section only on or after the
8 effective date of that section.

9 SECTION 1F.03. (a) The change in law made by Sections 1E.01
10 and 1E.02 of this article applies to the ad valorem tax rate of a
11 taxing unit beginning with the 2005 tax year, except as provided by
12 Subsection (b) of this section.

13 (b) If the governing body of a taxing unit adopts an ad
14 valorem tax rate for the taxing unit for the 2005 tax year before
15 the effective date of those sections, the change in law made by
16 those sections applies to the ad valorem tax rate of that taxing
17 unit beginning with the 2006 tax year, and the law in effect when
18 the tax rate was adopted applies to the 2005 tax year with respect
19 to that taxing unit.

20 SECTION 1F.04. (a) Except as provided by this section, this
21 article takes effect January 1, 2006, and applies only to an ad
22 valorem tax year that begins on or after that date.

23 (b) This section and Sections 1D.01-1E.02 of this article
24 take effect immediately if this Act receives a vote of two-thirds of
25 all the members elected to each house, as provided by Section 39,
26 Article III, Texas Constitution. If this Act does not receive the
27 vote necessary for immediate effect, this section and Sections

1 1D.01-1E.02 of this article take effect on the 91st day after the
2 last day of the legislative session.

3 ARTICLE 2. REFORMED FRANCHISE TAX

4 SECTION 2.01. Title 2, Tax Code, is amended by adding
5 Subtitle K to read as follows:

6 SUBTITLE K. REFORMED FRANCHISE TAX

7 CHAPTER 251. REFORMED FRANCHISE TAX

8 Sec. 251.001. DEFINITIONS. In this chapter:

9 (1) "Business" means an entity that employs an
10 individual to perform services.

11 (2) "Calendar quarter," "commission," "compensation
12 fund," and "contribution" have the meanings assigned those terms by
13 Section 201.011, Labor Code.

14 (3) "Employer" has the meaning assigned by Subchapter
15 C, Chapter 201, Labor Code.

16 (4) "Taxable business" means a business to which this
17 chapter applies as provided by Sections 251.004 and 251.006.

18 (5) "Wages" means wages, as defined under Subchapter
19 F, Chapter 201, Labor Code, paid by a taxable business and includes
20 the amounts excluded by Sections 201.082(1) and (9), Labor Code.

21 Sec. 251.002. RULES. The commission may adopt rules to
22 implement and administer this chapter.

23 Sec. 251.003. LOCATION OF SERVICE. (a) The tax imposed by
24 this chapter applies to wages for a service performed in this state
25 or in and outside this state if:

26 (1) the service is localized in this state; or

27 (2) the service is not localized in any state and some

1 of the service is performed in this state and:

2 (A) the base of operations is in this state, or
3 there is no base of operations, but the service is directed or
4 controlled from this state; or

5 (B) the base of operations or place from which
6 the service is directed or controlled is not in a state in which a
7 part of the service is performed, and the residence of the person
8 who performs the service is in this state.

9 (b) The tax imposed by this chapter applies to wages for a
10 service performed anywhere in the United States, including service
11 performed entirely outside this state, if:

12 (1) the service is not localized in a state;

13 (2) the service is performed by an individual who is
14 one of a class of employees who are required to travel outside this
15 state in performance of their duties; and

16 (3) the individual's base of operations is in this
17 state or, if there is no base of operations, the individual's
18 service is directed or controlled from this state.

19 (c) The tax imposed by this chapter applies to wages for a
20 service performed outside the United States by a citizen of the
21 United States.

22 (d) For the purposes of this section, service is localized
23 in a state if the service is performed entirely within the state or
24 the service performed outside the state is incidental to the
25 service performed in the state. In this section, a service that is
26 "incidental" includes a service that is temporary or that consists
27 of isolated transactions.

1 Sec. 251.004. TAXABLE BUSINESS. Subject to Section
2 251.006, the tax imposed by this chapter applies only to a business
3 that is an employer that pays or is required to pay a contribution
4 under Subtitle A, Title 4, Labor Code.

5 Sec. 251.005. TAX IMPOSED. Subject to Section 251.006, the
6 tax is imposed on each taxable business for each employee for whom
7 the taxable business pays or is required to pay a contribution for a
8 calendar quarter without regard to whether:

9 (1) the employee is full-time or part-time; or

10 (2) the wages paid were for the entire calendar
11 quarter or a portion of the calendar quarter.

12 Sec. 251.006. TAX IMPOSED ON EMPLOYEES. (a)
13 Notwithstanding Sections 251.004 and 251.005, a tax is imposed on
14 each business for each individual who performs a service for the
15 business for compensation, without regard to whether the business
16 pays a contribution for a calendar quarter for the individual, if
17 the individual is an employee of the business as provided by this
18 section for all or a part of the calendar quarter.

19 (b) An individual is an employee of a business for purposes
20 of this section if the business has a right to direct and control
21 how the individual performs the service for which the individual is
22 provided compensation, indicated by factors that include, but are
23 not limited to:

24 (1) whether the individual is subject to the
25 business's instructions about when, where, and how to work;

26 (2) whether the individual is trained to perform
27 services in a particular manner;

1 (3) the extent to which the individual has
2 unreimbursed business expenses;

3 (4) the extent to which the individual has a
4 significant investment in the facilities the individual uses in
5 performing the services;

6 (5) the extent to which the individual makes the
7 individual's services available to the relevant market, by
8 advertising, maintaining a visible business location, or
9 otherwise;

10 (6) the extent to which the individual can realize a
11 profit or loss;

12 (7) the manner in which the individual is paid by the
13 business;

14 (8) whether a written contract between the individual
15 and the business provides that the individual is or is not an
16 employee;

17 (9) whether the business provides the individual with
18 employee-type benefits, including insurance, a pension plan,
19 vacation pay, or sick pay;

20 (10) whether the relationship between the individual
21 and the business is considered permanent or for a limited period;
22 and

23 (11) the extent to which services performed by the
24 individual are a key aspect of the affairs of the business.

25 Sec. 251.007. BASE AMOUNT OF WAGES. The base amount of
26 wages for each employee is the total amount of wages paid to the
27 employee during the calendar quarter up to an amount that does not

1 exceed \$90,000 for the calendar year.

2 Sec. 251.008. RATE. The rate of the tax is equal to 1.15
3 percent of the base amount of wages for each employee as determined
4 under Section 251.007.

5 Sec. 251.009. EXEMPTION FOR GOVERNMENTAL ENTITIES. The tax
6 imposed under this chapter does not apply to a governmental entity.

7 Sec. 251.010. EXEMPTION FOR CERTAIN CHARITIES. The tax
8 imposed under this chapter does not apply to an organization exempt
9 from federal income tax under Section 501(a) of the Internal
10 Revenue Code of 1986 by being listed as an exempt organization in
11 Section 501(c)(3) of the code.

12 Sec. 251.011. TAX NOT DEDUCTED FROM WAGES. A taxable
13 business may not deduct the tax imposed under this chapter from any
14 wages of the taxable business's employees.

15 Sec. 251.012. CRIMINAL PENALTY. (a) A person who violates
16 Section 251.011 commits an offense.

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

18 Sec. 251.013. CIVIL PENALTY. (a) A person who violates
19 Section 251.011 is liable to the state for a civil penalty not to
20 exceed \$500 for each violation. Each day a violation continues may
21 be considered a separate violation for purposes of a civil penalty
22 assessment.

23 (b) A person who does not pay the tax imposed by this chapter
24 on wages paid to an individual who performs services for the person
25 because the person determines that the individual is not an
26 employee for purposes of this chapter is liable to the state for a
27 civil penalty equal to twice the amount of tax owed under this

1 chapter in relation to the individual unless the person can
2 demonstrate that there was a reasonable basis for this
3 determination.

4 (c) On request of the commission, the attorney general shall
5 file suit to collect a penalty under this section.

6 Sec. 251.014. REPORTS AND PAYMENT. (a) Each taxable
7 business shall, on or before the last day of the month immediately
8 following each calendar quarter, file a report on wages in a form
9 prescribed by the commission.

10 (b) The tax imposed under this chapter is due at the same
11 time, collected in the same manner, and subject to the same
12 penalties and interest as contributions assessed under Subtitle A,
13 Title 4, Labor Code.

14 (c) To the extent practicable, the commission shall combine
15 the reporting and payment of contributions and the reporting and
16 payment of the tax imposed under this chapter.

17 Sec. 251.015. DISPOSITION OF PROCEEDS. All proceeds from
18 the collection of the taxes imposed under this chapter shall be
19 deposited to the credit of the general revenue fund.

20 Sec. 251.016. CREDITS AGAINST INSURANCE PREMIUM TAXES. (a)
21 Subject to Subsection (b), a taxable business that pays a tax under
22 this chapter is entitled to a credit of the entire amount of tax
23 paid under this chapter against any insurance premium taxes under
24 Subtitle B, Title 3, Insurance Code, that the taxable business may
25 owe.

26 (b) A taxable business may not receive a credit in an amount
27 that exceeds the amount of the tax or assessment due after applying

1 any other credits. The taxable business may carry any unused credit
2 forward for not more than five years but it may not, at any time,
3 receive a credit in an amount that exceeds the amount of the tax or
4 assessment due, after applying any other credits.

5 (c) A taxable business may not convey, assign, or transfer
6 the credit allowed under this section to another entity unless all
7 of the assets of the business are conveyed, assigned, or
8 transferred in the same transaction.

9 (d) The commission shall adopt rules to implement this
10 section. The comptroller shall assist the commission in the
11 formulation and adoption of the rules.

12 Sec. 251.017. CREDITS FOR CERTAIN PROVIDERS OF HEALTH CARE
13 SERVICES. (a) Except as provided by Subsection (f), a taxable
14 business that participates in either the Medicaid program or the
15 Medicare program as a provider of health care services and that
16 receives not less than 15 percent of the business's revenue during a
17 calendar quarter from payments received under the Medicaid or
18 Medicare program, or both, is entitled to a credit in the amount
19 provided by Subsection (b) against the taxes imposed under this
20 chapter for that calendar quarter.

21 (b) The amount of the credit is equal to 40 percent of the
22 total amount of payments the taxable business received from
23 payments under the Medicaid and Medicare programs during that
24 calendar quarter that can be verified, if necessary.

25 (c) A taxable business may not receive a credit in an amount
26 that exceeds the amount of the tax or assessment due after applying
27 any other credits.

1 (d) A taxable business may not convey, assign, or transfer
2 the credit allowed under this section to another entity unless all
3 of the assets of the business are conveyed, assigned, or
4 transferred in the same transaction.

5 (e) The commission shall adopt rules to implement this
6 section. The comptroller and the Health and Human Services
7 Commission shall assist the commission in the formulation and
8 adoption of the rules.

9 (f) A taxable business that participates in the Medicaid or
10 Medicare program as a provider of durable medical equipment or as a
11 vendor of pharmaceuticals may not count payments for those services
12 for purposes of qualifying for the exemption under Subsection (b).

13 SECTION 2.02. In 2006, a business subject to the tax imposed
14 under Chapter 251, Tax Code, as added by this Act, for the first
15 calendar quarter of 2006 must file its report on wages for the first
16 calendar quarter on or before April 30, 2006, as provided by that
17 chapter. The business may delay payment of the tax owed for the
18 first calendar quarter until its payment of tax under Chapter 251,
19 Tax Code, as added by this Act, for the second calendar quarter is
20 due and may submit payments for both the first and second quarters
21 together. A business that owes the tax for the first calendar
22 quarter of 2006 but not for the second calendar quarter of 2006 may
23 submit its payment for the first calendar quarter on or before July
24 31, 2006.

25 SECTION 2.03. (a) Chapter 171, Tax Code, is repealed
26 effective January 1, 2006.

27 (b) Any corporation that is subject to the franchise tax

1 imposed under Chapter 171, Tax Code, on December 31, 2005, shall
2 file a final franchise tax return and pay a transitional tax as
3 required by this subsection on or before May 15, 2006. The
4 transitional tax is equal to the tax the corporation would have paid
5 in 2006 under Chapter 171, Tax Code, if Chapter 171, Tax Code, had
6 not been repealed. The provisions of Chapter 171, Tax Code,
7 relating to the computation and payment of the franchise tax remain
8 in effect after the repeal of Chapter 171, Tax Code, by this article
9 for the purposes of computing and paying the transitional tax
10 required by this subsection.

11 (c) Chapter 171, Tax Code, and Subtitle B, Title 2, Tax
12 Code, continue to apply to audits, deficiencies, redeterminations,
13 and refunds of any tax due or collected under Chapter 171, including
14 the tax due as provided by Subsection (b) of this section, until
15 barred by limitations.

16 (d) The repeal of Chapter 171, Tax Code, does not affect:

17 (1) the status of a corporation that has had its
18 corporate privileges, certificate of authority, or corporate
19 charter revoked, suit filed against it, or a receiver appointed
20 under Subchapter F, G, or H of that chapter;

21 (2) the ability of the comptroller, secretary of
22 state, or attorney general to take action against a corporation
23 under Subchapter F, G, or H of that chapter for actions that took
24 place before the repeal; or

25 (3) the right of a corporation to contest a
26 forfeiture, revocation, lawsuit, or appointment of a receiver under
27 Subchapter F, G, or H of that chapter.

1 (e) A corporation that has any unused credits under
2 Subchapter O, Chapter 171, Tax Code, that the corporation was
3 allowed to carry forward under that subchapter may apply those
4 credits to not more than 50 percent of the tax imposed by Chapter
5 251, Tax Code, as added by this Act, for each payment period until
6 the earlier of the date the credit would have expired under the
7 terms of Subchapter O, Chapter 171, Tax Code, had it continued in
8 existence, or December 31, 2025.

9 (f) A corporation that has any unused credits under
10 Subchapter P, Chapter 171, Tax Code, that the corporation was
11 allowed to carry forward under that subchapter may apply those
12 credits to not more than 50 percent of the tax imposed by Chapter
13 251, Tax Code, as added by this Act, for each payment period until
14 the earlier of the date the credit would have expired under the
15 terms of Subchapter P, Chapter 171, Tax Code, had it continued in
16 existence, or December 31, 2010.

17 (g) A corporation that has any unused credits under
18 Subchapter Q, Chapter 171, Tax Code, that the corporation was
19 allowed to carry forward under that subchapter may apply those
20 credits to not more than 50 percent of the tax imposed by Chapter
21 251, Tax Code, as added by this Act, for each payment period until
22 the earlier of the date the credit would have expired under the
23 terms of Subchapter Q, Chapter 171, Tax Code, had it continued in
24 existence, or December 31, 2010.

25 (h) The comptroller shall adopt rules to administer
26 Subsections (e)-(g) of this section.

27 SECTION 2.04. Chapter 111, Tax Code, is amended by adding

1 Subchapter H to read as follows:

2 SUBCHAPTER H. FORFEITURE OF RIGHT TO

3 TRANSACT BUSINESS IN THIS STATE

4 Sec. 111.401. APPLICABILITY OF SUBCHAPTER. This subchapter
5 applies to a taxpayer that is a corporation, banking corporation,
6 limited liability company, state or federal savings and loan
7 association, and any other kind of business association, company,
8 joint venture, partnership, or other combination of entities or
9 persons engaged in business that qualifies under the law of this
10 state for liability limitations for its owners or shareholders that
11 are substantially equivalent to those for a corporation.

12 Sec. 111.402. APPLICATION TO NONCORPORATE ENTITIES. (a)
13 The comptroller may, for the same reasons and using the same
14 procedures the comptroller uses in relation to the forfeiture of
15 the corporate privileges of a corporation, forfeit the right to
16 transact business in this state of another entity to which this
17 subchapter applies and that is subject to a tax imposed by this
18 title.

19 (b) The comptroller may, for the same reasons and using the
20 same procedures the comptroller uses in relation to the forfeiture
21 of a corporation's charter or certificate of authority, forfeit the
22 certificate or registration of another entity to which this
23 subchapter applies and that is subject to a tax imposed by this
24 title.

25 (c) The provisions of this subchapter, including Section
26 111.407, that apply to the forfeiture of a corporation's corporate
27 privileges and charter or certificate of authority apply to the

1 forfeiture of another entity's right to transact business in this
2 state and certificate or registration.

3 Sec. 111.403. FORFEITURE OF CORPORATE PRIVILEGES. The
4 comptroller shall forfeit the corporate privileges of a corporation
5 on which a tax is imposed under this title if the corporation:

6 (1) does not file, in accordance with this title and on
7 or before the 45th day after the date notice of forfeiture is
8 mailed, a report required by this title; or

9 (2) does not pay, on or before the 45th day after the
10 date notice of forfeiture is mailed, a tax imposed under this title
11 or does not pay, on or before the 45th day, a penalty imposed
12 relating to that tax.

13 Sec. 111.404. EFFECTS OF FORFEITURE. If the corporate
14 privileges of a corporation are forfeited under this subchapter:

15 (1) the corporation shall be denied the right to sue or
16 defend in a court of this state; and

17 (2) each director or officer of the corporation is
18 liable for a debt of the corporation as provided by Section 111.407.

19 Sec. 111.405. SUIT ON CAUSE OF ACTION ARISING BEFORE
20 FORFEITURE. In a suit against a corporation on a cause of action
21 arising before the forfeiture of the corporate privileges of the
22 corporation, affirmative relief may not be granted to the
23 corporation unless its corporate privileges are revived under this
24 subchapter.

25 Sec. 111.406. EXCEPTION TO FORFEITURE. The forfeiture of
26 the corporate privileges of a corporation does not apply to the
27 privilege to defend in a suit to forfeit the corporation's charter

1 or certificate of authority.

2 Sec. 111.407. LIABILITY OF DIRECTOR AND OFFICERS. (a) If
3 the corporate privileges of a corporation are forfeited for the
4 failure to file a report or pay a tax or penalty imposed under this
5 title, each director or officer of the corporation is liable for
6 each debt of the corporation that is created or incurred in this
7 state after the date on which the report, tax, or penalty is due and
8 before the corporate privileges are revived. The liability
9 includes liability for any tax or penalty imposed under this title
10 on the corporation that becomes due and payable after the date of
11 the forfeiture.

12 (b) The liability of a director or officer is in the same
13 manner and to the same extent as if the director or officer were a
14 partner and the corporation were a partnership.

15 (c) A director or officer is not liable for a debt of the
16 corporation if the director or officer shows that the debt was
17 created or incurred:

18 (1) over the director's objection; or

19 (2) without the director's knowledge and that the
20 exercise of reasonable diligence to become acquainted with the
21 affairs of the corporation would not have revealed the intention to
22 create the debt.

23 (d) If a corporation's charter or certificate of authority
24 and its corporate privileges are forfeited and revived under this
25 subchapter, the liability under this section of a director or
26 officer of the corporation is not affected by the revival of the
27 charter or certificate and the corporate privileges.

1 Sec. 111.408. NOTICE OF FORFEITURE. (a) If the comptroller
2 proposes to forfeit the corporate privileges of a corporation, the
3 comptroller shall notify the corporation that the forfeiture will
4 occur without a judicial proceeding unless the corporation:

5 (1) files, within the time established by Section
6 111.403, the report to which that section refers; or

7 (2) pays, within the time established by Section
8 111.403, the delinquent tax and penalty to which that section
9 refers.

10 (b) The notice shall be written or printed and shall be
11 verified by the seal of the comptroller's office.

12 (c) The comptroller shall mail the notice to the corporation
13 not later than the 45th day before the forfeiture of corporate
14 privileges. The notice shall be addressed to the corporation and
15 mailed to the address named in the corporation's charter as its
16 principal place of business or to another known place of business of
17 the corporation.

18 (d) The comptroller shall keep at the comptroller's office a
19 record of the date on which the notice is mailed. For the purposes
20 of this subchapter, the notice and the record of the mailing date
21 constitute legal and sufficient notice of the forfeiture.

22 Sec. 111.409. JUDICIAL PROCEEDING NOT REQUIRED FOR
23 FORFEITURE. The forfeiture of the corporate privileges of a
24 corporation is effected by the comptroller without a judicial
25 proceeding.

26 Sec. 111.410. REVIVAL OF CORPORATE PRIVILEGES. The
27 comptroller shall revive the corporate privileges of a corporation

1 if the corporation, before the forfeiture of its charter or
2 certificate of authority, pays any tax, penalty, or interest due
3 under this title.

4 Sec. 111.411. BANKING CORPORATIONS AND SAVINGS AND LOAN
5 ASSOCIATIONS. (a) Except as provided by Subsection (b), this
6 subchapter does not apply to a banking corporation that is
7 organized under the laws of this state or under federal law and has
8 its main office in this state.

9 (b) The banking commissioner shall appoint a conservator
10 under Subtitle A, Title 3, Finance Code, to pay the tax of a banking
11 corporation that is organized under the laws of this state and that
12 the commissioner certifies as being delinquent in the payment of
13 the corporation's tax.

14 Sec. 111.412. SAVINGS AND LOAN ASSOCIATION. (a) Except as
15 provided by Subsection (b), this subchapter does not apply to a
16 savings and loan association that is organized under the laws of
17 this state or under federal law and has its main office in this
18 state.

19 (b) The savings and loan commissioner shall appoint a
20 conservator under Subtitle B or C, Title 3, Finance Code, to pay the
21 tax of a savings and loan association that is organized under the
22 laws of this state and that the commissioner certifies as being
23 delinquent in the payment of the association's tax.

24 Sec. 111.413. GROUNDS FOR FORFEITURE OF CHARTER OR
25 CERTIFICATE OF AUTHORITY. It is a ground for the forfeiture of a
26 corporation's charter or certificate of authority if the corporate
27 privileges of the corporation are forfeited under this subchapter

1 and the corporation does not pay, on or before the 120th day after
2 the date the corporate privileges are forfeited, the amount
3 necessary for the corporation to revive under this subchapter its
4 corporate privileges.

5 Sec. 111.414. CERTIFICATION BY COMPTROLLER. After the
6 120th day after the date the corporate privileges of a corporation
7 are forfeited under this subchapter, the comptroller shall certify
8 the name of the corporation to the attorney general and the
9 secretary of state.

10 Sec. 111.415. SUIT FOR JUDICIAL FORFEITURE. On receipt of
11 the comptroller's certification, the attorney general shall bring
12 suit to forfeit the charter or certificate of authority of a
13 corporation if a ground exists for the forfeiture of the charter or
14 certificate.

15 Sec. 111.416. RECORD OF JUDICIAL FORFEITURE. (a) If a
16 district court forfeits a corporation's charter or certificate of
17 authority under this subchapter, the clerk of the court shall
18 promptly mail to the secretary of state a certified copy of the
19 court's judgment. On receipt of the copy of the judgment, the
20 secretary of state shall inscribe on the corporation's record at
21 the secretary's office the words "Judgment of Forfeiture" and the
22 date of the judgment.

23 (b) If a court forfeits a corporation's charter or
24 certificate of authority under this subchapter, the court may
25 appoint a receiver for the corporation and may administer the
26 receivership under the laws relating to receiverships.

27 (c) If an appeal of the judgment is perfected, the clerk of

1 the court shall promptly certify to the secretary of state that the
2 appeal has been perfected. On receipt of the certification, the
3 secretary of state shall inscribe on the corporation's record at
4 the secretary's office the word "Appealed" and the date on which the
5 appeal was perfected.

6 (d) If final disposition of an appeal is made, the clerk of
7 the court making the disposition shall promptly certify to the
8 secretary of state the type of disposition made and the date of the
9 disposition. On receipt of the certification, the secretary of
10 state shall inscribe on the corporation's record at the secretary's
11 office a brief note of the type of final disposition made and the
12 date of the disposition.

13 Sec. 111.417. REVIVAL OF CHARTER OR CERTIFICATE OF
14 AUTHORITY AFTER JUDICIAL FORFEITURE. A corporation whose charter
15 or certificate of authority is judicially forfeited under this
16 subchapter is entitled to have its charter or certificate revived
17 and to have its corporate privileges revived if:

18 (1) the corporation files each report that is required
19 by this title and that is delinquent;

20 (2) the corporation pays the tax, penalty, and
21 interest that is imposed under this title and that is due at the
22 time the suit under Section 111.418 to set aside forfeiture is
23 filed; and

24 (3) the forfeiture of the corporation's charter or
25 certificate is set aside in a suit under Section 111.418.

26 Sec. 111.418. SUIT TO SET ASIDE JUDICIAL FORFEITURE. If a
27 corporation's charter or certificate of authority is judicially

1 forfeited under this subchapter, a stockholder, director, or
2 officer of the corporation at the time of the forfeiture of the
3 charter or certificate or of the corporate privileges of the
4 corporation may bring suit in a district court of Travis County in
5 the name of the corporation to set aside the forfeiture of the
6 charter or certificate. The suit must be in the nature of a bill of
7 review. The secretary of state and attorney general must be made
8 defendants in the suit.

9 Sec. 111.419. RECORD OF SUIT TO SET ASIDE JUDICIAL
10 FORFEITURE. If a court under this subchapter sets aside the
11 forfeiture of a corporation's charter or certificate of authority,
12 the secretary of state shall inscribe on the corporation's record
13 in the secretary's office the words "Charter Revived by Court
14 Order" or "Certificate Revived by Court Order," a citation to the
15 suit, and the date of the court's judgment.

16 Sec. 111.420. CORPORATE PRIVILEGES AFTER JUDICIAL
17 FORFEITURE IS SET ASIDE. If a court under this subchapter sets
18 aside the forfeiture of a corporation's charter or certificate of
19 authority, the comptroller shall revive the corporate privileges of
20 the corporation and shall inscribe on the corporation's record in
21 the comptroller's office a note of the revival.

22 Sec. 111.421. FORFEITURE BY SECRETARY OF STATE. The
23 secretary of state may forfeit the charter or certificate of
24 authority of a corporation if:

25 (1) the secretary receives the comptroller's
26 certification under Section 111.414;

27 (2) the corporation does not revive its forfeited

1 corporate privileges on or before the 120th day after the date that
2 the corporate privileges were forfeited; and

3 (3) the corporation does not have assets from which a
4 judgment for any tax, penalty, or court costs imposed by this title
5 may be satisfied.

6 Sec. 111.422. JUDICIAL PROCEEDING NOT REQUIRED FOR
7 FORFEITURE BY SECRETARY OF STATE. The forfeiture by the secretary
8 of state of a corporation's charter or certificate of authority
9 under this subchapter is effected without a judicial proceeding.

10 Sec. 111.423. RECORD OF FORFEITURE BY SECRETARY OF STATE.
11 The secretary of state shall effect a forfeiture of a corporation's
12 charter or certificate of authority under this subchapter by
13 inscribing on the corporation's record in the secretary's office
14 the words "Charter Forfeited" or "Certificate Forfeited," the date
15 on which this inscription is made, and a citation to this subchapter
16 as authority for the forfeiture.

17 Sec. 111.424. REVIVAL OF CHARTER OR CERTIFICATE OF
18 AUTHORITY AFTER FORFEITURE BY SECRETARY OF STATE. A corporation
19 whose charter or certificate of authority is forfeited under this
20 subchapter by the secretary of state is entitled to have its charter
21 or certificate revived and to have its corporate privileges revived
22 if:

23 (1) the corporation files each report that is required
24 by this title and that is delinquent;

25 (2) the corporation pays the tax, penalty, and
26 interest that is imposed by this title and that is due at the time
27 the request under Section 111.425 to set aside forfeiture is made;

1 and

2 (3) the forfeiture of the corporation's charter or
3 certificate is set aside in a proceeding under Section 111.425.

4 Sec. 111.425. PROCEEDING TO SET ASIDE FORFEITURE BY
5 SECRETARY OF STATE. (a) If a corporation's charter or certificate
6 of authority is forfeited under this subchapter by the secretary of
7 state, a stockholder, director, or officer of the corporation at
8 the time of the forfeiture of the charter or certificate or of the
9 corporate privileges of the corporation may request in the name of
10 the corporation that the secretary of state set aside the
11 forfeiture of the charter or certificate.

12 (b) If a request is made, the secretary of state shall
13 determine if each delinquent report has been filed and any
14 delinquent tax, penalty, or interest has been paid. If each report
15 has been filed and the tax, penalty, or interest has been paid, the
16 secretary shall set aside the forfeiture of the corporation's
17 charter or certificate of authority.

18 Sec. 111.426. CORPORATE PRIVILEGES AFTER FORFEITURE BY
19 SECRETARY OF STATE IS SET ASIDE. If the secretary of state sets
20 aside under this subchapter the forfeiture of a corporation's
21 charter or certificate of authority, the comptroller shall revive
22 the corporate privileges of the corporation.

23 Sec. 111.427. USE OF CORPORATE NAME AFTER REVIVAL OF
24 CHARTER OR CERTIFICATE OF AUTHORITY. If a corporation's charter or
25 certificate of authority is forfeited under this subchapter by the
26 secretary of state and if the corporation requests the secretary to
27 set aside the forfeiture under Section 111.425, the corporation

1 shall determine from the secretary whether the corporation's name
2 is available for use. If the name is not available, the corporation
3 shall amend its charter or certificate to change its name.

4 SECTION 2.05. This article takes effect January 1, 2006.

5 ARTICLE 3. SALES AND USE TAXES

6 PART A. STATE SALES AND USE TAXES

7 SECTION 3A.01. Section 151.051(b), Tax Code, is amended to
8 read as follows:

9 (b) The sales tax rate is 7.25 [~~6-1/4~~] percent of the sales
10 price of the taxable item sold.

11 SECTION 3A.02. Subchapter A, Chapter 151, Tax Code, is
12 amended by adding Section 151.0029 to read as follows:

13 Sec. 151.0029. BILLBOARD ADVERTISING SERVICE. (a)
14 "Billboard advertising service" means a service allowing a
15 purchaser to obtain outdoor advertising on a billboard, including
16 the rental of the billboard space.

17 (b) In this section, "billboard" means a sign that:

18 (1) is a separate and fixed structure directly
19 attached to land or a building;

20 (2) is designed to have its content changed at
21 frequent intervals in an economically feasible manner; and

22 (3) is designed to prominently display outdoor
23 advertising that is visible to the occupants of motor vehicles
24 driving by the sign.

25 SECTION 3A.03. Subchapter A, Chapter 151, Tax Code, is
26 amended by adding Sections 151.0043 and 151.0044 to read as
27 follows:

1 Sec. 151.0043. "MOTOR VEHICLE REPAIR SERVICES." (a)

2 "Motor vehicle repair services" means the repair, remodeling,
3 maintenance, or restoration of a motor vehicle, including testing
4 or diagnostic services, body repair and painting, engine repair,
5 transmission repair, exhaust system repair, brake repair, and air
6 conditioning repair.

7 (b) "Motor vehicle repair services" does not include any
8 vehicle emissions tests required by law, safety inspection tests
9 required by law, and other similar tests required by law.

10 Sec. 151.0044. "MOTOR VEHICLE WASH OR DETAIL SERVICES."

11 "Motor vehicle wash or detail services" includes:

12 (1) cleaning of the exterior or interior of a motor
13 vehicle, including washing, waxing, polishing, buffing, detailing,
14 shampooing, vacuuming, finishing, or steam cleaning; and

15 (2) providing a self-service, automated, or
16 coin-operated facility that provides the services described in
17 Subdivision (1).

18 SECTION 3A.04. Section 151.0101(a), Tax Code, is amended to
19 read as follows:

20 (a) "Taxable services" means:

- 21 (1) amusement services;
- 22 (2) cable television services;
- 23 (3) personal services;
- 24 (4) motor vehicle parking and storage services;
- 25 (5) the repair, remodeling, maintenance, and
- 26 restoration of tangible personal property, including motor vehicle
27 repair services, except:

- 1 (A) aircraft;
- 2 (B) a ship, boat, or other vessel, other than:
- 3 (i) a taxable boat or motor as defined by
- 4 Section 160.001;
- 5 (ii) a sports fishing boat; or
- 6 (iii) any other vessel used for pleasure;
- 7 and
- 8 (C) [~~the repair, maintenance, and restoration of~~
- 9 ~~a motor vehicle; and~~
- 10 [~~(D)~~] the repair, maintenance, creation, and
- 11 restoration of a computer program, including its development and
- 12 modification, not sold by the person performing the repair,
- 13 maintenance, creation, or restoration service;
- 14 (6) telecommunications services;
- 15 (7) credit reporting services;
- 16 (8) debt collection services;
- 17 (9) insurance services;
- 18 (10) information services;
- 19 (11) real property services;
- 20 (12) data processing services;
- 21 (13) real property repair and remodeling;
- 22 (14) security services;
- 23 (15) telephone answering services;
- 24 (16) Internet access service; [~~and~~]
- 25 (17) a sale by a transmission and distribution
- 26 utility, as defined in Section 31.002, Utilities Code, of
- 27 transmission or delivery of service directly to an electricity

1 end-use customer whose consumption of electricity is subject to
2 taxation under this chapter;

3 (18) billboard advertising services; and

4 (19) motor vehicle wash or detail services.

5 SECTION 3A.05. Section 151.315, Tax Code, is amended to
6 read as follows:

7 Sec. 151.315. WATER. Water, other than water sold in a
8 sealed container, is exempted from the taxes imposed by this
9 chapter.

10 SECTION 3A.06. Sections 151.319(a) and (b), Tax Code, are
11 repealed.

12 SECTION 3A.07. There are exempted from the taxes imposed by
13 Chapter 151, Tax Code, the receipts from the sale, use, storage,
14 rental, or other consumption in this state of services that became
15 subject to the taxes because of the terms of this part and that are
16 the subject of a written contract or bid entered into on or before
17 June 1, 2005. The exemption provided by this section expires July
18 1, 2007.

19 SECTION 3A.08. This part takes effect July 1, 2005, if this
20 Act receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for effect on that
23 date, this part takes effect October 1, 2005.

24 PART B. MOTOR VEHICLE SALES AND USE TAX

25 SECTION 3B.01. Section 152.002, Tax Code, is amended by
26 adding Subsection (f) to read as follows:

27 (f) Notwithstanding Subsection (a), the total consideration

1 of a used motor vehicle is the amount on which the tax is computed as
2 provided by Section 152.0412.

3 SECTION 3B.02. Section 152.021(b), Tax Code, is amended to
4 read as follows:

5 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
6 consideration.

7 SECTION 3B.03. Section 152.022(b), Tax Code, is amended to
8 read as follows:

9 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
10 consideration.

11 SECTION 3B.04. Section 152.026(b), Tax Code, is amended to
12 read as follows:

13 (b) The tax rate is 10 percent of the gross rental receipts
14 from the rental of a rented motor vehicle for 30 days or less and
15 7.35 [~~6-1/4~~] percent of the gross rental receipts from the rental of
16 a rented motor vehicle for longer than 30 days.

17 SECTION 3B.05. Section 152.028(b), Tax Code, is amended to
18 read as follows:

19 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
20 consideration.

21 SECTION 3B.06. Section 152.041(a), Tax Code, is amended to
22 read as follows:

23 (a) The tax assessor-collector of the county in which an
24 application for registration or for a Texas certificate of title is
25 made shall collect taxes imposed by this chapter, subject to
26 Section 152.0412, unless another person is required by this chapter
27 to collect the taxes.

1 SECTION 3B.07. Subchapter C, Chapter 152, Tax Code, is
2 amended by adding Section 152.0412 to read as follows:

3 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX
4 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive
5 value" means the average retail value of a motor vehicle as
6 determined by the Texas Department of Transportation, based on a
7 nationally recognized motor vehicle industry reporting service.

8 (b) If the amount paid for a motor vehicle subject to the tax
9 imposed by this chapter is equal to or greater than the standard
10 presumptive value of the vehicle, a county tax assessor-collector
11 shall compute the tax on the amount paid.

12 (c) If the amount paid for a motor vehicle subject to the tax
13 imposed by this chapter is less than the standard presumptive value
14 of the vehicle, a county tax assessor-collector shall compute the
15 tax on the standard presumptive value unless the purchaser
16 establishes the retail value of the vehicle as provided by
17 Subsection (d).

18 (d) A county tax assessor-collector shall compute the tax
19 imposed by this chapter on the retail value of a motor vehicle if:

20 (1) the retail value is shown on an appraisal
21 certified by an adjuster licensed under Chapter 4101, Insurance
22 Code, or by a motor vehicle dealer operating under Subchapter B,
23 Chapter 503, Transportation Code;

24 (2) the appraisal is on a form prescribed by the
25 comptroller for that purpose; and

26 (3) the purchaser of the vehicle obtains the appraisal
27 not later than the 20th day after the date of purchase.

1 (e) On request, a motor vehicle dealer operating under
2 Subchapter B, Chapter 503, Transportation Code, shall provide a
3 certified appraisal of the retail value of a motor vehicle. The
4 comptroller by rule shall establish a fee that a dealer may charge
5 for providing the certified appraisal. The county tax
6 assessor-collector shall retain a copy of a certified appraisal
7 received under this section for a period prescribed by the
8 comptroller.

9 (f) The Texas Department of Transportation shall maintain
10 information on the standard presumptive values of motor vehicles as
11 part of the department's registration and title system. The
12 department shall update the information at least quarterly each
13 calendar year.

14 (g) This section does not apply to a transaction described
15 by Section 152.024 or 152.025.

16 SECTION 3B.08. Not later than October 1, 2005, the Texas
17 Department of Transportation shall:

18 (1) establish standard presumptive values for motor
19 vehicles as provided by Section 152.0412, Tax Code, as added by this
20 part;

21 (2) modify the department's registration and title
22 system as needed to include that information and administer that
23 section; and

24 (3) make that information available through the system
25 to all county tax assessor-collectors.

26 SECTION 3B.09. (a) Except as provided by Subsection (b) of
27 this section, this part takes effect July 1, 2005, if this Act

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for effect on that
4 date, this part takes effect September 1, 2005.

5 (b) Section 152.0412, Tax Code, as added by this part, takes
6 effect October 1, 2005.

7 PART C. BOAT AND MOTOR BOAT SALES AND USE TAX

8 SECTION 3C.01. Section 160.021(b), Tax Code, is amended to
9 read as follows:

10 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
11 consideration.

12 SECTION 3C.02. Section 160.022(b), Tax Code, is amended to
13 read as follows:

14 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
15 consideration.

16 SECTION 3C.03. This part takes effect July 1, 2005, if this
17 Act receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for effect on that
20 date, this part takes effect September 1, 2005.

21 PART D. TAX ON DISCRETIONARY FOOD AND DRINK ITEMS

22 SECTION 3D.01. Subtitle E, Title 2, Tax Code, is amended by
23 adding Chapter 164 to read as follows:

24 CHAPTER 164. TAX ON DISCRETIONARY FOOD AND DRINK ITEMS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 164.001. DEFINITIONS. In this chapter:

27 (1) "Snack food" means any item that is ordinarily

1 sold for consumption without further preparation and that is not
2 generally considered a major component of a well-balanced meal.

3 The term includes:

4 (A) bakery items, including pastries, donuts,
5 cakes, tortes, pies, tarts, bars, and cookies;

6 (B) candy;

7 (C) chips, including chips made from potatoes,
8 flour, or corn;

9 (D) popcorn;

10 (E) pretzels; and

11 (F) roasted nuts.

12 (2) "Soft drink" means a nonalcoholic beverage that
13 contains natural or artificial sweeteners. The term does not
14 include a beverage that:

15 (A) contains:

16 (i) milk or milk products;

17 (ii) soy, rice, or similar milk
18 substitutes; or

19 (iii) more than 50 percent of vegetable or
20 fruit juice by volume;

21 (B) is intended by the manufacturer for
22 consumption by an infant and that is commonly referred to as "infant
23 formula"; or

24 (C) is intended by the manufacturer for use for
25 weight reduction.

26 [Sections 164.002-164.050 reserved for expansion]

1 SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

2 Sec. 164.051. TAX IMPOSED. (a) A tax is imposed on each
3 sale at retail of soft drinks or snack food.

4 (b) The tax rate is three percent of the sales price of the
5 soft drinks or snack food.

6 (c) The tax imposed under this chapter is in addition to any
7 other tax imposed by state law.

8 Sec. 164.052. EXCEPTIONS TO APPLICATION OF TAX. The tax
9 imposed under this chapter does not apply to food or a beverage sold
10 in or by a restaurant, lunch counter, cafeteria, hotel, or other
11 business for consumption on the premises of the business.

12 Sec. 164.053. RULES. The comptroller by rule shall
13 prescribe the manner in which the tax imposed under this chapter is
14 administered, imposed, and collected.

15 [Sections 164.054-164.100 reserved for expansion]

16 SUBCHAPTER C. ALLOCATION OF TAX

17 Sec. 164.101. ALLOCATION OF TAX. The revenue from the tax
18 imposed under this chapter shall be deposited to the credit of the
19 general revenue fund.

20 SECTION 3D.02. This part takes effect July 1, 2005, if this
21 Act receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for effect on that
24 date, this part takes effect September 1, 2005.

25 ARTICLE 4. CIGARETTE AND TOBACCO PRODUCTS TAXES

26 PART A. RATES

27 SECTION 4A.01. Section 154.021(b), Tax Code, is amended to

1 read as follows:

2 (b) The tax rates are:

3 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
4 weighing three pounds or less per thousand; and

5 (2) the rate provided by Subdivision (1) plus \$2.10
6 per thousand on cigarettes weighing more than three pounds per
7 thousand.

8 SECTION 4A.02. Section 155.021(b), Tax Code, is amended to
9 read as follows:

10 (b) The tax rates are:

11 (1) 3.44 cents [~~one cent~~] per 10 or fraction of 10 on
12 cigars weighing three pounds or less per thousand;

13 (2) \$25.80 [~~\$7.50~~] per thousand on cigars that:

14 (A) weigh more than three pounds per thousand;
15 and

16 (B) sell at factory list price, exclusive of any
17 trade discount, special discount, or deal, for 3.3 cents or less
18 each;

19 (3) \$37.84 [~~\$11~~] per thousand on cigars that:

20 (A) weigh more than three pounds per thousand;

21 (B) sell at factory list price, exclusive of any
22 trade discount, special discount, or deal, for more than 3.3 cents
23 each; and

24 (C) contain no substantial amount of nontobacco
25 ingredients; and

26 (4) \$51.60 [~~\$15~~] per thousand on cigars that:

27 (A) weigh more than three pounds per thousand;

1 (B) sell at factory list price, exclusive of any
2 trade discount, special discount, or deal, for more than 3.3 cents
3 each; and

4 (C) contain a substantial amount of nontobacco
5 ingredients.

6 SECTION 4A.03. Section 155.0211(b), Tax Code, is amended to
7 read as follows:

8 (b) The tax rate for tobacco products other than cigars is
9 40 [~~35.213~~] percent of the manufacturer's list price, exclusive of
10 any trade discount, special discount, or deal.

11 SECTION 4A.04. This part takes effect July 1, 2005, if this
12 Act receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for effect on that
15 date, this part takes effect September 1, 2005.

16 PART B. FEE ON CIGARETTES MANUFACTURED BY CERTAIN COMPANIES

17 SECTION 4B.01. Chapter 161, Health and Safety Code, is
18 amended by adding Subchapter U to read as follows:

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

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

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

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

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

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

14 Sec. 161.602. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

25 (6) "Nonsettling manufacturer cigarettes" means
26 cigarettes manufactured, fabricated, assembled, or imported by a
27 nonsettling manufacturer.

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

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

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

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

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

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

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

27 (c) The fee imposed by this subchapter is in addition to any

1 other privilege, license, fee, or tax required or imposed by state
2 law.

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

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

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

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

- 16 (1) three percent; or
17 (2) the percentage increase in the most recent annual
18 revised Consumer Price Index for all Urban Consumers, as published
19 by the federal Bureau of Labor Statistics of the United States
20 Department of Labor.

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

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

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

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

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

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

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

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

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

24 (b) Not later than the 15th day of the month after the month
25 in which the comptroller mails a nonsettling manufacturer a notice
26 under Subsection (a), the nonsettling manufacturer shall send to
27 the comptroller the amount of the fee due according to the notice.

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

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

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

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

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

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

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

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

8 (2) \$50,000.

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

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

16 (e) The comptroller shall establish procedures to:

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

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

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

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

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

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

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

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

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

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

24 Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes
25 and cigarette tobacco products of a nonsettling manufacturer that
26 has not complied with this subchapter, including full payment of
27 the fee imposed by this subchapter, shall be treated as cigarettes

1 for which the tax assessed by Chapter 154 or 155, Tax Code, as
2 appropriate, has not been paid, and the manufacturer is subject to
3 all penalties imposed by those chapters for violations of those
4 chapters.

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

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

10 (2) is not included on the list described by Section
11 161.607(b).

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

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

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

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

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

23 SECTION 4B.02. (a) Not later than the 30th day after the
24 date this part takes effect, a nonsettling manufacturer, as that
25 term is defined by Section 161.602, Health and Safety Code, as added
26 by this part, that is offering cigarettes or cigarette tobacco
27 products for sale or distribution in this state on the effective

1 date of this part, shall provide to the attorney general on a form
2 prescribed by the attorney general:

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

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

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

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

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

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

20 SECTION 4B.03. This part takes effect July 1, 2005, if this
21 Act receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for effect on that
24 date, this part takes effect September 1, 2005.

25 ARTICLE 5. TELECOMMUNICATIONS INFRASTRUCTURE FUND

26 SECTION 5.01. Section 57.048, Utilities Code, is amended by
27 adding Subsections (f)-(i) to read as follows:

1 (f) Notwithstanding any other provision of this title, a
2 certificated telecommunications utility may recover from the
3 utility's customers an assessment imposed on the utility under this
4 subchapter after the total amount deposited to the credit of the
5 fund, excluding interest and loan repayments, is equal to \$1.5
6 billion, as determined by the comptroller. A certificated
7 telecommunications utility may recover only the amount of the
8 assessment imposed after the total amount deposited to the credit
9 of the fund, excluding interest and loan repayments, is equal to
10 \$1.5 billion, as determined by the comptroller. The utility may
11 recover the assessment through a monthly billing process.

12 (g) The comptroller shall publish in the Texas Register the
13 date on which the total amount deposited to the credit of the fund,
14 excluding interest and loan repayments, is equal to \$1.5 billion.

15 (h) Not later than February 15 of each year, a certificated
16 telecommunications utility that wants to recover the assessment
17 under Subsection (f) shall file with the commission an affidavit or
18 affirmation stating the amount that the utility paid to the
19 comptroller under this section during the previous calendar year
20 and the amount the utility recovered from its customers in
21 cumulative payments during that year.

22 (i) The commission shall maintain the confidentiality of
23 information the commission receives under this section that is
24 claimed to be confidential for competitive purposes. The
25 confidential information is exempt from disclosure under Chapter
26 552, Government Code.

27 SECTION 5.02. Section 57.0485, Utilities Code, is amended

1 to read as follows:

2 Sec. 57.0485. ALLOCATION OF REVENUE [ACCOUNTS]. [~~(a)~~] The
3 comptroller shall deposit [~~50 percent of~~] the money collected by
4 the comptroller under Section 57.048 to the credit of the general
5 revenue fund [~~public schools account in the fund. The comptroller~~
6 ~~shall deposit the remainder of the money collected by the~~
7 ~~comptroller under Section 57.048 to the credit of the qualifying~~
8 ~~entities account in the fund.~~

9 [~~(b) Interest earned on money in an account shall be~~
10 ~~deposited to the credit of that account].~~

11 SECTION 5.03. Section 57.051, Utilities Code, is amended to
12 read as follows:

13 Sec. 57.051. SUNSET PROVISION. The Telecommunications
14 Infrastructure Fund [~~Board~~] is subject to Chapter 325, Government
15 Code (Texas Sunset Act). Unless continued in existence as provided
16 by that chapter, [~~the board is abolished and~~] this subchapter
17 expires September 1, 2011 [~~2005~~].

18 SECTION 5.04. Sections 57.048(c) and (d), Utilities Code,
19 are repealed.

20 SECTION 5.05. If, on the day before the effective date of
21 this article, the assessment prescribed by Section 57.048,
22 Utilities Code, is imposed at a rate of less than 1.25 percent, the
23 comptroller shall, on the effective date of this article, reset the
24 rate of the assessment to 1.25 percent.

25 SECTION 5.06. This article takes effect July 1, 2005, if
26 this Act receives a vote of two-thirds of all the members elected to
27 each house, as provided by Section 39, Article III, Texas

1 Constitution. If this Act does not receive the vote necessary for
2 effect on that date, this article takes effect September 1, 2005.

3 ARTICLE 6. EFFECTIVE DATE

4 SECTION 6.01. (a) Except as provided by Subsection (b) of
5 this section, this Act takes effect July 1, 2005, if this Act
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for effect on that
9 date, this Act takes effect September 1, 2005.

10 (b) If a section, part, or article of this bill provides a
11 different effective date than provided by Subsection (a) of this
12 section, that section, part, or article takes effect according to
13 its terms.