

BILL ANALYSIS

Senate Research Center
77R15281 DAK-F

C.S.H.B. 2378
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Finance
5/8/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Because of federal and state taxes, the price of American manufactured cigarettes intended for export is significantly less than American manufactured cigarettes designated for domestic consumption. Before 1999, wholesalers were legally able to buy large volumes of cigarettes manufactured in the United States but intended for export, pay all required taxes and duties for reimportation of the products, and market the export products at a significant discount from the product sold for domestic consumption. This retailing process deceived consumers who believed that the export cigarettes were of the same quality as cigarettes intended for domestic consumption. C.S.H.B. 2378 prohibits a stamp from being affixed to cigarettes that violate federal regulations, establishes a system for identifying and monitoring tax stamping, and establishes prohibitions relating to certain cigarettes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.0415, Tax Code, to prohibit a person from affixing a stamp to a package of cigarettes if the package contains cigarettes with respect to which any person is not in compliance with 15 U.S.C. Section 1335a, as amended, relating to submission of ingredient information to federal authorities, 19 U.S.C. Sections 1681-1681b, as amended, relating to imports of certain cigarettes, 26 U.S.C. Section 5754, as amended, or relating to previously exported tobacco products.

SECTION 2. Amends Section 154.053, Tax Code, by adding Subsection (c) to require the comptroller to design and furnish stamps in a manner that permits identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp. Requires the comptroller to maintain for at least four years the information identifying the person that affixed the stamp to each package of cigarettes.

SECTION 3. Amends Section 154.201, Tax Code, to require the records to include, 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.

SECTION 4. Amends Section 154.5025, Tax Code, to provide that a person commits an offense if the person knowingly affixes stamps to cigarettes in violation of Section 154.0415 (Cigarettes to Which Stamps May Not be Affixed).

SECTION 5. Amends Chapter 35D, Business & Commerce Code, by adding Section 35.49, as follows:

Sec. 35.49. OTHER REMEDIES. (a) Authorizes a person who sells, distributes, or manufactures cigarettes and who sustains direct economic or commercial injury as a result of a violation of Section 154.0415, Tax Code, or Section 48.015, Penal Code, to bring an action in

good faith for appropriate injunctive relief.

(b) Provides that the remedy provided by this section is in addition to any other remedy provided by law.

SECTION 6. Amends Chapter 48, Penal Code, by adding Section 48.015, as follows:

Sec. 48.015. PROHIBITIONS RELATING TO CERTAIN CIGARETTES. (a) Prohibits a person from acquiring, holding, owning, possessing, or transporting for sale or distribution in this state or importing or causing to be imported into this state for sale or distribution in this state cigarettes that do not comply with all applicable requirements imposed by or under federal law and implementing regulations or cigarettes to which stamps may not be affixed under Section 154.0415, Tax Code, other than cigarettes lawfully imported or brought into the state for personal use and cigarettes lawfully sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with 19 U.S.C. Section 1555(b), as amended.

(b) Provides that a person who commits an act prohibited by Subsection (a), knowing or having reason to know that the person is doing so, is guilty of a Class A misdemeanor.

SECTION 7. (a) Effective date: September 1, 2001.

(b) and (c) Makes application of this Act prospective.