

BILL ANALYSIS

C.S.H.B. 3475
By: Guillen
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that state law imposing taxes on tobacco products is in need of an update as certain provisions are unclear and increase the difficulty for the comptroller of public accounts in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries. C.S.H.B. 3475 seeks to provide such an update.

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. 3475 amends the Tax Code to make a permitted distributor who makes a first sale to a permitted distributor in Texas liable for the cigars and tobacco products tax and requires the distributor making the sale to pay the tax. The bill extends what constitutes a first sale to include the first transfer of possession in connection with a purchase, sale, or any exchange for value of tobacco products in or into Texas, which:

- includes the sale of tobacco products by a distributor in or outside Texas to a distributor, wholesaler, or retailer in Texas and by a manufacturer in Texas who transfers the tobacco products in Texas; and
- does not include:
 - the sale of tobacco products by a manufacturer outside Texas to a distributor in Texas; or
 - the transfer of tobacco products from a manufacturer outside Texas to a bonded agent in Texas.

C.S.H.B. 3475 exempts raw tobacco sold to a permitted manufacturer in Texas for the purpose of using the tobacco in manufacturing from the cigars and tobacco products tax and provides that the ultimate consumer or user in Texas bears the impact of that tax. The bill establishes that if another person pays the tax, the amount of the tax is added to the price charged to the ultimate consumer or user.

C.S.H.B. 3475 prohibits a person from engaging in business as a tobacco product export warehouse unless the person has applied for and received the applicable permit from the comptroller, sets out what constitutes engaging in business in relation to tobacco products, and

requires each such warehouse to obtain a permit for each place of business the warehouse owns or operates. The bill provides that no permit fee is required for a tobacco product export warehouse.

C.S.H.B. 3475 provides for the manner in which tobacco products may be sold to or sold and distributed by and between permit holders and with regard to retail sales to consumers. The bill establishes that a person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

C.S.H.B. 3475 requires the single location at which a tobacco product retailer's records are kept to be a commercial business location.

C.S.H.B. 3475 requires each export warehouse to keep, at each of the warehouse's places of business in Texas, records of all tobacco products received, distributed, and delivered and provides for the information those records must include.

C.S.H.B. 3475 expands the scope of the offense involving a person taking certain actions while acting as a tobacco product distributor, wholesaler, retailer, or bonded agent without a valid permit to include a person acting as a tobacco product export warehouse and, without having a valid permit, storing, distributing, or delivering tobacco products on which taxes have not been paid. The bill makes the offense of nonpayment of tax regarding knowingly consuming, using, or smoking tobacco products without the tax being paid applicable without regard to the amount of tax due on the products.

C.S.H.B. 3475 repeals provisions establishing a presumption relating to the intentions of a person who receives or possesses tobacco products on which a tax of more than \$50 would be due for the purpose of making a first sale in Texas. The bill provides for the combination of the offenses involving the possession of tobacco products, in violation of applicable state law, on which a tax is required to be paid of more than \$50 and of \$50 or less into a single offense. The bill establishes that the absence of evidence of a tax payment is prima facie evidence of nonpayment.

C.S.H.B. 3475 does the following:

- classifies a vending machine from which tobacco products are sold as a place of business;
- classifies an e-cigarette as a tobacco product; and
- clarifies the persons who constitute a bonded agent, distributor, export warehouse, or manufacturer.

C.S.H.B. 3475 repeals the following provisions of the Tax Code:

- Section 155.022
- Section 155.112(b)
- Section 155.203

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3475 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 cigarette tax.