

House Bill 4614
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(A) selling cigarettes in or into this state;

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

or

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

(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, which:

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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

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(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, which:

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- (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 [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.
- (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.
- (11) "Individual package of cigarettes" means a package that contains at least 20 [~~not fewer than 10~~] cigarettes.
- (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) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains [~~required to obtain~~] a permit under Section 154.101.
- (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

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- (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 [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.
- (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.
- (11) "Individual package of cigarettes" means a package that contains at least 20 [~~not fewer than 10~~] cigarettes.
- (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) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains [~~required to obtain~~] a permit under Section 154.101.
- (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

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

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

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

(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.

SECTION 2. Section 154.002, Tax Code, is amended to read 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) For the purpose of Subsection (a), the vehicle of a manufacturer's representative is not a residence or public storage facility.

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

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

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

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

(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 not damaged beyond recognition as a valid Texas tax stamp. [FA1]

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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cigarettes to make a first sale.

SECTION 4. Subchapter B, Chapter 154, Tax Code, is amended by adding Section 154.0225 to read as follows:
Sec. 154.0225. LIABILITY OF PERMITTED DISTRIBUTOR. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax imposed by this chapter.

SECTION 4. Same as House version.

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

SECTION 5. Same as House version.

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 6. Same as House version.

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

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

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

(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.

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

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

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

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

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SECTION 7. Same as House version.

SECTION 8. Same as House version.

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- (c) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor.
- (d) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer.
- (e) A permitted importer may sell cigarettes only to a permitted distributor, wholesaler, or retailer.
- (f) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.
- (g) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler in this state.
- (h) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.
- (i) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

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

- (a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, 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, Tax Code, is amended by adding Subsections (c) and (g) to read as follows:

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SECTION 10. Same as House version.

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

(g) 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. Section 154.201, Tax Code, is amended to read as follows:

Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. 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 business location, which the retailer shall designate as its principal place of business in this state, of all cigarettes purchased and 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

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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:

(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 Subsections (a)(1) [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 the agent's places ~~place~~ of business in this state, records of all cigarettes received, distributed, and delivered.

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SECTION 12. Same as House version.

SECTION 13. Same as House version.

SECTION 14. Same as House version.

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

Sec. 154.2085. EXPORT WAREHOUSE'S RECORDS. (a) Each export warehouse shall keep, at each of the warehouse's 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 16. 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 17. Sections 154.501(a), (b), and (d), Tax Code, are amended to read as follows:

(a) 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;

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SECTION 16. Same as House version.

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

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 the 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

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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(a), Tax Code, is amended to read as follows:

- (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.

SECTION 21. The changes in law made by this Act to Sections 154.502, 154.509, and 154.520, Tax Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in

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effect for that purpose. 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. The changes in law made by this Act do 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 23. This Act takes effect September 1, 2019.

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SECTION 22. Same as House version.

SECTION 23. Same as House version.

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