

1-1 By: Otto, et al. (Senate Sponsor - Hinojosa) H.B. No. 3536
 1-2 (In the Senate - Received from the House May 8, 2013;
 1-3 May 9, 2013, read first time and referred to Committee on Finance;
 1-4 May 20, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 11, Nays 2; May 20, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14		X		
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19		X		
1-20			X	
1-21			X	
1-22	X			
1-23	X			

1-24 COMMITTEE SUBSTITUTE FOR H.B. No. 3536 By: Hegar

1-25 A BILL TO BE ENTITLED
 1-26 AN ACT

1-27 relating to imposing a fee on the sale of cigarettes and cigarette
 1-28 tobacco products manufactured by certain companies; providing
 1-29 penalties.

1-30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-31 SECTION 1. Chapter 161, Health and Safety Code, is amended
 1-32 by adding Subchapter V to read as follows:

1-33 SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS
 1-34 MANUFACTURED BY CERTAIN COMPANIES

1-35 Sec. 161.601. PURPOSE. The purpose of this subchapter is
 1-36 to:

1-37 (1) recover health care costs to the state imposed by
 1-38 non-settling manufacturers;

1-39 (2) prevent non-settling manufacturers from
 1-40 undermining this state's policy of reducing underage smoking by
 1-41 offering cigarettes and cigarette tobacco products at prices that
 1-42 are substantially below the prices of cigarettes and cigarette
 1-43 tobacco products of other manufacturers;

1-44 (3) protect the tobacco settlement agreement and
 1-45 funding, which has been reduced because of the growth of sales of
 1-46 non-settling manufacturer cigarettes and cigarette tobacco
 1-47 products, for programs that are funded wholly or partly by payments
 1-48 to this state under the tobacco settlement agreement and recoup for
 1-49 this state settlement payment revenue lost because of sales of
 1-50 non-settling manufacturer cigarettes and cigarette tobacco
 1-51 products;

1-52 (4) ensure evenhanded treatment of manufacturers and
 1-53 further protect the tobacco settlement agreement and funding by
 1-54 imposing a partial payment obligation on non-settling
 1-55 manufacturers that already make payments on Texas sales under the
 1-56 master settlement agreement until a credit amendment to that
 1-57 agreement that will provide those manufacturers with a credit for
 1-58 payments to Texas is effective; and

1-59 (5) provide funding for any purpose the legislature
 1-60 determines.

2-1 Sec. 161.602. DEFINITIONS. In this subchapter:

2-2 (1) "Brand family" means each style of cigarettes or
 2-3 cigarette tobacco products sold under the same trademark. The term
 2-4 includes any style of cigarettes or cigarette tobacco products that
 2-5 have a brand name, trademark, logo, symbol, motto, selling message,
 2-6 recognizable pattern of colors, or other indication of product
 2-7 identification that is identical to, similar to, or identifiable
 2-8 with a previously known brand of cigarettes or cigarette tobacco
 2-9 products.

2-10 (2) "Cigarette" means a roll for smoking that is:

2-11 (A) made of tobacco or tobacco mixed with another
 2-12 ingredient and wrapped or covered with a material other than
 2-13 tobacco; and

2-14 (B) not a cigar.

2-15 (3) "Cigarette tobacco product" means roll-your-own
 2-16 tobacco or tobacco that, because of the tobacco's appearance, type,
 2-17 packaging, or labeling, is suitable for use in making cigarettes
 2-18 and is likely to be offered to or purchased by a consumer for that
 2-19 purpose.

2-20 (4) "Credit amendment" means an amendment to the
 2-21 master settlement agreement that offers a credit to subsequent
 2-22 participating manufacturers for fees paid under this subchapter
 2-23 with respect to their products in a form agreed on by settling
 2-24 states, as defined in the master settlement agreement, with
 2-25 aggregate allocable shares, as defined in the master settlement
 2-26 agreement, equal to at least 99.937049 percent; by the original
 2-27 participating manufacturers, as defined in the master settlement
 2-28 agreement; and by subsequent participating manufacturers whose
 2-29 aggregate market share, expressed as a percentage of the total
 2-30 number of individual cigarettes sold in the United States, the
 2-31 District of Columbia, and Puerto Rico during the calendar year at
 2-32 issue, as measured by excise taxes collected by the federal
 2-33 government, and in the case of cigarettes sold in Puerto Rico, by
 2-34 arbitrios de cigarillos collected by the Puerto Rico taxing
 2-35 authority, is greater than 2.5 percent. For purposes of the
 2-36 calculation of subsequent participating manufacturer market share
 2-37 under this subchapter, 0.09 ounces of roll-your-own tobacco
 2-38 constitutes one cigarette.

2-39 (5) "Distributor" has the meaning assigned by Section
 2-40 154.001 or 155.001, Tax Code, as appropriate.

2-41 (6) "Fee" or "monthly fee" means the fee imposed under
 2-42 Section 161.603.

2-43 (7) "Manufacturer" means a person that manufactures,
 2-44 fabricates, or assembles cigarettes or cigarette tobacco products,
 2-45 or causes or arranges for the manufacture, fabrication, or assembly
 2-46 of cigarettes or cigarette tobacco products for sale or
 2-47 distribution. For purposes of this subchapter, the term includes a
 2-48 person that is the first importer into the United States of
 2-49 cigarettes or cigarette tobacco products manufactured, fabricated,
 2-50 or assembled outside the United States.

2-51 (8) "Master settlement agreement" means the
 2-52 settlement agreement entered into on November 23, 1998, by 46
 2-53 states and leading United States tobacco manufacturers, as amended
 2-54 as of September 1, 2013.

2-55 (9) "Non-settling manufacturer" means a manufacturer
 2-56 of cigarettes or cigarette tobacco products that did not sign a
 2-57 tobacco settlement agreement described by Subdivision (15).

2-58 (10) "Non-settling manufacturer cigarettes" means
 2-59 cigarettes of a non-settling manufacturer.

2-60 (11) "Non-settling manufacturer cigarette tobacco
 2-61 products" means cigarette tobacco products of a non-settling
 2-62 manufacturer.

2-63 (12) "Released claim" means:

2-64 (A) "released claims" as that term is defined in
 2-65 the agreement described by Subdivision (15)(A); and

2-66 (B) all claims encompassed in Paragraph 7 of the
 2-67 agreement described by Subdivision (15)(B).

2-68 (13) "Settling manufacturer" means a manufacturer of
 2-69 cigarettes or cigarette tobacco products that signed a tobacco

3-1 settlement agreement described by Subdivision (15).
3-2 (14) "Subsequent participating manufacturer" has the
3-3 same meaning provided for that term in the master settlement
3-4 agreement, except that the term excludes any settling manufacturer
3-5 under the tobacco settlement agreement described by Subdivision
3-6 (15)(B). A manufacturer may not be treated as a subsequent
3-7 participating manufacturer for purposes of Section 161.604(c)
3-8 unless it has provided to the comptroller notice and proof, in the
3-9 form and manner the comptroller may prescribe, that it is a
3-10 subsequent participating manufacturer.

3-11 (15) "Tobacco settlement agreement" means either:
3-12 (A) the Comprehensive Settlement Agreement and
3-13 Release filed on January 16, 1998, in the United States District
3-14 Court, Eastern District of Texas, in the case styled The State of
3-15 Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all
3-16 subsequent amendments; or

3-17 (B) the settlement agreement entered into on
3-18 March 20, 1997, regarding the matter described in Paragraph (A),
3-19 but only as to companies that signed that agreement on that date.

3-20 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the
3-21 sale, use, consumption, or distribution in this state of:

3-22 (1) non-settling manufacturer cigarettes if a stamp is
3-23 required to be affixed to a package of those cigarettes under
3-24 Section 154.041, Tax Code;

3-25 (2) non-settling manufacturer cigarettes that are
3-26 sold, purchased, or distributed in this state but that are not
3-27 required to have a stamp affixed to a package of those cigarettes
3-28 under Chapter 154, Tax Code;

3-29 (3) non-settling manufacturer cigarette tobacco
3-30 products that are subject to the tax imposed by Section 155.0211,
3-31 Tax Code; and

3-32 (4) non-settling manufacturer cigarette tobacco
3-33 products that are sold, purchased, or distributed in this state but
3-34 that are not subject to the tax imposed by Section 155.0211, Tax
3-35 Code.

3-36 (b) The fee imposed by this section does not apply to
3-37 cigarettes or cigarette tobacco products that a settling
3-38 manufacturer claims as its own, and that are included in computing
3-39 payments to be made by that settling manufacturer, under the
3-40 tobacco settlement agreement described by Section 161.602(15)(A).

3-41 (c) The fee imposed by this section does not apply to
3-42 cigarettes or cigarette tobacco products that are sold into another
3-43 state for resale to consumers outside of this state, provided that
3-44 the sale is reported to the state into which the cigarettes are sold
3-45 under 15 U.S.C. Section 376.

3-46 (d) The fee imposed by this section is in addition to any
3-47 other privilege, license, fee, or tax required or imposed by state
3-48 law.

3-49 (e) Except as otherwise provided by this subchapter, the fee
3-50 imposed by this section is imposed, collected, paid, administered,
3-51 and enforced in the same manner as the taxes imposed by Chapter 154
3-52 or 155, Tax Code, as appropriate.

3-53 (f) The fee imposed by this section shall be collected only
3-54 once on each cigarette or cigarette tobacco product on which it is
3-55 due.

3-56 Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette
3-57 tobacco products sold, used, consumed, or distributed in this
3-58 state, as provided by Section 161.603, during the 2013 calendar
3-59 year, the fee is imposed at the rate of 2.75 cents for:

3-60 (1) each non-settling manufacturer cigarette; and

3-61 (2) each 0.09 ounces of non-settling manufacturer
3-62 cigarette tobacco product described by Section 161.602(3).

3-63 (b) Beginning in January 2014, and in January of each
3-64 subsequent year, the comptroller shall compute the rate of the fee
3-65 applicable during that calendar year by increasing the rate for the
3-66 preceding calendar year by the greater of:

3-67 (1) three percent; or

3-68 (2) the actual total percentage change in the Consumer
3-69 Price Index for All Urban Consumers (CPI-U), as published by the

4-1 Bureau of Labor Statistics of the United States Department of
 4-2 Labor, during the preceding calendar year, calculated by comparing
 4-3 the CPI-U for December of the preceding calendar year with the CPI-U
 4-4 for December a year earlier.

4-5 (c) Notwithstanding Subsection (a), the rate of the fee on
 4-6 the cigarettes and cigarette tobacco products of a subsequent
 4-7 participating manufacturer shall, for calendar months beginning
 4-8 before the effective date of a credit amendment, be calculated by
 4-9 substituting 0.75 cents for 2.75 cents in Subsection (a). For
 4-10 calendar months beginning on or after the effective date of a credit
 4-11 amendment, the rate of the fee on the cigarettes and cigarette
 4-12 tobacco products of subsequent participating manufacturers shall
 4-13 be the same as the rate that applies for those months to the
 4-14 cigarettes of non-settling manufacturers who are not subsequent
 4-15 participating manufacturers.

4-16 Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY
 4-17 FEE. (a) A distributor required to file a report under Section
 4-18 154.210 or 155.111, Tax Code, shall, in addition to the information
 4-19 required by those sections, include in that required report, as
 4-20 appropriate:

4-21 (1) the number and denominations of stamps affixed to
 4-22 individual packages of non-settling manufacturer cigarettes during
 4-23 the preceding month;

4-24 (2) the amount of non-settling manufacturer cigarette
 4-25 tobacco products subject to the tax imposed by Section 155.0211,
 4-26 Tax Code, during the preceding month;

4-27 (3) the number of individual packages of non-settling
 4-28 manufacturer cigarettes and the amount of non-settling
 4-29 manufacturer cigarette tobacco products not subject to the tax
 4-30 imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code,
 4-31 sold or purchased in this state or otherwise distributed in this
 4-32 state for sale in the United States;

4-33 (4) a calculation of the monthly fee required to be
 4-34 paid by the distributor; and

4-35 (5) any other information the comptroller considers
 4-36 necessary or appropriate to determine the amount of the fee imposed
 4-37 by this subchapter or to enforce this subchapter.

4-38 (b) A distributor shall include with the report required
 4-39 under this section the fee imposed under Section 161.603 based on
 4-40 the non-settling manufacturer cigarettes and cigarette tobacco
 4-41 products required to be included in the distributor's report under
 4-42 this section and calculated using the rate under Section 161.604.

4-43 (c) The information required by Subsections (a)(1), (2),
 4-44 and (3) must be itemized for each place of business and by
 4-45 manufacturer and brand family.

4-46 (d) The requirement to report information under this
 4-47 section shall be enforced in the same manner as the requirement to
 4-48 deliver to or file with the comptroller a report required under
 4-49 Section 154.210 or 155.111, Tax Code, as appropriate.

4-50 (e) Notwithstanding any other law, a distributor that
 4-51 remits a monthly fee under this section is, subject to Section
 4-52 154.051, Tax Code, entitled to a stamping allowance of three
 4-53 percent of the face value of all stamps purchased under Section
 4-54 154.041, Tax Code, for providing the service of affixing stamps to
 4-55 cigarette packages.

4-56 (f) Information obtained from a report provided under
 4-57 Subsection (a) regarding cigarettes or cigarette tobacco products
 4-58 sold, purchased, or otherwise distributed by a non-settling
 4-59 manufacturer may be disclosed by the comptroller to the
 4-60 manufacturer or to the authorized representative of the
 4-61 manufacturer.

4-62 (g) The comptroller shall, for the purpose of assisting
 4-63 distributors in calculating the monthly fee, publish and maintain
 4-64 on the comptroller's Internet website:

4-65 (1) a list of the names and brand families of settling
 4-66 manufacturers;

4-67 (2) a list of each non-settling manufacturer showing
 4-68 whether that manufacturer:

4-69 (A) is a subsequent participating manufacturer;

5-1 or
 5-2 (B) is not a subsequent participating
 5-3 manufacturer; and

5-4 (3) the effective date of any credit amendment.

5-5 Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING
 5-6 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS
 5-7 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or
 5-8 cigarette tobacco products of a non-settling manufacturer were not
 5-9 offered for sale or distribution in this state on September 1, 2013,
 5-10 the non-settling manufacturer shall, before the date the cigarettes
 5-11 or cigarette tobacco products are offered for sale or distribution
 5-12 in this state, provide to the attorney general on a form prescribed
 5-13 by the attorney general:

5-14 (1) the non-settling manufacturer's complete name,
 5-15 address, and telephone number;

5-16 (2) the date that the non-settling manufacturer will
 5-17 begin offering cigarettes or cigarette tobacco products for sale or
 5-18 distribution in this state;

5-19 (3) the names of the brand families of the cigarettes
 5-20 or cigarette tobacco products that the non-settling manufacturer
 5-21 will offer for sale or distribution in this state;

5-22 (4) a statement that the non-settling manufacturer
 5-23 intends to comply with this subchapter; and

5-24 (5) the name, address, telephone number, and signature
 5-25 of an officer of the non-settling manufacturer attesting to all of
 5-26 the included information.

5-27 (b) The attorney general shall make the information
 5-28 provided under this section available to the comptroller.

5-29 Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and
 5-30 cigarette tobacco products of a non-settling manufacturer that are
 5-31 sold, used, consumed, or distributed in this state in violation of
 5-32 this subchapter, including cigarettes and cigarette tobacco
 5-33 products for which full payment of the fee imposed under Section
 5-34 161.603 is not made, shall be treated as cigarettes or cigarette
 5-35 tobacco products for which the tax assessed by Chapter 154 or 155,
 5-36 Tax Code, as appropriate, has not been paid, and the distributor or
 5-37 non-settling manufacturer is subject to all penalties imposed by
 5-38 those chapters for violations of those chapters.

5-39 Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.
 5-40 A non-settling manufacturer shall appoint and engage a resident
 5-41 agent for service of process.

5-42 Sec. 161.609. AUDIT OR INSPECTION. The comptroller or
 5-43 attorney general is entitled to conduct reasonable periodic audits
 5-44 or inspections of the financial records of a non-settling
 5-45 manufacturer and its distributors to ensure compliance with this
 5-46 subchapter.

5-47 Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request,
 5-48 the comptroller shall report annually to the independent auditor or
 5-49 other entities responsible for making calculations or other
 5-50 determinations under a tobacco settlement agreement or the master
 5-51 settlement agreement, as the master settlement agreement may be
 5-52 amended or supplemented by some or all of the parties thereto, the
 5-53 volume of cigarettes on which the fee required under Section
 5-54 161.603 is paid, itemized by cigarette manufacturer and brand
 5-55 family.

5-56 Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
 5-57 The revenue from the fees imposed by this subchapter shall be
 5-58 deposited in the state treasury to the credit of the general revenue
 5-59 fund.

5-60 Sec. 161.612. RELEASED CLAIMS. All fees paid by a
 5-61 manufacturer under this subchapter shall apply on a dollar for
 5-62 dollar basis to reduce any judgment or settlement on a released
 5-63 claim brought against the manufacturer that made the payment.

5-64 Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This
 5-65 subchapter applies without regard to Section 154.022, Tax Code, or
 5-66 any other law that might be read to create an exemption for
 5-67 interstate sales.

5-68 (b) This subchapter does not apply to a tobacco product
 5-69 described by Section 155.001(15)(C), Tax Code.

6-1 Sec. 161.614. RULES. The comptroller and attorney general
6-2 may issue rules and regulations as necessary to carry out or enforce
6-3 this subchapter.

6-4 SECTION 2. (a) Not later than September 30, 2013, a
6-5 non-settling manufacturer, as that term is defined by Section
6-6 161.602, Health and Safety Code, as added by this Act, that is
6-7 offering cigarettes or cigarette tobacco products for sale or
6-8 distribution in this state on September 1, 2013, shall provide to
6-9 the attorney general on a form prescribed by the attorney general:

6-10 (1) the non-settling manufacturer's complete name,
6-11 address, and telephone number;

6-12 (2) the date that the non-settling manufacturer began
6-13 offering cigarettes or cigarette tobacco products for sale or
6-14 distribution in this state;

6-15 (3) the names of the brand families of the cigarettes
6-16 or cigarette tobacco products that the non-settling manufacturer
6-17 offers for sale or distribution in this state;

6-18 (4) a statement that the non-settling manufacturer
6-19 intends to comply with Subchapter V, Chapter 161, Health and Safety
6-20 Code, as added by this Act; and

6-21 (5) the name, address, telephone number, and signature
6-22 of an officer of the non-settling manufacturer attesting to all of
6-23 the included information.

6-24 (b) The attorney general shall make the information
6-25 provided under Subsection (a) of this section available to the
6-26 comptroller.

6-27 SECTION 3. This Act takes effect September 1, 2013.

6-28 * * * * *