By:  Guillen H.B. No. 4614

A BILL TO BE ENTITLED

AN ACT

relating to the administration, collection and remittance of cigarette tax

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 154.001, Tax Code, is amended to read as follows:

Sec. 154.001.  DEFINITIONS. In this chapter:

(1)  "Bonded agent" means a person in this state who is a[~~n~~] third party agent of a [~~person~~ ] 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[~~person~~] outside this state.

(2)  "Cigarette" means a roll for smoking:

(A)  that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B)  that is not a cigar.

(3)  "Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.

(4)  "Common carrier" means a motor carrier registered under Chapter 643, Transportation Code, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor agency to the Interstate Commerce Commission.

(5)  "Consumer" means a person who possesses cigarettes for personal consumption.

(6)  "Counterfeit stamp" means a sticker, label, print, tag, or token that is used or is intended to be used to simulate a stamp and that is not authorized or issued by the comptroller.

(7)  "Distributor" means a person who:

(A)  is authorized to purchase for the purpose of making a first sale in this state cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B)  ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C)  manufactures or produces cigarettes; or

(D)  is an importer[ or import broker].

(8)  "Engaged in business" means selling cigarettes in or into this state, using a warehouse or another location to store cigarettes, or physically conducting cigarette related business within this state by a person or a person's representative.

(9)[~~8~~]"Export warehouse" means a person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10)[~~(9)~~]  "First sale" means, 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[ in intrastate commerce];

(B)  the first use or consumption of cigarettes in this state; or

(C)  the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(11)[~~(10)~~]  "Importer"[ ~~or "import broker"~~] means a person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12)[~~(11)~~]  "Individual package of cigarettes" means a package that contains no[~~not~~] fewer than 20[~~10~~] cigarettes.

(13)[~~(12)~~] "Manufacturer" means a person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes for sale or distribution[~~and sells cigarettes to a distributor~~].

14[(13)] "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

15[(14)]  "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, export warehouse or retailer who[required to] obtains a permit under Section 154.101.

16[(15]) "Place of business" means:

(A)  a commercial business location where cigarettes are sold;

(B)  a commercial business location where cigarettes are kept for sale or consumption or otherwise stored; [or]

(C)  a vehicle from which cigarettes are sold; or[.]

(D) a vending machine from which cigarettes are sold.

17[(16)]  "Previously used stamp" means a stamp that has been used to show payment of a tax imposed by this chapter and is again used, sold, or possessed for sale or use to show payment of a tax imposed by this chapter.

18[(17)]  "Retailer" means a person who engages in the practice of selling cigarettes to consumers and includes the owner of a [coin-operated] cigarette vending machine.

(19)  "Roll-your-own machine" means a machine for commercial use at a retail premise and is capable of producing cigarettes only in personal use quantities.

20[(18)]  "Stamp" includes only a stamp that:

(A)  is printed, manufactured, or made by authority of the comptroller;

(B)  shows payment of the tax imposed by this chapter; [and]

(C)  is consecutively numbered and uniquely identifiable as a Texas tax stamp[.]; and

(D)  is legible and undamaged.

21[(19)] "Wholesaler" means a person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor.

SECTION 2.  Section 154.002, Tax Code, is amended to add subsection (b) as follows:

Sec. 154.002.  STORAGE.

(a) The commercial business location where cigarettes are stored or kept cannot be a residence or a unit in a public storage facility.

(b)  This section does not apply to a manufacturer's representative.

SECTION 3.  Section 154.022, Tax Code, is amended to read as follows:

Sec. 154.022.  TAX IMPOSED ON FIRST SALE OF CIGARETTES. The cigarette tax is imposed and becomes due and payable when a person [in this state] receives cigarettes to make a first sale in this state.

(A)  A first sale includes:

(1)  the sale of cigarettes by a distributor located outside of this state to a distributor, wholesaler, or a retailer within this state;

(2)  the sale of cigarettes by a distributor inside this state who sells to a distributor, wholesaler, or a retailer within this state; or

(3)  the sale of cigarettes by a manufacturer located in this state who transfers the cigarettes in this state.

(B)  A first sale does not include:

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

(2)  the transfer of cigarettes from a manufacturer to a bonded agent in this state.

SECTION 4.  Section 154.024, Tax Code, is amended to read as follows:

Sec. 154.024.  IMPORTATION OF SMALL QUANTITIES.

(a)  A person who imports and personally transports 200 or fewer cigarettes into this state from another state or Indian reservation 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. A person who imports and personally transports 200 or fewer cigarettes into this state from a foreign country shall pay the tax imposed by this chapter and have affixed on each individual package of cigarettes a stamp to show payment of the tax.

(b)  Employees of the Texas Alcoholic Beverage Commission who collect taxes on alcoholic beverages at ports of entry shall collect at the ports of entry the tax imposed by this chapter on cigarettes imported into this state. In computing the amount of taxes to be collected, the commission may round the total amount up to the nearest quarter of a dollar.

(c)  The comptroller and the Texas Alcoholic Beverage Commission shall make rules for the administration of this section.

SECTION 5.  Section 154.041(d), and (f), Tax Code, are amended to read as follows:

Sec. 154.041.  STAMP REQUIRED.

(a) A person who pays a tax imposed by this chapter shall securely affix a stamp to each individual package of cigarettes to show payment of the tax.

(b)  Except as provided by Section 154.152, each distributor shall obtain the necessary stamps before receiving or accepting delivery of unstamped packages of cigarettes. The possession of unstamped packages of cigarettes without the possession of the requisite amount or number of stamps is prima facie evidence that the cigarettes are possessed for the purpose of making a first sale without stamps and without payment of the tax imposed by this chapter

(c) The absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(d) A manufacturer of cigarettes outside this state may purchase a stamp and affix it to the individual package and no further payment of the tax is required.

(e)  The transfer of possession of cigarettes by a bonded agent to a distributor in this state, under instructions received from outside this state, is not a first sale.

SECTION 6.  Section 154.060, Tax Code, is amended to read as follows:

Sec. 154.060.  CANCELLATION. No person may cancel, mark, alter, or mutilate a stamp on a package of cigarettes so that the comptroller is prevented from or hindered in examining the genuineness of the stamp.

SECTION 7.  Section 154.101(b), and (g) through (k), Tax Code, are amended to read as follows:

Sec. 154.101.  PERMITS.

(b)  Each distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer.

(g) A research facility that only possesses and uses cigarettes for experimental purposes is not subject to the provisions of this section.

(h) 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 must obtain a manufacturer's, distributor's, and a retailer's permit.

(i) A person cannot be issued a permit under this chapter for a residence or a unit in a public storage facility.

(j) [(g)] All financial information provided under this section is confidential and not subject to Chapter 552, Government Code.

(k) [(h)]  Permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer shall be governed exclusively by the provisions of this code.

SECTION 8.  Section 154.1015, Tax Code, is amended to read as follows:

Sec. 154.1015.  SALES; PERMIT HOLDERS AND NONPERMIT HOLDERS.

(a)  Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders.

(b)  An out of state manufacturer who is not a permitted distributor may only sell to a permitted distributor.

(c)  A permitted distributor may only sell to another permitted distributor, wholesaler, or retailer.

(d) An importer may only sell to a permitted distributor, wholesaler, or retailer.

(e) A permitted wholesaler may only sell to a permitted distributor, wholesaler, or retailer.

(f) A permitted retailer may only sell to the consumer, and may only purchase from a distributor or wholesaler permitted in this state.

(g) A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax.

(h) A person who operates an export warehouse may only sell to persons authorized to sell or consume unstamped cigarettes outside the United States.

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

(j) [(b)] A person who is not a permit holder may not sell or distribute more than 200 individual cigarettes to any person.

SECTION 9.  Section 154.110(a), Tax Code, is amended to read as follows:

Sec. 154.110.  ISSUANCE OF PERMIT.

(a)  The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, manufacturer, importer, export warehouse, or retailer if the comptroller:

(1)  has received an application and fee, if required;

(2)  believes that the applicant has complied with Section 154.101; and

(3)  determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

SECTION 10.  Section 154.111(g),(h) and (i), Tax Code, are amended to read as follows:

Sec. 154.111.  PERMIT YEAR; FEES.

(g)  Permitted locations that close before the permit expiration date are not eligible for a refund.

(h) No fee is required for a person who has applied for and received an export warehouse permit.

(i)[(g)]  expired.

SECTION 11.  Section 154.201, Tax Code, is amended to read as follows:

Each distributor, wholesaler, bonded agent, and export warehouse shall keep records at each place of business of all cigarettes purchased or received, including records of those cigarettes for which no tax is due under federal law. Each retailer shall keep records at a single commercial location, which the retailer shall designate as its principal place of business in this state, of all cigarettes purchased or received. These records must include:

(1)  the name and address of the shipper or carrier and the mode of transportation;

(2)  all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;

(3)  the date and the name of the place of origin of the cigarette shipment;

(4)  the date and the name of the place of arrival of the cigarette shipment;

(5)  a statement of the number, kind, and price paid for cigarettes, including cigarettes in stamped and unstamped packages;

(6)  the name, address, permit number, and tax identification number of the seller;

(7)  in the case of a distributor, copies of the customs certificates required by 19 U.S.C. Section 1681a(c), as amended, for all cigarettes imported into the United States to which the distributor has affixed a tax stamp; and

(8)  any other information required by rules of the comptroller.

SECTION 12.  Section 154.204(b), Tax Code, is amended to read as follows:

Sec. 154.204.  MANUFACTURER'S RECORDS AND REPORTS.

(b)  A manufacturer who sells cigarettes to a permit holder in this state shall file with the comptroller, on or before the 25th [~~end~~]of each month, a report showing the information listed in Subdivisions (1), (2), (3), and (5) of Subsection (a) for the previous month. Information related to the manufacturer's list prices must be submitted by the manufacturer 15 days prior to any scheduled changes.

SECTION 13.  Section 154.207(b), Tax Code, is amended to read as follows:

(b)  The comptroller and the attorney general are entitled to access during regular business hours [to] all records pertaining to cigarettes that are transported.

SECTION 14.  Section 154.208(a), Tax Code, is amended to read as follows:

(a)  Each bonded agent shall keep, at each of its places of business in this state, records of all cigarettes received, distributed, and delivered.

SECTION 15.  Section 154.209(b), Tax Code, is amended to read as follows:

(b)  If a permit holder's place of business is a vehicle or a vending machine, the permit holder shall designate in the application for a permit a permanent place of business to keep the records. The permit holder shall keep the records in the designated place.

SECTION 16.  Section 154.213, Tax Code, is added to read as follows:

Sec. 154.213  EXPORT WAREHOUSE'S RECORDS. (a) Each export warehouse shall keep, at each of its places of business in this state, records of all cigarettes received, distributed, and delivered.

(b)  The records must 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 17.  Section 154.501, Tax Code, is amended to read as follows:

(a)  A person violates this chapter if the person:

(1)  is a distributor, wholesaler, manufacturer, importer, export warehouse, 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, importer, export warehouse, or retailer without a valid permit;

(3)  is a distributor, wholesaler, manufacturer, importer, export warehouse, 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)  is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter.

(b)  A person who violates this section [~~forfeits and~~] shall pay to the state a penalty of not more than $2,000 for each violation.

(c)  Each day on which a violation occurs is a separate offense.

(d)  The attorney general shall bring a suit[s] to recover penalties under this section.

(e)  A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction.

SECTION 18.  Section 154.502, Tax Code, is amended to read as follows:

Sec. 154.502.  UNSTAMPED CIGARETTES. Except as provided by Section 154.026(b), a person commits an offense if the person:

(1)  makes a first sale of unstamped cigarettes;

(2)  sells, offers for sale, or presents as a prize or gift unstamped cigarettes; or

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

SECTION 19.  Section 154.509, Tax Code, is amended to read as follows:

Sec. 154.509.  PERMITS. A person commits an offense if the person acting:

(1)  as a distributor, wholesaler, or retailer, receives or possesses cigarettes without having a valid permit;

(2)  as a distributor, wholesaler, or retailer, receives or possesses cigarettes without having a permit posted where it can be easily seen by the public;

(3)  as a distributor or wholesaler, does not deliver an invoice to the purchaser as required by Section 154.203;

(4)  as a distributor, wholesaler, or retailer, sells cigarettes without having a valid permit; or

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

SECTION 20.  Section 154.520, Tax Code, is amended to read as follows:

Sec. 154.520.  COUNTERFEIT STAMPS.

(a)  A person commits an offense if the person:

(1)  prints, engraves, makes, duplicates, issues, sells, or circulates counterfeit stamps;

(2)  possesses, with intent to use, sell, circulate, or pass a counterfeit stamp;

(3)  uses or consents to the use of a counterfeit stamp in the sale or offering for sale of cigarettes; or

(4)  places or causes to be placed a counterfeit stamp on an individual package of cigarettes.

(b)  An offense under this section is a felony punishable by confinement in the Texas Department of Criminal Justice for not less than 2 years nor more than 20 years.

(c)  Venue of a prosecution under this section is in Travis County.

SECTION 21.  The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and 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 22.  This Act takes effect September 1, 2019.