

By: Zerwas

H.B. No. 2453

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to imposing a fee on the sale of cigarettes and cigarette  
3 tobacco products manufactured by certain companies; providing  
4 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 non-settling manufacturers;

14 (2) prevent non-settling 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 non-settling 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 non-settling manufacturer cigarettes and cigarette tobacco  
2 products;

3 (4) ensure evenhanded treatment of manufacturers and  
4 further protect the tobacco settlement agreement and funding by  
5 imposing a partial payment obligation on non-settling  
6 manufacturers that already make payments on Texas sales under the  
7 master settlement agreement until a credit amendment to that  
8 agreement that will provide those manufacturers with a credit for  
9 payments to Texas is effective; and

10 (5) provide funding for any purpose the legislature  
11 determines.

12 Sec. 161.602. DEFINITIONS. In this subchapter:

13 (1) "Brand family" means each style of cigarettes or  
14 cigarette tobacco products sold under the same trademark. The term  
15 includes any style of cigarettes or cigarette tobacco products that  
16 have a brand name, trademark, logo, symbol, motto, selling message,  
17 recognizable pattern of colors, or other indication of product  
18 identification that is identical to, similar to, or identifiable  
19 with a previously known brand of cigarettes or cigarette tobacco  
20 products.

21 (2) "Cigarette" means any product that contains  
22 nicotine and is intended to be burned or heated under ordinary  
23 conditions of use, and consists of or contains:

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

26 (B) tobacco, in any form, that is functional in a  
27 product that, because of the product's appearance, the type of

1 tobacco used in the filler, or the product's packaging and  
2 labeling, is likely to be offered to or purchased by a consumer as a  
3 cigarette; or

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

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

14 (4) "Credit amendment" means an amendment to the  
15 master settlement agreement that offers a credit to subsequent  
16 participating manufacturers for fees paid under this subchapter  
17 with respect to their products in a form agreed on by settling  
18 states, as defined in the master settlement agreement, with  
19 aggregate allocable shares, as defined in the master settlement  
20 agreement, equal to at least 99.937049 percent; by the original  
21 participating manufacturers, as defined in the master settlement  
22 agreement; and by subsequent participating manufacturers whose  
23 aggregate market share, expressed as a percentage of the total  
24 number of individual cigarettes sold in the United States, the  
25 District of Columbia, and Puerto Rico during the calendar year at  
26 issue, as measured by excise taxes collected by the federal  
27 government, and in the case of cigarettes sold in Puerto Rico, by

1 arbitrios de cigarillos collected by the Puerto Rico taxing  
2 authority, is greater than 2.5 percent. For purposes of the  
3 calculation of subsequent participating manufacturer market share  
4 under this subchapter, 0.09 ounces of roll-your-own tobacco  
5 constitutes one individual cigarette.

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

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

16 (7) "Master settlement agreement" means the  
17 settlement agreement entered into on November 23, 1998, by 46  
18 states and leading United States tobacco manufacturers, as amended  
19 as of September 1, 2013.

20 (8) "Non-settling manufacturer" means a manufacturer  
21 of cigarettes or cigarette tobacco products that did not sign a  
22 tobacco settlement agreement described by Subdivision (13).

23 (9) "Non-settling manufacturer cigarettes" means  
24 cigarettes of a non-settling manufacturer.

25 (10) "Non-settling manufacturer cigarette tobacco  
26 products" means cigarette tobacco products of a non-settling  
27 manufacturer.

1           (11) "Settling manufacturer" means a manufacturer of  
2 cigarettes or cigarette tobacco products that signed a tobacco  
3 settlement agreement described by Subdivision (13).

4           (12) "Subsequent participating manufacturer" has the  
5 same meaning provided for that term in the master settlement  
6 agreement, except that the term excludes any settling manufacturer  
7 under the tobacco settlement agreement described by Subdivision  
8 (13)(B). A manufacturer may not be treated as a subsequent  
9 participating manufacturer for purposes of Section 161.604(c)  
10 unless it has provided to the comptroller notice and proof, in the  
11 form and manner the comptroller may prescribe, that it is a  
12 subsequent participating manufacturer.

13           (13) "Tobacco settlement agreement" means either:

14                   (A) the Comprehensive Settlement Agreement and  
15 Release filed on January 16, 1998, in the United States District  
16 Court, Eastern District of Texas, in the case styled The State of  
17 Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all  
18 subsequent amendments; or

19                   (B) the settlement agreement entered into on  
20 March 20, 1997, but only as to companies that signed that agreement  
21 on that date.

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

24                   (1) non-settling manufacturer cigarettes if a stamp is  
25 required to be affixed to a package of those cigarettes under  
26 Section 154.041, Tax Code;

27                   (2) non-settling manufacturer cigarettes that are

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

4 (3) non-settling manufacturer cigarette tobacco  
5 products that are subject to the tax imposed by Section 155.0211,  
6 Tax Code; and

7 (4) non-settling manufacturer cigarette tobacco  
8 products that are sold, purchased, or distributed in this state but  
9 that are not subject to the tax imposed by Section 155.0211, Tax  
10 Code.

11 (b) The fee imposed by this section does not apply to  
12 cigarettes or cigarette tobacco products that a settling  
13 manufacturer claims as its own, and that are included in computing  
14 payments to be made by that settling manufacturer, under the  
15 tobacco settlement agreement described by Section 161.602(13)(A).

16 (c) The fee imposed by this subchapter does not apply to  
17 cigarettes or cigarette tobacco products that are sold into another  
18 state for resale to consumers outside of this state, provided that  
19 the sale is reported to the state into which the cigarettes are sold  
20 under 15 U.S.C. Section 376.

21 (d) 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 (e) 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 as the taxes imposed  
27 by Chapter 154 or 155, Tax Code, as appropriate, taking into account

1 that the fee is imposed on non-settling manufacturers.

2 (f) The fee imposed by this subchapter shall be collected  
3 only once on each cigarette or cigarette tobacco product on which it  
4 is due.

5 Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette  
6 tobacco products sold, used, consumed, or distributed in this  
7 state, as provided by Section 161.603, during the 2013 calendar  
8 year, the fee is imposed at the rate of 2.75 cents for:

9 (1) each non-settling manufacturer cigarette; and

10 (2) each 0.09 ounces of non-settling manufacturer  
11 cigarette tobacco product.

12 (b) Beginning in January 2014, and in January of each  
13 subsequent year, the comptroller shall compute the rate of the tax  
14 applicable during that calendar year by increasing the rate for the  
15 preceding calendar year, as recalculated under Section 161.607 for  
16 that year, by the greater of:

17 (1) three percent; or

18 (2) the actual total percentage change in the Consumer  
19 Price Index for All Urban Consumers (CPI), as published by the  
20 Bureau of Labor Statistics of the United States Department of  
21 Labor, during the preceding calendar year, calculated by comparing  
22 the CPI for December of the preceding calendar year with the CPI for  
23 December a year earlier.

24 (c) Notwithstanding Subsection (a), the rate of the fee on  
25 the cigarettes and cigarette tobacco products of a subsequent  
26 participating manufacturer shall, for calendar months beginning  
27 before the effective date of a credit amendment, be calculated by

1 substituting 0.75 cents for 2.75 cents in Subsection (a). For  
2 calendar months beginning on or after the effective date of a credit  
3 amendment, the rate of the fee on the cigarettes and cigarette  
4 tobacco products of subsequent participating manufacturers shall  
5 be the same as the rate that applies for those months to the  
6 cigarettes of non-settling manufacturers who are not subsequent  
7 participating manufacturers.

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

12 (1) the number and denominations of stamps affixed to  
13 individual packages of non-settling manufacturer cigarettes during  
14 the preceding month;

15 (2) the amount of non-settling manufacturer cigarette  
16 tobacco products subject to the tax imposed by Section 155.0211,  
17 Tax Code, during the preceding month;

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

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

27 (b) The information required by Subsections (a)(1), (2),



1 and (3) must be itemized for each place of business and by  
2 manufacturer and brand family.

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

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

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

16 (1) compute the amount of the fee imposed by this  
17 subchapter that each non-settling manufacturer owes for that  
18 reporting period based on that information and any other  
19 information available to the comptroller; and

20 (2) mail to each non-settling manufacturer a notice of  
21 the fee the manufacturer owes.

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

26 Sec. 161.607. ADDITIONAL FEE. (a) In preparing the final  
27 notice under Section 161.606 for the 2014 calendar year and for each

1 subsequent calendar year, the comptroller shall recalculate the fee  
2 rate for the calendar year to which that notice applies, using the  
3 methodology specified in Section 161.604, except that:

4 (1) the rate of tax for the year to which the increases  
5 are applied shall be the greater of the rate for the preceding year  
6 calculated under this section and the rate for that year originally  
7 calculated under Section 161.604; and

8 (2) Section 161.604(b)(2) shall be applied using the  
9 actual total percent change in the Consumer Price Index for All  
10 Urban Consumers (CPI), as published by the Bureau of Labor  
11 Statistics of the United States Department of Labor, for the  
12 calendar year to which that final notice relates, calculated by  
13 comparing the CPI for December of the calendar year to which the  
14 notice relates with the CPI for December of the year preceding the  
15 year to which the notice relates.

16 (b) If the rate as recalculated under Subsection (a) exceeds  
17 the rate originally calculated for the calendar year under Section  
18 161.604, the amount shown as payable by each non-settling  
19 manufacturer in the final notice shall be equal to the amount of  
20 non-settling manufacturer cigarettes and non-settling manufacturer  
21 cigarette tobacco products of that manufacturer sold, used,  
22 consumed, or distributed in this state during the full year to which  
23 the notice relates multiplied by the recalculated fee rate computed  
24 under Subsection (a), reduced by the amount of fees paid by that  
25 manufacturer under the notices previously issued for that year  
26 under Section 161.606.

27 Sec. 161.608. DIRECTORY OF COMPLYING MANUFACTURERS. (a)

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

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

7 Sec. 161.609. PREPAYMENT BEFORE OFFERING NON-SETTLING  
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 non-settling manufacturer were not offered for sale  
11 or distribution in this state on September 1, 2012, the  
12 non-settling manufacturer may not offer those cigarettes or  
13 cigarette tobacco products for sale or distribution in this state  
14 after that date unless the manufacturer first prepays the fee  
15 imposed by this subchapter for sales of cigarettes and cigarette  
16 tobacco products that will occur in the first calendar month in  
17 which they are sold or distributed in this state.

18 (b) The amount a non-settling 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 on which the fee  
23 would be due that the comptroller reasonably projects that the  
24 non-settling manufacturer will sell or distribute in this state  
25 during that calendar month; and

26 (B) each 0.09 ounces of non-settling  
27 manufacturer cigarette tobacco products on which the fee would be

1 due that the comptroller reasonably projects that the non-settling  
2 manufacturer will sell or distribute in this state during that  
3 calendar month; or

4 (2) \$50,000.

5 (c) The comptroller may require a non-settling manufacturer  
6 to provide any information reasonably necessary to determine the  
7 prepayment amount.

8 (d) The comptroller shall establish procedures to:

9 (1) reimburse a non-settling manufacturer if the  
10 actual sales or distributions in the first calendar month are less  
11 than the projected sales or distributions; and

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

15 (e) Beginning in the month following the month for which a  
16 non-settling manufacturer prepays its fees, the non-settling  
17 manufacturer shall thereafter pay the fee imposed by this  
18 subchapter in the manner provided by Section 161.606.

19 Sec. 161.610. REPORT TO ATTORNEY GENERAL BEFORE OFFERING  
20 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS  
21 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to  
22 prepaying the fee required by Section 161.609, a non-settling  
23 manufacturer described by Section 161.609(a) shall, before the date  
24 the cigarettes or cigarette tobacco products are offered for sale  
25 or distribution in this state, provide to the attorney general on a  
26 form prescribed by the attorney general:

27 (1) the non-settling manufacturer's complete name,

1 address, and telephone number;

2 (2) the date that the non-settling manufacturer will  
3 begin offering cigarettes or cigarette tobacco products for sale or  
4 distribution in this state;

5 (3) the names of the brand families of the cigarettes  
6 or cigarette tobacco products that the non-settling manufacturer  
7 will offer for sale or distribution in this state;

8 (4) a statement that the non-settling manufacturer  
9 intends to comply with this subchapter; and

10 (5) the name, address, telephone number, and signature  
11 of an officer of the non-settling manufacturer attesting to all of  
12 the included information.

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

15 Sec. 161.611. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes  
16 and cigarette tobacco products of a non-settling manufacturer that  
17 has not complied with this subchapter, including full payment of  
18 the fee imposed by this subchapter, shall be treated as cigarettes  
19 or cigarette tobacco products for which the tax assessed by Chapter  
20 154 or 155, Tax Code, as appropriate, has not been paid, and the  
21 non-settling manufacturer is subject to all penalties imposed by  
22 those chapters for violations of those chapters.

23 (b) The comptroller shall provide to a non-settling  
24 manufacturer, each distributor authorized to affix stamps under  
25 Chapter 154, Tax Code, and the attorney general a notice of the  
26 non-settling manufacturer's noncompliance with this subchapter if  
27 the non-settling manufacturer:

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

3           (2) is not included on the directory required by  
4 Section 161.608.

5           (c) If a non-settling manufacturer does not appear on the  
6 directory required by Section 161.608, or on receipt of the notice  
7 of a non-settling manufacturer's noncompliance, a distributor may  
8 not:

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

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

13           (3) otherwise purchase, sell, or distribute  
14 cigarettes or cigarette tobacco products manufactured by the  
15 non-settling manufacturer in this state.

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

23           Sec. 161.612. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.  
24 A non-settling manufacturer shall appoint and engage a resident  
25 agent for service of process.

26           Sec. 161.613. AUDIT OR INSPECTION. The comptroller or  
27 attorney general is entitled to conduct reasonable periodic audits

1 or inspections of the financial records of a non-settling  
2 manufacturer and its distributors to ensure compliance with this  
3 subchapter.

4 Sec. 161.614. COMPTROLLER INFORMATION SHARING. On request,  
5 the comptroller shall report annually to the independent auditor or  
6 other entities responsible for making calculations or other  
7 determinations under a tobacco settlement agreement or the master  
8 settlement agreement, as the master settlement agreement may be  
9 amended or supplemented by some or all of the parties thereto, the  
10 volume of cigarettes on which the fee required under Section  
11 161.603 is paid, itemized by cigarette manufacturer and brand  
12 family.

13 Sec. 161.615. REVENUE DEPOSITED IN GENERAL REVENUE FUND.  
14 The revenue from the tax imposed by this subchapter shall be  
15 deposited in the state treasury to the credit of the general revenue  
16 fund.

17 Sec. 161.616. APPLICATION OF SUBCHAPTER. This subchapter  
18 applies without regard to Section 154.022, Tax Code, or any other  
19 law that might be read to create an exemption for interstate sales.

20 Sec. 161.617. RULES. The comptroller and attorney general  
21 may issue rules and regulations as necessary to carry out or enforce  
22 this subchapter.

23 SECTION 2. (a) Not later than September 30, 2013, a  
24 non-settling manufacturer, as that term is defined by Section  
25 161.602, Health and Safety Code, as added by this Act, that is  
26 offering cigarettes or cigarette tobacco products for sale or  
27 distribution in this state on September 1, 2013, shall provide to

1 the attorney general on a form prescribed by the attorney general:

2 (1) the non-settling manufacturer's complete name,  
3 address, and telephone number;

4 (2) the date that the non-settling manufacturer began  
5 offering cigarettes or cigarette tobacco products for sale or  
6 distribution in this state;

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

10 (4) a statement that the non-settling manufacturer  
11 intends to comply with Subchapter V, Chapter 161, Health and Safety  
12 Code, as added by this Act; and

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

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

19 SECTION 3. This Act takes effect September 1, 2013.