

## **BILL ANALYSIS**

Senate Research Center  
86R19381 SRA-F

H.B. 4614  
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Finance  
5/9/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Multiple sections of Chapter 154 (Cigarette Tax), Tax Code, have not been updated for over 20 years. Certain provisions in this chapter are unclear and increase the difficulty of the comptroller of public accounts of the State of Texas interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries.

H.B. 4614 amends current law to define potentially unclear terms, clarify existing definitions and requirements, and provide conforming cleanup throughout Chapter 154.

H.B. 4614 amends current law relating to the administration, collection, and remittance of the cigarette tax; and requires a permit.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 154.001, Tax Code, by amending Subdivisions (1), (7), (9), (10), (11), (12), (14), (15), (17), and (18) and adding Subdivisions (7-a) and (17-a), as follows:

(1) Redefines "bonded agent" to mean a person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer, rather than to mean a person in this state who is an agent of a person outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the person outside this state.

(7) Redefines "distributor" to mean a certain person, including a person who is an importer, rather than an importer or import broker.

(7-a) Defines "engage in business" for purposes of this chapter (Cigarette Tax).

(9) Redefines "first sale" to mean, except as otherwise provided by this chapter:

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, rather than in intrastate commerce, which:

(i) includes the sale of cigarettes by:

(a) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(b) a manufacturer in this state who transfers the cigarettes in this state; and

(ii) does not include:

(a) the sale of cigarettes by a manufacturer outside this state to a distributor in this state; or

(b) the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state; or

(B)-(C) makes no changes to these paragraphs.

(10) Defines "importer," rather than "importer" or "import broker," for purposes of this chapter.

(11) Redefines "individual package of cigarettes" to mean a package that contains at least 20 cigarettes, rather than not fewer than 10 cigarettes.

(12) Redefines "manufacturer" to mean a person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution, rather than to mean a person who manufactures and sells cigarettes to a distributor.

(14) Redefines "permit holder" to mean a bonded agent, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains, rather than a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer required to obtain, a permit under Section 154.101 (Permits).

(15) Redefines "place of business" to include a vending machine from which cigarettes are sold. Makes nonsubstantive changes.

(17) Redefines "retailer" to mean a person who engages in the business of selling cigarettes to consumers and includes the owner of a cigarette vending machine, rather than to mean a person who engages in the practice of selling cigarettes to consumers and includes the owner of a coin-operated cigarette vending machine.

(17-a) Defines "roll-your-own-machine" for purposes of this chapter.

(18) Redefines "stamp" to include only a stamp that is legible and undamaged. Makes nonsubstantive changes.

SECTION 2. Amends Section 154.002, Tax Code, as follows:

Sec. 154.002. STORAGE. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that, for the purpose of Subsection (a), the vehicle of a manufacturer's representative is not a residence or public storage facility.

SECTION 3. Amends Section 154.022, Tax Code, as follows:

Sec. 154.022. TAX IMPOSED ON FIRST SALE OF CIGARETTES. Provides that the cigarette tax is imposed and becomes due and payable when a person receives cigarettes to make a first sale, rather than when a person in this state receives cigarettes to make a first sale.

SECTION 4. Amends Subchapter B, Chapter 154, Tax Code, by adding Section 154.0225, as follows:

Sec. 154.0225. LIABILITY OF PERMITTED DISTRIBUTOR. Provides that a permitted distributor who makes a first sale to a permitted distributor in this state is liable for and is required to pay the tax imposed by this chapter.

SECTION 5. Amends Section 154.024(a), Tax Code, to provide that a person who imports and personally transports 200 or fewer cigarettes into this state from another state or from an Indian reservation under the jurisdiction of the United States government, rather than from another state, is not required to pay the tax imposed by this chapter if the person uses the cigarettes and does not sell them or offer them for sale.

SECTION 6. Amends Section 154.060, Tax Code, as follows:

Sec. 154.060. CANCELLATION. Provides that no person is authorized to cancel, mark, alter, or mutilate, rather than cancel, mark, or mutilate, a stamp on a package of cigarettes so that the comptroller of public accounts of the State of Texas (comptroller) is prevented from or hindered in examining the genuineness of the stamp.

SECTION 7. Amends Section 154.101, Tax Code, by amending Subsections (a), (b), and (h) and adding Subsections (i) and (j), as follows:

(a) Prohibits a person from engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer, rather than as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer, unless the person has applied for and received the applicable permit from the comptroller.

(b) Requires each distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer to obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer. Prohibits the comptroller from issuing a permit for a place of business that is a residence or a unit in a public storage facility. Makes conforming changes.

(h) Requires permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer to be governed exclusively by the provisions of this code. Makes conforming changes.

(i) Provides that this section does not apply to a research facility that possesses and uses cigarettes only for experimental purposes.

(j) Requires a person engaged in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine available for use by consumers to obtain manufacturer's, distributor's, and retailer's permits.

SECTION 8. Amends Section 154.1015, Tax Code, by amending Subsection (a) and adding Subsections (c), (d), (e), (f), (g), (h), and (i), as follows:

(a) Authorizes cigarettes, except for retail sales to consumers, to only be sold or distributed by and between permit holders as provided by this section, rather than between permit holders.

(c) Authorizes a manufacturer outside this state who is not a permitted distributor to sell cigarettes only to a permitted distributor.

(d) Authorizes a permitted distributor to sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(e) Authorizes a permitted importer to sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(f) Authorizes a permitted wholesaler to sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(g) Authorizes a permitted retailer to sell cigarettes only to the consumer and to purchase cigarettes only from a permitted distributor or wholesaler in this state.

(h) Authorizes a permitted export warehouse to sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(i) Authorizes a manufacturer's representative to sell cigarettes only to a permitted distributor, wholesaler, or retailer.

SECTION 9. Amends Section 154.110(a), Tax Code, to require the comptroller to issue a permit to a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer, rather than to a distributor, wholesaler, bonded agent, manufacturing importer, or retailer, if certain criteria are met.

SECTION 10. Amends Section 154.111, Tax Code, by adding Subsections (c) and (g), as follows:

(c) Provides that a fee is not required for an export warehouse permit.

(g) Provides 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.

SECTION 11. Amends Section 154.201, Tax Code, as follows:

Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Requires each retailer to keep records at a single commercial business location, rather than a single location, which the retailer is required to designate as its principal place of business in this state, of all cigarettes purchased and received.

SECTION 12. Amends Section 154.204(b), Tax Code, as follows:

(b) Requires a manufacturer who sells cigarettes to a permit holder in this state to file with the comptroller, on or before the 25th of each month, rather than on or before the end of each month, a report showing the information listed in Subsections (a)(1), (2), (3), and (5) (relating to certain categories of records) for the previous month. Makes a nonsubstantive change.

SECTION 13. Amends Section 154.207(b), Tax Code, to make a nonsubstantive change.

SECTION 14. Amends Section 154.208(a), Tax Code, as follows:

(a) Requires each bonded agent to keep, at each of the agent's places of business in this state, rather than at each place of business in this state, records of all cigarettes received, distributed, and delivered.

SECTION 15. Amends Subchapter F, Chapter 154, Tax Code, by adding Section 154.2085, as follows:

Sec. 154.2085. EXPORT WAREHOUSE'S RECORDS. (a) Requires each export warehouse to keep, at each of the warehouse's places of business in this state, records of all cigarettes received, distributed, and delivered.

(b) Requires the records to include:

(1) invoices for receipts and deliveries;

(2) orders for receipts and deliveries;

(3) shipping records for receipts and deliveries; and

(4) shipping records for distribution and delivery.

SECTION 16. Amends Section 154.209(b), Tax Code, to make a nonsubstantive change.

SECTION 17. Amends Sections 154.501(a), (b), and (d), Tax Code, as follows:

(a) Makes conforming changes. Provides that a person violates this chapter if the person:

(1) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;

(2) engages in the business of a bonded agent, distributor, wholesaler, manufacturer, export warehouse, importer, or retailer without a valid permit;

(3) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, or retailer and fails to make a report or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4) makes no changes to this subdivision.

(b) Requires a person who violates this section to pay to the state a penalty of not more than \$2,000 for each violation, rather than providing that a person who violates this section forfeits and is required to pay to the state a penalty of not more than \$2,000 for each violation.

(d) Requires the Texas attorney general to bring a suit, rather than suits, to recover penalties under this section (Penalties).

SECTION 18. Amends Section 154.502, Tax Code, as follows:

Sec. 154.502. UNSTAMPED CIGARETTES. Provides that, except as provided by Section 154.026(b) (relating to certain provisions not applying to cigarettes exempt from tax), a person commits an offense if the person:

(1)–(2) makes no changes to these subdivisions; or

(3) knowingly consumes, uses, or smokes cigarettes subject to the tax under this chapter, rather than taxed under this chapter, without a stamp affixed to each individual package.

SECTION 19. Amends Section 154.509, Tax Code, as follows:

Sec. 154.509. PERMITS. Provides that a person commits an offense if the person acting:

(1)–(4) makes no changes to these subdivisions; or

(5) as a bonded agent or export warehouse, rather than as a bonded agent, stores, distributes, or delivers cigarettes in unstamped packages without having a valid permit.

SECTION 20. Amends Section 154.520(a), Tax Code, as follows:

(a) Provides that a person commits an offense if the person prints, engraves, makes, duplicates, issues, sells, or circulates, rather than prints, engraves, makes, issues, sells, or circulates, counterfeit stamps or meets other criteria. Makes nonsubstantive changes.

SECTION 21. Makes application of Sections 154.502, 154.509, and 154.520, Tax Code, as amended by this Act, prospective. Provides that, for purposes of this section, an offense was

committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 22. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that liability continues in effect as if this Act had not been enacted, and that the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 23. Effective date: September 1, 2019.