

By: Otto

H.B. No. 3536

Substitute the following for H.B. No. 3536:

By: Hilderbran

C.S.H.B. No. 3536

A BILL TO BE ENTITLED

1 AN ACT

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

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 a roll for smoking that is:

22 (A) made of tobacco or tobacco mixed with another
23 ingredient and wrapped or covered with a material other than
24 tobacco; and

25 (B) not a cigar.

26 (3) "Cigarette tobacco product" means roll-your-own
27 tobacco or tobacco that, because of the tobacco's appearance, type,

1 packaging, or labeling, is suitable for use in making cigarettes
2 and is likely to be offered to or purchased by a consumer for that
3 purpose.

4 (4) "Credit amendment" means an amendment to the
5 master settlement agreement that offers a credit to subsequent
6 participating manufacturers for fees paid under this subchapter
7 with respect to their products in a form agreed on by settling
8 states, as defined in the master settlement agreement, with
9 aggregate allocable shares, as defined in the master settlement
10 agreement, equal to at least 99.937049 percent; by the original
11 participating manufacturers, as defined in the master settlement
12 agreement; and by subsequent participating manufacturers whose
13 aggregate market share, expressed as a percentage of the total
14 number of individual cigarettes sold in the United States, the
15 District of Columbia, and Puerto Rico during the calendar year at
16 issue, as measured by excise taxes collected by the federal
17 government, and in the case of cigarettes sold in Puerto Rico, by
18 arbitrios de cigarillos collected by the Puerto Rico taxing
19 authority, is greater than 2.5 percent. For purposes of the
20 calculation of subsequent participating manufacturer market share
21 under this subchapter, 0.09 ounces of roll-your-own tobacco
22 constitutes one cigarette.

23 (5) "Distributor" has the meaning assigned by Section
24 154.001 or 155.001, Tax Code, as appropriate.

25 (6) "Fee" or "monthly fee" means the fee imposed under
26 Section 161.603.

27 (7) "Indian" means a member of an Indian tribe.

1 (8) "Indian country" means:

2 (A) all land within the limits of any Indian
3 reservation under the jurisdiction of the United States government,
4 including rights-of-way running through the reservation and
5 notwithstanding any patent; and

6 (B) any land to which title is either held in
7 trust by the United States for the benefit of an Indian tribe or by
8 an individual Indian and over which an Indian tribe exercises
9 governmental power.

10 (9) "Indian tribe" means a tribal entity recognized
11 and eligible for funding and services from the Bureau of Indian
12 Affairs by virtue of its status as an Indian tribe.

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

21 (11) "Master settlement agreement" means the
22 settlement agreement entered into on November 23, 1998, by 46
23 states and leading United States tobacco manufacturers, as amended
24 as of September 1, 2013.

25 (12) "Non-settling manufacturer" means a manufacturer
26 of cigarettes or cigarette tobacco products that did not sign a
27 tobacco settlement agreement described by Subdivision (18).

1 (13) "Non-settling manufacturer cigarettes" means
2 cigarettes of a non-settling manufacturer.

3 (14) "Non-settling manufacturer cigarette tobacco
4 products" means cigarette tobacco products of a non-settling
5 manufacturer.

6 (15) "Released claim" means:

7 (A) "released claims" as that term is defined in
8 the agreement described by Subdivision (18)(A); and

9 (B) all claims encompassed in Paragraph 16 of the
10 agreement described by Subdivision (18)(B).

11 (16) "Settling manufacturer" means a manufacturer of
12 cigarettes or cigarette tobacco products that signed a tobacco
13 settlement agreement described by Subdivision (18).

14 (17) "Subsequent participating manufacturer" has the
15 same meaning provided for that term in the master settlement
16 agreement, except that the term excludes any settling manufacturer
17 under the tobacco settlement agreement described by Subdivision
18 (18)(B). A manufacturer may not be treated as a subsequent
19 participating manufacturer for purposes of Section 161.604(c)
20 unless it has provided to the comptroller notice and proof, in the
21 form and manner the comptroller may prescribe, that it is a
22 subsequent participating manufacturer.

23 (18) "Tobacco settlement agreement" means either:

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

1 subsequent amendments; or

2 (B) the settlement agreement entered into on
3 March 20, 1997, regarding the matter described in Paragraph (A),
4 but only as to companies that signed that agreement on that date.

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

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

10 (2) non-settling manufacturer cigarettes that are
11 sold, purchased, or distributed in this state but that are not
12 required to have a stamp affixed to a package of those cigarettes
13 under Chapter 154, Tax Code;

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

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

21 (b) The fee imposed by this section does not apply to
22 cigarettes or cigarette tobacco products that a settling
23 manufacturer claims as its own, and that are included in computing
24 payments to be made by that settling manufacturer, under the
25 tobacco settlement agreement described by Section 161.602(18)(A).

26 (c) The fee imposed by this section does not apply to
27 cigarettes or cigarette tobacco products that are sold into another

1 state for resale to consumers outside of this state, provided that
2 the sale is reported to the state into which the cigarettes are sold
3 under 15 U.S.C. Section 376.

4 (d) The fee imposed by this section does not apply to
5 cigarettes or cigarette tobacco products sold to an Indian tribe
6 for resale to members of that tribe within that tribe's Indian
7 country.

8 (e) The fee imposed by this section is in addition to any
9 other privilege, license, fee, or tax required or imposed by state
10 law.

11 (f) Except as otherwise provided by this subchapter, the fee
12 imposed by this section is imposed, collected, paid, administered,
13 and enforced in the same manner as the taxes imposed by Chapter 154
14 or 155, Tax Code, as appropriate.

15 (g) The fee imposed by this section shall be collected only
16 once on each cigarette or cigarette tobacco product on which it is
17 due.

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

22 (1) each non-settling manufacturer cigarette; and
23 (2) each 0.09 ounces of non-settling manufacturer
24 cigarette tobacco product described by Section 161.602(3).

25 (b) Beginning in January 2014, and in January of each
26 subsequent year, the comptroller shall compute the rate of the fee
27 applicable during that calendar year by increasing the rate for the

1 preceding calendar year by the greater of:

2 (1) three percent; or

3 (2) the actual total percentage change in the Consumer
4 Price Index for All Urban Consumers (CPI-U), as published by the
5 Bureau of Labor Statistics of the United States Department of
6 Labor, during the preceding calendar year, calculated by comparing
7 the CPI-U for December of the preceding calendar year with the CPI-U
8 for December a year earlier.

9 (c) Notwithstanding Subsection (a), the rate of the fee on
10 the cigarettes and cigarette tobacco products of a subsequent
11 participating manufacturer shall, for calendar months beginning
12 before the effective date of a credit amendment, be calculated by
13 substituting 0.75 cents for 2.75 cents in Subsection (a). For
14 calendar months beginning on or after the effective date of a credit
15 amendment, the rate of the fee on the cigarettes and cigarette
16 tobacco products of subsequent participating manufacturers shall
17 be the same as the rate that applies for those months to the
18 cigarettes of non-settling manufacturers who are not subsequent
19 participating manufacturers.

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

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

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

4 (3) the number of individual packages of non-settling
5 manufacturer cigarettes and the amount of non-settling
6 manufacturer cigarette tobacco products not subject to the tax
7 imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code,
8 sold or purchased in this state or otherwise distributed in this
9 state for sale in the United States;

10 (4) a calculation of the monthly fee required to be
11 paid by the distributor; and

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

15 (b) A distributor shall include with the report required
16 under this section the fee imposed under Section 161.603 based on
17 the non-settling manufacturer cigarettes and cigarette tobacco
18 products required to be included in the distributor's report under
19 this section and calculated using the rate under Section 161.604.

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

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

27 (e) Notwithstanding any other law, a distributor that

1 remits a monthly fee under this section is, subject to Section
2 154.051, Tax Code, entitled to a stamping allowance of three
3 percent of the face value of all stamps purchased under Section
4 154.041, Tax Code, for providing the service of affixing stamps to
5 cigarette packages.

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

12 (g) The comptroller shall, for the purpose of assisting
13 distributors in calculating the monthly fee, publish and maintain
14 on the comptroller's Internet website:

15 (1) a list of the names and brand families of settling
16 manufacturers;

17 (2) a list of each non-settling manufacturer that:

18 (A) is a subsequent participating manufacturer;

19 or

20 (B) is not a subsequent participating
21 manufacturer; and

22 (3) the effective date of any credit amendment.

23 Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING
24 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS
25 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or
26 cigarette tobacco products of a non-settling manufacturer were not
27 offered for sale or distribution in this state on September 1, 2013,

1 the non-settling manufacturer shall, before the date the cigarettes
2 or cigarette tobacco products are offered for sale or distribution
3 in this state, provide to the attorney general on a form prescribed
4 by the attorney general:

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

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

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

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

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

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

20 Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and
21 cigarette tobacco products of a non-settling manufacturer that are
22 sold, used, consumed, or distributed in this state in violation of
23 this subchapter, including cigarettes and cigarette tobacco
24 products for which full payment of the fee imposed under Section
25 161.603 is not made, shall be treated as cigarettes or cigarette
26 tobacco products for which the tax assessed by Chapter 154 or 155,
27 Tax Code, as appropriate, has not been paid, and the distributor or

1 non-settling manufacturer is subject to all penalties imposed by
2 those chapters for violations of those chapters.

3 Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.
4 A non-settling manufacturer shall appoint and engage a resident
5 agent for service of process.

6 Sec. 161.609. AUDIT OR INSPECTION. The comptroller or
7 attorney general is entitled to conduct reasonable periodic audits
8 or inspections of the financial records of a non-settling
9 manufacturer and its distributors to ensure compliance with this
10 subchapter.

11 Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request,
12 the comptroller shall report annually to the independent auditor or
13 other entities responsible for making calculations or other
14 determinations under a tobacco settlement agreement or the master
15 settlement agreement, as the master settlement agreement may be
16 amended or supplemented by some or all of the parties thereto, the
17 volume of cigarettes on which the fee required under Section
18 161.603 is paid, itemized by cigarette manufacturer and brand
19 family.

20 Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
21 The revenue from the fees imposed by this subchapter shall be
22 deposited in the state treasury to the credit of the general revenue
23 fund.

24 Sec. 161.612. RELEASED CLAIMS. All fees paid by a
25 manufacturer under this subchapter shall apply on a dollar for
26 dollar basis to reduce any judgment or settlement on a released
27 claim brought against the manufacturer that made the payment.

1 Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This
2 subchapter applies without regard to Section 154.022, Tax Code, or
3 any other law that might be read to create an exemption for
4 interstate sales.

5 (b) This subchapter does not apply to a tobacco product
6 described by Section 155.001(15)(C), Tax Code.

7 Sec. 161.614. RULES. The comptroller and attorney general
8 may issue rules and regulations as necessary to carry out or enforce
9 this subchapter.

10 SECTION 2. Section 155.0211(b), Tax Code, is amended to
11 read as follows:

12 (b) Except as provided by Subsection (c), the tax rate for:

13 (1) each can or package of a tobacco product other than
14 cigars or chewing tobacco is \$1.22 per ounce and a proportionate
15 rate on all fractional parts of an ounce; and

16 (2) chewing tobacco is 80 cents per ounce and a
17 proportionate rate on all fractional parts of an ounce.

18 SECTION 3. (a) Not later than September 30, 2013, a
19 non-settling 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, 2013, shall provide to
23 the attorney general on a form prescribed by the attorney general:

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

26 (2) the date that the non-settling 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 non-settling manufacturer
4 offers for sale or distribution in this state;

5 (4) a statement that the non-settling 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 non-settling 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 4. The change in law made by this Act to Section
15 155.0211, Tax Code, does not affect tax liability accruing before
16 the effective date of this Act. That liability continues in effect
17 as if this Act had not been enacted, and the former law is continued
18 in effect for the collection of taxes due and for civil and criminal
19 enforcement of the liability for those taxes.

20 SECTION 5. This Act takes effect September 1, 2013.