

By: Zerwas

H.B. No. 2548

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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 (e) The fee imposed by this subchapter does not apply to
3 cigarettes and cigarette tobacco products that are sold, purchased
4 or otherwise distributed in this state for transportation for
5 retail sale outside of this state. A person may not transport or
6 cause to be transported from this state cigarettes or cigarette
7 tobacco products for retail sale in another state unless such
8 products bear stamps of the state in which they are to be sold that
9 have been lawfully affixed in accordance with the laws of such
10 state, or if the state in which such products are to be sold does not
11 require a stamp, all excise taxes imposed on such products by the
12 state in which they are to be sold have been lawfully paid in
13 accordance with the laws of such state. However, a person shall not
14 be required to affix a tax stamp of another state or pay the excise
15 tax of another state prior to transporting the cigarettes or
16 cigarette tobacco products out of this state if the other state
17 prohibits that action and such products are being sold to a
18 wholesaler licensed by that state.

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

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

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

- 27 (1) three percent; or

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

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

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

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

15 (3) the number of individual packages of nonsettling
16 manufacturer cigarettes and the amount of nonsettling manufacturer
17 cigarette tobacco products not subject to the tax imposed by
18 Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or
19 purchased in this state or otherwise distributed in this state for
20 sale in the United States; and

21 (4) the number of nonsettling manufacturer cigarettes
22 and the amount of nonsettling cigarette tobacco products
23 transported or caused to be transported outside of Texas during the
24 preceding month, as well as the name and address of the recipient of
25 such products outside of Texas; and

26 (5) any other information the comptroller considers
27 necessary or appropriate to determine the amount of the fee imposed

1 by this subchapter or to enforce this subchapter.

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

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

9 (d) Information obtained from a report provided under
10 Subsection (a) regarding cigarettes or cigarette tobacco products
11 sold, purchased, or otherwise distributed by a nonsettling
12 manufacturer may be disclosed by the comptroller to that
13 manufacturer or to the authorized representative of the
14 manufacturer.

15 Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month,
16 not later than the 20th 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 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. DIRECTORY OF COMPLYING MANUFACTURERS. (a)

2 The comptroller shall develop, maintain, and publish on the
3 comptroller's Internet website a directory listing of all
4 nonsettling manufacturers that have complied with this subchapter.

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

7 Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING
8 MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR
9 DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco

10 products of a nonsettling manufacturer are not offered for sale or
11 distribution in this state on September 1, 2011, the nonsettling
12 manufacturer may not offer those cigarettes or cigarette tobacco
13 products for sale or distribution in this state after that date
14 unless the manufacturer first prepays the fee imposed by this
15 subchapter for sales of cigarettes and cigarette tobacco products
16 that will occur in the first calendar month in which they are sold
17 or distributed in this state.

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

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

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

25 (B) each 0.09 ounce of nonsettling manufacturer
26 cigarette tobacco products the comptroller reasonably projects
27 that the nonsettling manufacturer will sell or distribute in this

1 state during that calendar month; or

2 (2) \$50,000.

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

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

10 (e) The comptroller shall establish procedures to:

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

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

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

22 Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING
23 NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS

24 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to
25 prepaying the fee required by Section 161.608, a nonsettling
26 manufacturer described by Section 161.608(a) shall, before the date
27 the cigarettes or cigarette tobacco products are offered for sale

1 or distribution in this state, provide to the attorney general on a
2 form 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 will
6 begin 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 will offer for sale or distribution in this state;

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

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

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

18 Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes
19 and cigarette tobacco products of a nonsettling manufacturer that
20 has not complied with this subchapter, including full payment of
21 the fee imposed by this subchapter, shall be treated as cigarettes
22 or tobacco products for which the tax assessed by Chapter 154 or
23 155, Tax Code, as appropriate, has not been paid, and the
24 manufacturer is subject to all penalties imposed by those chapters
25 for violations of those chapters.

26 (b) The comptroller shall provide to a nonsettling
27 manufacturer, each distributor authorized to affix stamps under

1 Chapter 154, Tax Code, and the attorney general a notice of the
2 manufacturer's noncompliance with this subchapter if the
3 manufacturer:

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

6 (2) is not included on the directory required by
7 Section 161.607.

8 (c) If a nonsettling manufacturer does not appear on the
9 directory required by Section 161.607, or on receipt of the notice
10 of a nonsettling manufacturer's noncompliance, a distributor may
11 not:

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

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

16 (3) otherwise purchase, sell, or distribute
17 cigarettes manufactured by the nonsettling manufacturer in this
18 state.

19 (d) If the comptroller determines that the nonsettling
20 manufacturer that is the subject of a notice provided under
21 Subsection (b) later complies with this subchapter, the comptroller
22 shall provide to the nonsettling manufacturer, each distributor
23 authorized to affix stamps under Chapter 154, Tax Code, and the
24 attorney general notice that the nonsettling manufacturer is in
25 compliance with this subchapter.

26 Sec. 161.611. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.

27 A nonsettling manufacturer shall appoint and engage a resident

1 agent for service of process.

2 Sec. 161.612. AUDIT OR INSPECTION. The comptroller or
3 attorney general is entitled to conduct reasonable periodic audits
4 or inspections of the financial records of a nonsettling
5 manufacturer to ensure compliance with this subchapter.

6 Sec. 161.613. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX
7 RELIEF FUND. The revenue from the fee imposed by this subchapter
8 shall be deposited to the credit of the property tax relief fund
9 under Section 403.109, Government Code.

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

13 SECTION 2. (a) Not later than September 30, 2011, a
14 nonsettling manufacturer, as that term is defined by Section
15 161.602, Health and Safety Code, as added by this Act, that is
16 offering cigarettes or cigarette tobacco products for sale or
17 distribution in this state on September 1, 2011, shall provide to
18 the attorney general on a form prescribed by the attorney general:

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

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

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

27 (4) a statement that the nonsettling manufacturer

1 intends to comply with Subchapter V, Chapter 161, Health and Safety
2 Code, as added by this Act; and

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

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

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