

By: Shelton

H.B. No. 2085

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the imposition of a fee on the sale of cigarettes and  
3 cigarette tobacco products manufactured by certain companies;  
4 providing penalties.

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

6 SECTION 1. Chapter 161, Health and Safety Code, is amended  
7 by adding Subchapter V to read as follows:

8 SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

9 MANUFACTURED BY CERTAIN COMPANIES

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

12 (1) recover health care costs to the state imposed by  
13 nonsettling manufacturers;

14 (2) prevent nonsettling manufacturers from  
15 undermining this state's policy of reducing underage smoking by  
16 offering cigarettes and cigarette tobacco products at prices that  
17 are substantially below the prices of cigarettes and cigarette  
18 tobacco products of other manufacturers;

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

1 nonsettling manufacturer cigarettes and cigarette tobacco  
2 products; and

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

5 Sec. 161.602. DEFINITIONS. In this subchapter:

6 (1) "Brand family" means each style of cigarettes or  
7 cigarette tobacco products sold under the same trademark. The term  
8 includes any style of cigarettes or cigarette tobacco products that  
9 have a brand name, trademark, logo, symbol, motto, selling message,  
10 recognizable pattern of colors, or other indication of product  
11 identification that is identical to, similar to, or identifiable  
12 with a previously known brand of cigarettes or cigarette tobacco  
13 products.

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

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

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

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

1 cigarette.

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

7 (4) "Distributor" has the meaning assigned by Section  
8 154.001 or 155.001, Tax Code, as appropriate.

9 (5) "Manufacturer" means a person that manufactures,  
10 fabricates, or assembles cigarettes for sale or distribution. For  
11 purposes of this subchapter, the term includes a person that is the  
12 first importer into the United States of cigarettes and cigarette  
13 tobacco products manufactured, fabricated, or assembled outside  
14 the United States.

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

17 (7) "Nonsettling manufacturer cigarettes" means  
18 cigarettes manufactured, fabricated, assembled, or imported by a  
19 nonsettling manufacturer.

20 (8) "Nonsettling manufacturer cigarette tobacco  
21 products" means cigarette tobacco products manufactured,  
22 fabricated, assembled, or imported by a nonsettling manufacturer.

23 (9) "Tobacco settlement agreement" means the  
24 Comprehensive Settlement Agreement and Release filed on January 16,  
25 1998, in the United States District Court, Eastern District of  
26 Texas, in the case styled The State of Texas v. The American Tobacco  
27 Co., et al., No. 5-96CV-91, and all subsequent amendments.

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

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

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

10          (3) nonsettling manufacturer cigarette tobacco  
11 products that are subject to the tax imposed by Section 155.0211,  
12 Tax Code; and

13          (4) nonsettling manufacturer cigarette tobacco  
14 products that are sold, purchased, or distributed in this state but  
15 that are not subject to the tax imposed by Section 155.0211, Tax  
16 Code.

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

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

24       (d) Except as otherwise provided by this subchapter, the fee  
25 imposed by this subchapter is imposed, collected, paid,  
26 administered, and enforced in the same manner, taking into account  
27 that the fee is imposed on nonsettling manufacturers, as the taxes

1 imposed by Chapters 154 and 155, Tax Code, as appropriate.

2 Sec. 161.604. RATE OF FEE. (a) Except as provided by  
3 Subsection (b), the fee is imposed at the rate of 2.15 cents for:

4 (1) each nonsettling manufacturer cigarette; and

5 (2) each 0.09 ounce of nonsettling manufacturer  
6 cigarette tobacco product.

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

10 (1) three percent; or

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

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

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

22 (2) the amount of nonsettling manufacturer cigarette  
23 tobacco products subject to the tax imposed by Section 155.0211,  
24 Tax Code, during the preceding month;

25 (3) the number of individual packages of nonsettling  
26 manufacturer cigarettes and the amount of nonsettling manufacturer  
27 cigarette tobacco products not subject to the tax imposed by

1 Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or  
2 purchased in this state or otherwise distributed in this state for  
3 sale in the United States; and

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

7 (b) The information required by Subsections (a)(1), (2),  
8 and (3) must be itemized for each place of business and by  
9 manufacturer and brand family.

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

14 (d) Information obtained from a report provided under  
15 Subsection (a) regarding cigarettes or cigarette tobacco products  
16 sold, purchased, or otherwise distributed by a nonsettling  
17 manufacturer may be disclosed by the comptroller to that  
18 manufacturer or to the authorized representative of the  
19 manufacturer.

20 Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month,  
21 not later than the 20th day after the date the comptroller receives  
22 the information required by Section 161.605, the comptroller shall:

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

27 (2) mail to each nonsettling manufacturer a notice of

1 the amount of fee the manufacturer owes.

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

6 Sec. 161.607. DIRECTORY OF COMPLYING MANUFACTURERS. (a)  
7 The comptroller shall develop, maintain, and publish on the  
8 comptroller's Internet website a directory listing of all  
9 nonsettling manufacturers that have complied with this subchapter.

10 (b) The comptroller shall provide the list described by  
11 Subsection (a) to any person on request.

12 Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING  
13 MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR  
14 DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco  
15 products of a nonsettling manufacturer are not offered for sale or  
16 distribution in this state on September 1, 2011, the nonsettling  
17 manufacturer may not offer those cigarettes or cigarette tobacco  
18 products for sale or distribution in this state after that date  
19 unless the manufacturer first prepays the fee imposed by this  
20 subchapter for sales of cigarettes and cigarette tobacco products  
21 that will occur in the first calendar month in which they are sold  
22 or distributed in this state.

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

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

27 (A) the number of cigarettes the comptroller

1 reasonably projects that the nonsettling manufacturer will sell or  
2 distribute in this state during that calendar month; and

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

7 (2) \$50,000.

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

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

15 (e) The comptroller shall establish procedures to:

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

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

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

27 Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING



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

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

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

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

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

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

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

23 Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes  
24 and cigarette tobacco products of a nonsettling manufacturer that  
25 has not complied with this subchapter, including full payment of  
26 the fee imposed by this subchapter, shall be treated as cigarettes  
27 or tobacco products for which the tax assessed by Chapter 154 or

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

4 (b) The comptroller shall provide to a nonsettling  
5 manufacturer, each distributor authorized to affix stamps under  
6 Chapter 154, Tax Code, and the attorney general a notice of the  
7 manufacturer's noncompliance with this subchapter if the  
8 manufacturer:

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

11 (2) is not included on the directory required by  
12 Section 161.607.

13 (c) If a nonsettling manufacturer does not appear on the  
14 directory required by Section 161.607, or on receipt of the notice  
15 of a nonsettling manufacturer's noncompliance, a distributor may  
16 not:

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

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

21 (3) otherwise purchase, sell, or distribute  
22 cigarettes manufactured by the nonsettling manufacturer in this  
23 state.

24 (d) If the comptroller determines that the nonsettling  
25 manufacturer that is the subject of a notice provided under  
26 Subsection (b) later complies with this subchapter, the comptroller  
27 shall provide to the nonsettling manufacturer, each distributor

1 authorized to affix stamps under Chapter 154, Tax Code, and the  
2 attorney general notice that the nonsettling manufacturer is in  
3 compliance with this subchapter.

4 Sec. 161.611. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.  
5 A nonsettling manufacturer shall appoint and engage a resident  
6 agent for service of process.

7 Sec. 161.612. AUDIT OR INSPECTION. The comptroller or  
8 attorney general is entitled to conduct reasonable periodic audits  
9 or inspections of the financial records of a nonsettling  
10 manufacturer to ensure compliance with this subchapter.

11 Sec. 161.613. REVENUE DEPOSITED IN GENERAL REVENUE FUND.  
12 The revenue from the tax imposed by this subchapter shall be  
13 deposited in the state treasury to the credit of the general revenue  
14 fund.

15 Sec. 161.614. APPLICATION OF SUBCHAPTER. This subchapter  
16 applies without regard to Section 154.022, Tax Code, or any other  
17 law that might be read to create an exemption for interstate sales.

18 SECTION 2. (a) Not later than September 30, 2011, a  
19 nonsettling manufacturer, as that term is defined by Section  
20 161.602, Health and Safety Code, as added by this Act, that is  
21 offering cigarettes or cigarette tobacco products for sale or  
22 distribution in this state on September 1, 2011, shall provide to  
23 the attorney general on a form prescribed by the attorney general:

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

26 (2) the date that the nonsettling manufacturer began  
27 offering cigarettes or cigarette tobacco products for sale or

1 distribution in this state;

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

5           (4) a statement that the nonsettling manufacturer  
6 intends to comply with Subchapter V, Chapter 161, Health and Safety  
7 Code, as added by this Act; and

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

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

14           SECTION 3. This Act takes effect September 1, 2011.