

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 ~~third party agent~~ 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

1 Commission.

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

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

7 (7) "Distributor" means a person who:

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

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

15 (C) manufactures or produces cigarettes; or

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

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

21 (9) [~~8~~] "Export warehouse" means a person in this state  
22 who receives cigarettes in unstamped packages from manufacturers  
23 and stores the cigarettes for the purpose of making sales to  
24 authorized persons for resale, use, or consumption outside the  
25 United States.

26 (10) [~~9~~] "First sale" means, except as otherwise  
27 provided by this chapter:

1 (A) the first transfer of possession in  
2 connection with a purchase, sale, or any exchange for value of  
3 cigarettes in or into this state [ in intrastate commerce];

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

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

8 (11) [~~(10)~~] "Importer" [~~or "import broker"~~] means a  
9 person who ships, transports, or imports into this state cigarettes  
10 manufactured or produced outside the United States for the purpose  
11 of making a first sale in this state.

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

14 (13) [~~(12)~~] "Manufacturer" means a person who  
15 manufactures, fabricates, or assembles cigarettes, or causes or  
16 arranges for the manufacture, fabrication, or assembly of  
17 cigarettes for sale or distribution [~~and sells cigarettes to a~~  
18 ~~distributor~~].

19 14 [(13)] "Manufacturer's representative" means a  
20 person employed by a manufacturer to sell or distribute the  
21 manufacturer's stamped cigarette packages.

22 15 [(14)] "Permit holder" means a bonded agent,  
23 distributor, wholesaler, manufacturer, importer, export warehouse  
24 or retailer who [required to] obtains a permit under Section  
25 154.101.

26 16 [(15)] "Place of business" means:

27 (A) a commercial business location where

1 cigarettes are sold;

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

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

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

9 17[(16)] "Previously used stamp" means a stamp that  
10 has been used to show payment of a tax imposed by this chapter and is  
11 again used, sold, or possessed for sale or use to show payment of a  
12 tax imposed by this chapter.

13 18[(17)] "Retailer" means a person who engages in the  
14 practice of selling cigarettes to consumers and includes the owner  
15 of a [coin-operated] cigarette vending machine.

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

19 20[(18)] "Stamp" includes only a stamp that:

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

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

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

26 (D) is legible and undamaged.

27 21[(19)] "Wholesaler" means a person, including a

1 manufacturer's representative, who sells or distributes cigarettes  
2 in this state for resale but who is not a distributor.

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

5 Sec. 154.002. STORAGE.

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

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

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

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

17 (A) A first sale includes:

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

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

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

26 (B) A first sale does not include:

27 (1) the sale of cigarettes by a manufacturer located

1 outside of this state to a distributor in this state; or

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

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

6 Sec. 154.024. IMPORTATION OF SMALL QUANTITIES.

7 (a) A person who imports and personally transports 200 or  
8 fewer cigarettes into this state from another state or Indian  
9 reservation is not required to pay the tax imposed by this chapter  
10 if the person uses the cigarettes and does not sell them or offer  
11 them for sale. A person who imports and personally transports 200 or  
12 fewer cigarettes into this state from a foreign country shall pay  
13 the tax imposed by this chapter and have affixed on each individual  
14 package of cigarettes a stamp to show payment of the tax.

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

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

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

25 Sec. 154.041. STAMP REQUIRED.

26 (a) A person who pays a tax imposed by this chapter shall  
27 securely affix a stamp to each individual package of cigarettes to

1 show payment of the tax.

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

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

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

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

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

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

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

26 Sec. 154.101. PERMITS.

27 (b) Each distributor, wholesaler, bonded agent,

1 manufacturer, export warehouse, importer, or retailer shall obtain  
2 a permit for each place of business owned or operated by the  
3 distributor, wholesaler, bonded agent, manufacturer, export  
4 warehouse, importer, or retailer.

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

8 (h) A person engaged in the business of selling cigarettes  
9 for commercial purposes and who provides a roll-your-own machine  
10 available for use by consumers must obtain a manufacturer's,  
11 distributor's, and a retailer's permit.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

22       Sec. 154.110. ISSUANCE OF PERMIT.

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

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

27            (2) believes that the applicant has complied with

1 Section 154.101; and

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

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

6 Sec. 154.111. PERMIT YEAR; FEES.

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

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

11 (i)[(g)] expired.

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

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

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

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

27 (3) the date and the name of the place of origin of the

1 cigarette shipment;

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

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

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

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

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

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

17 Sec. 154.204. MANUFACTURER'S RECORDS AND REPORTS.

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

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

27 (b) The comptroller and the attorney general are entitled to

1 access during regular business hours [to] all records pertaining to  
2 cigarettes that are transported.

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

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

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

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

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

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

21 (b) The records must include:

22 (1) invoices for receipts and deliveries;

23 (2) orders for receipts and deliveries;

24 (3) shipping records for receipts and deliveries; and

25 (4) shipping records for distribution and delivery.

26 SECTION 17. Section 154.501, Tax Code, is amended to read as  
27 follows:

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

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

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

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

13 (4) is a person affected by this chapter and fails or  
14 refuses to abide by or violates a provision of this chapter or a  
15 rule adopted by the comptroller under this chapter.

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

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

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

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

26 SECTION 18. Section [154.502](#), Tax Code, is amended to read as  
27 follows:

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

- 3           (1) makes a first sale of unstamped cigarettes;  
4           (2) sells, offers for sale, or presents as a prize or  
5 gift unstamped cigarettes; or  
6           (3) knowingly consumes, uses, or smokes cigarettes  
7 subject to tax [~~taxed~~] under this chapter without a stamp affixed to  
8 each individual package.

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

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

- 13           (1) as a distributor, wholesaler, or retailer,  
14 receives or possesses cigarettes without having a valid permit;  
15           (2) as a distributor, wholesaler, or retailer,  
16 receives or possesses cigarettes without having a permit posted  
17 where it can be easily seen by the public;  
18           (3) as a distributor or wholesaler, does not deliver  
19 an invoice to the purchaser as required by Section 154.203;  
20           (4) as a distributor, wholesaler, or retailer, sells  
21 cigarettes without having a valid permit; or  
22           (5) as a bonded agent[, ] or export warehouse, stores,  
23 distributes, or delivers cigarettes in unstamped packages without  
24 having a valid permit.

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

27          Sec. 154.520. COUNTERFEIT STAMPS.

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

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

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

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

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

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

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

15 SECTION 21. The change in law made by this Act does not  
16 affect tax liability accruing before the effective date of this  
17 Act. That liability continues in effect as if this Act had not been  
18 enacted, and the former law is continued in effect for the  
19 collection of taxes due and for civil and criminal enforcement of  
20 the liability for those taxes.

21 SECTION 22. This Act takes effect September 1, 2019.