

By: Otto

H.B. No. 3536

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 non-settling manufacturers;

(2) prevent non-settling 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 non-settling 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 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 cigarettes and cigarette  
6 tobacco products of non-settling manufacturers that already make  
7 payments on Texas sales under the Master Settlement Agreement until  
8 an amendment to that agreement that will provide those  
9 manufacturers with a credit for payments to Texas, as defined  
10 herein, is effective; and

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

13 Sec. 161.602. DEFINITIONS. In this subchapter:

14 (1) "Monthly fee" or "fee" means the fee imposed on a  
15 distributor pursuant to Section 161.605, based on the non-settling  
16 manufacturer cigarettes and cigarette tobacco products required to  
17 be included on the distributor's returns under that section, and  
18 calculated using the fee rate under Section 161.604.

19 (2) "Brand family" means each style of cigarettes or  
20 cigarette tobacco products sold under the same trademark. The term  
21 includes any style of cigarettes or cigarette tobacco products that  
22 have a brand name, trademark, logo, symbol, motto, selling message,  
23 recognizable pattern of colors, or other indication of product  
24 identification that is identical to, similar to, or identifiable  
25 with a previously known brand of cigarettes or cigarette tobacco  
26 products.

27 (3) "Cigarette" means any product that contains

1 nicotine and is intended to be burned or heated under ordinary  
2 conditions of use, and consists of or contains:

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

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

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

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

20 (5) "Credit amendment" means an amendment to the  
21 master settlement agreement that offers a credit to subsequent  
22 participating manufacturers for fees paid under this act with  
23 respect to their products in a form agreed upon by (1) Settling  
24 States (as defined in the master settlement agreement) with  
25 aggregate Allocable Shares (as defined in the master settlement  
26 agreement) equal to at least 99.937049%; (2) the original  
27 participating manufacturers (as defined in the master settlement

1 agreement); and (3) subsequent participating manufacturers whose  
2 aggregate market share, expressed as a percentage, of the total  
3 number of individual cigarettes sold in the fifty United States,  
4 the District of Columbia, and Puerto Rico during the calendar year  
5 at issue, as measured by excise taxes collected by the federal  
6 government, and, in the case of cigarettes sold in Puerto Rico, by  
7 arbitrios de cigarillos collected by the Puerto Rico taxing  
8 authority, is greater than 2.5 percent. For purposes of calculation  
9 of subsequent participating manufacturer market share under this  
10 act, 0.09 ounces of "roll your own" tobacco shall constitute one  
11 cigarette.

12           (6) "Distributor" has the meaning assigned by Section  
13 154.001 or 155.001, Tax Code, as appropriate.

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

22           (8) "Master settlement agreement" means the  
23 settlement agreement entered into on November 23, 1998 by 46 states  
24 and leading United States tobacco manufacturers, as amended to  
25 date;

26           (9) "Non-settling manufacturer" means a manufacturer  
27 of cigarettes or cigarette tobacco products that did not sign a

1 tobacco settlement agreement as described in section 161.602(14).

2 (10) "Non-settling manufacturer cigarettes" means  
3 cigarettes of a non-settling manufacturer.

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

7 (12) "Settling manufacturer" means a manufacturer of  
8 cigarettes or cigarette tobacco products that signed a tobacco  
9 settlement agreement as described in Section 161.602(14).

10 (13) "Subsequent participating manufacturer" shall  
11 have the same meaning as provided for that term in the master  
12 settlement agreement, except such term shall exclude any settling  
13 manufacturer under the tobacco settlement agreement described in  
14 section 161.602(14)(B). Provided that a manufacturer shall not be  
15 treated as a subsequent participating manufacturer for purposes of  
16 section 161.604(c) unless it has provided to the comptroller notice  
17 and proof, in such form and manner as the comptroller may prescribe,  
18 that it is a subsequent participating manufacturer.

19 (14) "Tobacco settlement agreement" means either (A)  
20 the Comprehensive Settlement Agreement and Release filed on January  
21 16,1998, in the United States District Court, Eastern District of  
22 Texas, in the case styled The State of Texas v. The American Tobacco  
23 Co., et al., No. 5-96CV-91, and all subsequent amendments; or (B)  
24 the settlement agreement entered into on March 20, 1997 with  
25 respect to the matter described in paragraph (A), but only as to  
26 companies that signed such agreement on that date.

27 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale,

1 use, consumption, or distribution in this state of:

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

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

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

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

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

21 (c) The fee imposed by this subchapter does not apply to  
22 cigarettes or cigarette tobacco products that are sold into another  
23 state for resale to consumers outside of this state, provided that  
24 the sale is reported to the state into which the cigarettes are sold  
25 pursuant to 15 U.S.C. section 376.

26 (d) The fee imposed by this subchapter is in addition to any  
27 other privilege, license, fee, or tax required or imposed by state

1 law.

2 (e) Except as otherwise provided by this subchapter, the fee  
3 imposed by this subchapter is imposed, collected, paid,  
4 administered, and enforced in the same manner as the taxes imposed  
5 by Chapters 154 and 155, Tax Code, as appropriate.

6 (f) The fee imposed by this subchapter shall be collected  
7 only once as to each cigarette or cigarette tobacco product on which  
8 it is due.

9 Sec. 161.604. RATE OF FEE. (a) For cigarettes or tobacco  
10 products sold, used, consumed, or distributed in this state, as  
11 provided in section 161.603, during the calendar year 2013, the fee  
12 is imposed at the rate of 2.75 cents for:

- 13 (1) each non-settling manufacturer cigarette; and  
14 (2) each 0.09 ounce of non-settling manufacturer  
15 cigarette tobacco product.

16 (b) Beginning in January 2014, and in January of each  
17 subsequent year, the comptroller shall compute the rate of the fee  
18 applicable during that calendar year by increasing the rate for the  
19 preceding calendar year by the greater of:

- 20 (1) three percent; or  
21 (2) the actual total percent -change in the Consumer  
22 Price Index for All Urban Consumers, as published by the Bureau of  
23 Labor Statistics of the United States Department of Labor, during  
24 such preceding calendar year (calculated by comparing the CPI for  
25 December of such preceding calendar year with the CPI for December a  
26 year earlier).

27 (c) Notwithstanding Section 601.604(a), the rate of the fee

1 on the cigarettes and cigarette tobacco products of subsequent  
2 participating manufacturers shall, for calendar months beginning  
3 prior to the effective date of a credit amendment, be calculated  
4 under subsections (a) and (b) of this section by substituting 0.75  
5 cents for 2.75 cents in subsection (a) of this section. For calendar  
6 months beginning on or after the effective date of a credit  
7 amendment, the rate of the fee on the cigarettes and cigarette  
8 tobacco products of subsequent participating manufacturers shall  
9 be the same as the rate that applies for such months to the  
10 cigarettes of non-settling manufacturers who are not subsequent  
11 participating manufacturers.

12 Sec. 161.605. RETURN AND PAYMENT OF MONTHLY FEE. (a) A  
13 distributor required to file a report under Section 154.210 or  
14 155.111, Tax Code, shall, along with the report required by those  
15 sections, make a return which includes, as appropriate:

16 (1) the number and denominations of stamps affixed to  
17 individual packages of non-settling manufacturer cigarettes during  
18 the preceding month;

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

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



1           (4) any other information the comptroller considers  
2 necessary or appropriate to determine the amount of the monthly fee  
3 or to enforce this subchapter.

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

7           (c) The return required under this Section shall include a  
8 calculation of the monthly fee, which shall be due and payable by  
9 the distributor with the return for that reporting period. To  
10 assist distributors in calculating the monthly fee, the comptroller  
11 shall publish and maintain on the comptroller's Internet website a  
12 current list of the names and brands of the settling manufacturers,  
13 non-settling manufacturers that are subsequent participating  
14 manufacturers, non-settling manufacturers that are not subsequent  
15 participating manufacturers, and the effective date of any credit  
16 amendment.

17           (d) The requirement to make a return under this section  
18 shall be enforced in the same manner as the requirement to deliver  
19 to or file with the comptroller a report required under Section  
20 154.210 or 155.111, Tax Code, as appropriate.

21           (e) Information obtained from a return provided under  
22 subsection (a) regarding cigarettes or cigarette tobacco products  
23 sold, purchased, or otherwise distributed by a non-settling  
24 manufacturer may be disclosed by the comptroller to that  
25 manufacturer or to the authorized representative of the  
26 manufacturer.

27           Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING

1 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS  
2 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or  
3 cigarette tobacco products of a non-settling manufacturer were not  
4 offered for sale or distribution in this state on September 1, 2013,  
5 such non-settling manufacturer shall, before the date the  
6 cigarettes or cigarette tobacco products are offered for sale or  
7 distribution in this state, provide to the attorney general on a  
8 form prescribed by the attorney general:

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

11 (2) the date that the non-settling 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 non-settling manufacturer  
16 will offer for sale or distribution in this state;

17 (4) a statement that the non-settling manufacturer  
18 intends to comply with this subchapter

19 (5) the name, address, telephone number, and signature  
20 of an officer of the non-settling 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. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and  
25 cigarette tobacco products of a non-settling manufacturer that are  
26 sold, used, consumed or distributed in this state in violation of  
27 this subchapter, including failure to make full payment of the fees

1 imposed by this subchapter, shall be treated as cigarettes or  
2 tobacco products for which the tax assessed by Chapter 154 or 155,  
3 Tax Code, as appropriate, has not been paid, and the distributor or  
4 manufacturer is subject to all penalties imposed by those chapters  
5 for violations of those chapters.

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

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

14 Sec. 161.610. COMPTROLLER INFORMATION SHARING. Upon  
15 request, the comptroller shall report annually to the Independent  
16 Auditor, or other entities responsible for making calculations or  
17 other determinations under a tobacco settlement agreement or the  
18 Master Settlement Agreement, as the Master Settlement Agreement may  
19 be hereafter amended or supplemented by some or all of the parties  
20 thereto, the volume of cigarettes on which the fee required under  
21 Section 161.603 of this subchapter is paid, itemized by cigarette  
22 manufacturer and brand family.

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

27 Sec. 161.612. APPLICATION OF SUBCHAPTER. This subchapter

1 applies without regard to Section 154.022, Tax Code, or any other  
2 law that might be read to create an exemption for interstate sales.

3 SECTION 2. (a) Not later than September 30, 2013, a  
4 non-settling manufacturer, as that term is defined by Section  
5 161.602, Health and Safety Code, as added by this Act, that is  
6 offering cigarettes or cigarette tobacco products for sale or  
7 distribution in this state on September 1, 2013, shall provide to  
8 the attorney general on a form prescribed by the attorney general:

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

11 (2) the date that the non-settling manufacturer began  
12 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 non-settling manufacturer  
16 offers for sale or distribution in this state;

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

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

23 (b) The attorney general shall make the information  
24 provided under subsection (a) of this section available to the  
25 comptroller.

26 SECTION 3. The comptroller and the attorney general shall  
27 have the authority to adopt rules as necessary to carry out or

1 enforce Chapter 161, Subchapter V.

2 SECTION 4. This Act takes effect September 1, 2013.