

SENATE AMENDMENTS

2nd Printing

By: Guillen

H.B. No. 4614

A BILL TO BE ENTITLED

AN ACT

relating to the administration, collection, and remittance of the
cigarette tax; requiring a permit.

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

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

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

(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]~~.

(7-a) "Engage in business" means, in relation to

1 cigarettes, engaging by a person, either directly or through a
2 representative, in any of the following activities:

3 (A) selling cigarettes in or into this state;

4 (B) using a warehouse or another location to
5 store cigarettes; or

6 (C) otherwise conducting through a physical
7 presence cigarette-related business in this state.

8 (9) "First sale" means, except as otherwise provided
9 by this chapter:

10 (A) the first transfer of possession in
11 connection with a purchase, sale, or any exchange for value of
12 cigarettes in or into this state, which:

13 (i) includes the sale of cigarettes by:

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

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

18 (ii) does not include:

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

21 (b) the transfer of cigarettes from a
22 manufacturer outside this state to a bonded agent in this state [~~in~~
23 ~~intrastate commerce~~];

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

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

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

5 (11) "Individual package of cigarettes" means a
6 package that contains at least 20 [~~not fewer than 10~~] cigarettes.

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

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

15 (15) "Place of business" means:

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

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

21 (C) a vehicle from which cigarettes are sold; or

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

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

27 (17-a) "Roll-your-own machine" means a machine for

1 commercial use at a retail premise that is capable of producing
2 cigarettes only in quantities for personal use.

3 (18) "Stamp" includes only a stamp that:

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

6 (B) shows payment of the tax imposed by this
7 chapter; ~~and~~

8 (C) is consecutively numbered and uniquely
9 identifiable as a Texas tax stamp; and

10 (D) is legible and undamaged.

11 SECTION 2. Section 154.002, Tax Code, is amended to read as
12 follows:

13 Sec. 154.002. STORAGE. (a) The commercial business
14 location where cigarettes are stored or kept cannot be a residence
15 or a unit in a public storage facility.

16 (b) For the purpose of Subsection (a), the vehicle of a
17 manufacturer's representative is not a residence or public storage
18 facility.

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

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

24 SECTION 4. Subchapter B, Chapter 154, Tax Code, is amended
25 by adding Section 154.0225 to read as follows:

26 Sec. 154.0225. LIABILITY OF PERMITTED DISTRIBUTOR. A
27 permitted distributor who makes a first sale to a permitted

1 distributor in this state is liable for and shall pay the tax
2 imposed by this chapter.

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

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

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

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

20 SECTION 7. Section 154.101, Tax Code, is amended by
21 amending Subsections (a), (b), and (h) and adding Subsections (i)
22 and (j) to read as follows:

23 (a) A person may not engage in business as a distributor,
24 wholesaler, bonded agent, manufacturer, export warehouse,
25 importer, or retailer unless the person has applied for and
26 received the applicable permit from the comptroller.

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. The comptroller may not issue a
5 permit for a place of business that is a residence or a unit in a
6 public storage facility.

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

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

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

17 SECTION 8. Section 154.1015, Tax Code, is amended by
18 amending Subsection (a) and adding Subsections (c), (d), (e), (f),
19 (g), (h), and (i) to read as follows:

20 (a) Except for retail sales to consumers, cigarettes may
21 only be sold or distributed by and between permit holders as
22 provided by this section.

23 (c) A manufacturer outside this state who is not a permitted
24 distributor may sell cigarettes only to a permitted distributor.

25 (d) A permitted distributor may sell cigarettes only to a
26 permitted distributor, wholesaler, or retailer.

27 (e) A permitted importer may sell cigarettes only to a

1 permitted distributor, wholesaler, or retailer.

2 (f) A permitted wholesaler may sell cigarettes only to a
3 permitted distributor, wholesaler, or retailer.

4 (g) A permitted retailer may sell cigarettes only to the
5 consumer and may purchase cigarettes only from a permitted
6 distributor or wholesaler in this state.

7 (h) A permitted export warehouse may sell cigarettes only to
8 persons authorized to sell or consume unstamped cigarettes outside
9 the United States.

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

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

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

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

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

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

22 SECTION 10. Section 154.111, Tax Code, is amended by adding
23 Subsections (c) and (g) to read as follows:

24 (c) A fee is not required for an export warehouse permit.

25 (g) A person issued a permit for a place of business that
26 permanently closes before the permit expiration date is not
27 entitled to a refund of the permit fee.

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

3 Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each
4 distributor, wholesaler, bonded agent, and export warehouse shall
5 keep records at each place of business of all cigarettes purchased
6 or received, including records of those cigarettes for which no tax
7 is due under federal law. Each retailer shall keep records at a
8 single commercial business location, which the retailer shall
9 designate as its principal place of business in this state, of all
10 cigarettes purchased and received. These records must include:

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

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

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

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

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

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

25 (7) in the case of a distributor, copies of the customs
26 certificates required by 19 U.S.C. Section 1681a(c), as amended,
27 for all cigarettes imported into the United States to which the

1 distributor has affixed a tax stamp; and

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

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

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

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

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

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

20 (a) Each bonded agent shall keep, at each of the agent's
21 places ~~[place]~~ of business in this state, records of all cigarettes
22 received, distributed, and delivered.

23 SECTION 15. Subchapter F, Chapter 154, Tax Code, is amended
24 by adding Section 154.2085 to read as follows:

25 Sec. 154.2085. EXPORT WAREHOUSE'S RECORDS. (a) Each export
26 warehouse shall keep, at each of the warehouse's places of business
27 in this state, records of all cigarettes received, distributed, and

1 delivered.

2 (b) The records must include:

3 (1) invoices for receipts and deliveries;

4 (2) orders for receipts and deliveries;

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

6 (4) shipping records for distribution and delivery.

7 SECTION 16. Section 154.209(b), Tax Code, is amended to
8 read as follows:

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

14 SECTION 17. Sections 154.501(a), (b), and (d), Tax Code,
15 are amended to read as follows:

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

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

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

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

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

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

7 (d) The attorney general shall bring a suit [~~suits~~] to
8 recover penalties under this section.

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

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

- 13 (1) makes a first sale of unstamped cigarettes;
14 (2) sells, offers for sale, or presents as a prize or
15 gift unstamped cigarettes; or
16 (3) knowingly consumes, uses, or smokes cigarettes
17 subject to the tax [~~taxed~~] under this chapter without a stamp
18 affixed to each individual package.

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

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

- 23 (1) as a distributor, wholesaler, or retailer,
24 receives or possesses cigarettes without having a valid permit;
25 (2) as a distributor, wholesaler, or retailer,
26 receives or possesses cigarettes without having a permit posted
27 where it can be easily seen by the public;

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

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

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

8 SECTION 20. Section 154.520(a), Tax Code, is amended to
9 read as follows:

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

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

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

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

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

19 SECTION 21. The changes in law made by this Act to Sections
20 154.502, 154.509, and 154.520, Tax Code, apply only to an offense
21 committed on or after the effective date of this Act. An offense
22 committed before the effective date of this Act is governed by the
23 law in effect on the date the offense was committed, and the former
24 law is continued in effect for that purpose. For purposes of this
25 section, an offense was committed before the effective date of this
26 Act if any element of the offense occurred before that date.

27 SECTION 22. The changes in law made by this Act do not

1 affect tax liability accruing before the effective date of this
2 Act. That liability continues in effect as if this Act had not been
3 enacted, and the former law is continued in effect for the
4 collection of taxes due and for civil and criminal enforcement of
5 the liability for those taxes.

6 SECTION 23. This Act takes effect September 1, 2019.

ADOPTED

✓✓
MAY 16 2019

Henry Spaul
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *J. J. Hing*

1 Amend H.B. No. 4614 (senate committee printing) in SECTION 1
2 of the bill by striking added Section 154.001(18)(D), Tax Code
3 (page 2, line 50), and substituting the following:

4 (D) is not damaged beyond recognition as a valid
5 Texas tax stamp.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 17, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (Relating to the administration, collection, and remittance of the cigarette tax; requiring a permit.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill amends Chapter 154 of the Tax Code, regarding the cigarette tax. The bill would clarify and update this chapter of the Tax Code by adding and amending definitions instrumental in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries received by the Comptroller.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD, SMad

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 8, 2019

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (Relating to the administration, collection, and remittance of the cigarette tax; requiring a permit.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill amends Chapter 154 of the Tax Code, regarding the cigarette tax. The bill would clarify and update this chapter of the Tax Code by adding and amending definitions instrumental in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries received by the Comptroller.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD, SMad

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 12, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (relating to the administration, collection, and remittance of the cigarette tax; requiring a permit.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill amends Chapter 154 of the Tax Code, regarding the cigarette tax. The bill would clarify and update this chapter of the Tax Code by adding and amending definitions instrumental in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries received by the Comptroller.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD, SMad

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 1, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (Relating to the administration, collection and remittance of cigarette tax), **As Introduced**

No fiscal implication to the State is anticipated.

The bill amends Chapter 154 of the Tax Code, regarding the cigarette tax. The bill would clarify and update this chapter of the Tax Code by adding and amending definitions instrumental in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries received by the Comptroller.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD, SMad

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

86TH LEGISLATIVE REGULAR SESSION

April 12, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (relating to the administration, collection, and remittance of the cigarette tax; requiring a permit.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: WP, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

86TH LEGISLATIVE REGULAR SESSION

April 9, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4614 by Guillen (Relating to the administration, collection and remittance of cigarette tax), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: WP, KK