

BILL ANALYSIS

C.S.H.B. 2358
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that sellers are currently prohibited from advertising the sale of a product for which the seller will absorb the sales tax as an incentive to buy the product from the seller. C.S.H.B. 2358 seeks to increase consumer purchasing power and potential seller revenue by allowing sellers to pay the taxes on a product they are selling.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2358 amends the Tax Code to revise the conduct that constitutes the offense of prohibited advertising relating to sales tax absorption by a retailer to make the offense applicable to a retailer who directly or indirectly advertises, holds out, or states to a customer or to the public that the tax is not part of the sales price payable by the customer. The bill authorizes a retailer to directly or indirectly advertise, hold out, or state to a customer or to the public that the retailer will pay the sales tax for the customer if:

- the retailer indicates in the advertisement, holding out, or statement that the retailer is paying the sales tax for the customer;
- the retailer does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and
- any purchaser's receipt or other statement given to the customer listing the sales price paid or to be paid by the customer separately states the amount of the tax and indicates that the tax will be paid by the retailer.

C.S.H.B. 2358, with respect to a retailer who directly or indirectly advertises, holds out, or states to the customer or to the public that the retailer will pay the tax for the customer and who makes a sale of a taxable item:

- establishes that such a retailer is presumed to have received or collected the amount of the sales and use taxes imposed on the taxable item;
- requires the retailer to hold that amount in trust for the benefit of the state; and
- makes the retailer liable to the state for that amount plus any accrued penalties and

interest on the amount.

EFFECTIVE DATE

October 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2358 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions relating to the rights, duties, and requirements under the Limited Sales, Excise, and Use Tax Act of a person who owns or operates a physical, electronic, or online marketplace and processes taxable sales or payments for marketplace sellers.

The substitute revises provisions relating to the sales tax liability of a retailer who advertises, holds out, or states to a customer or to the public that the retailer will pay the sales tax for the customer.

The substitute does not include provisions establishing that the sale of a taxable item made by a marketplace seller through a marketplace is consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser.