

## **BILL ANALYSIS**

C.S.H.B. 4614  
By: Guillen  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that state law governing the imposition of the cigarette tax is outdated, unclear, and burdensome for the comptroller of public accounts in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries. C.S.H.B. 4614 seeks to address this issue by revising and clarifying provisions relating to the administration, collection, and remittance of the cigarette tax.

### **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. 4614 amends the Tax Code to establish that the vehicle of a manufacturer's representative is not a residence or public storage facility for the purposes of the prohibition against cigarettes being stored or kept in a commercial business location that is a residence or a unit in a public storage facility. The bill makes a permitted distributor who makes a first sale to a permitted distributor in Texas liable for the cigarette tax and requires the distributor 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 cigarettes in or into Texas, which:

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

C.S.H.B. 4614 exempts a person who imports and personally transports 200 or fewer cigarettes into Texas from an Indian reservation under the jurisdiction of the federal government from the requirement to pay the cigarette tax if the person uses the cigarettes and does not sell them or offer them for sale. The bill prohibits a person from altering a stamp on a package of cigarettes so that the comptroller of public accounts is prevented from or hindered in examining the genuineness of the stamp.

C.S.H.B. 4614 prohibits a person from engaging in business as an export warehouse unless the person has applied for and received the applicable permit from the comptroller and includes an export warehouse among the entities required to obtain a cigarette permit for each place of business owned or operated by the entity. The bill establishes that a fee is not required for an export warehouse permit. The bill includes an export warehouse among the entities subject to penalties for certain violative actions.

C.S.H.B. 4614 prohibits the comptroller from issuing a permit for a place of business that is a residence or a unit in a public storage facility. The bill exempts a research facility that possesses and uses cigarettes only for experimental purposes from the permit requirement and requires a person engaged in the business of selling cigarettes for commercial purposes and who provides a roll-your-own machine available for use by consumers to obtain manufacturer's, distributor's, and retailer's permits. The bill sets out what constitutes engaging in business in relation to cigarettes.

C.S.H.B. 4614 provides for the manner in which cigarettes may be sold to or sold and distributed by and between permit holders and with regard to retail sales to consumers.

C.S.H.B. 4614 excludes a person issued a permit for a place of business that permanently closes before the permit expiration date from eligibility for a permit fee refund. The bill specifies that the location where each cigarette retailer is required to keep records is a single commercial business location. The bill changes the deadline by which a manufacturer who sells cigarettes to a permit holder in Texas is required to file a manufacturer's report with the comptroller from on or before the end of each month to on or before the 25th of each month.

C.S.H.B. 4614 requires each export warehouse to keep, at each of its places of business in Texas, records of all cigarettes received, distributed, and delivered. The bill requires the records to include invoices for receipts and deliveries, orders for receipts and deliveries, shipping records for receipts and deliveries, and shipping records for distribution and delivery. The bill expands the conduct that constitutes a counterfeit stamps offense for purposes of cigarette tax penalties to include the duplication of counterfeit stamps.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4614 may differ from the original in minor or nonsubstantive ways to conform to certain bill drafting conventions, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include an exemption for a manufacturer's representative from the prohibition against cigarettes being stored or kept in a commercial business location that is a residence or a unit in a public storage facility. The substitute includes a provision establishing that the vehicle of a manufacturer's representative is not a residence or public storage facility for the purposes of that prohibition.

The substitute includes a specification that the Indian reservation from which a person is exempt from the requirement to pay the cigarette tax who imports and personally transports 200 or fewer cigarettes into Texas is an Indian reservation under the jurisdiction of the federal government.

The substitute includes a prohibition against a person from engaging in business as an export warehouse unless the person has applied for and received the applicable permit from the comptroller of public accounts.