

CHAPTER 58

S.B. No. 472

An Act relating to the cigarette and cigar and tobacco products taxes in Chapters 154 and 155 of the Tax Code; amending the following sections and subsections of the Tax Code: 154.001, 154.058, 154.101, 154.105, 154.109, 154.110, 154.111, 154.114, 154.120, 154.121, 154.201, 154.209(b), 154.501(a), 154.509, 154.516, 155.001, 155.041(a) and (b), 155.045, 155.046, 155.048(a), 155.049, 155.056, 155.058, 155.059(a), 155.101, 155.110(b), 155.201(a), 155.207, and 155.212 and repealing the following sections and subsections: 154.102, 154.118(b), 154.206, 154.211, 154.212, 155.025, 155.054(b), 155.053(b) and (c), 155.057, 155.060, 155.105, 155.109, 155.112, 155.113, 154.308, 154.521, 155.185, 154.413, 154.414, 155.153, 155.154, 154.401, 154.402, 155.141, and 155.142.

Be it enacted by the Legislature of the State of Texas:

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

“Section 154.001. **DEFINITIONS.** In this chapter:

“(1) ‘Cigarette’ means a roll for smoking made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco, but does not include a cigar.

“(2) ‘Individual package of cigarettes’ means:

“(A) the smallest package of cigarettes ordinarily sold at retail; or

“(B) any size package of cigarettes taxed by the United States.

“(3) ‘Place of business’ means:

“(A) a place where cigarettes are sold;

“(B) a place where cigarettes are stored or kept for sale or consumption; or

“(C) a vehicle [~~train; or vending machine~~] if cigarettes are sold from the vehicle [~~train; or vending machine~~].

“(4) ‘Stamp’ means a stamp that is printed, manufactured, or made by authority of the comptroller; issued, sold, or circulated by the treasurer; and used to show payment of a tax imposed by this chapter.

“(5) ‘Counterfeit stamp’ means a stamp, label, print, tag, or token that is not authorized by the comptroller or not issued by the treasurer, but is used to show payment of a tax imposed by this chapter.

“(6) ‘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 to sell or use, to show payment of a tax imposed by this chapter.

“(7) ‘First sale’ means:

“(A) the first sale or distribution of cigarettes 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.

“(8) ‘Drop shipment’ means a delivery of cigarettes received by a person in this state if payment for the cigarettes is made to the shipper or seller by a person other than the consignee.

“(9) ‘Distributor’ means a person in this state who:

“(A) manufactures or produces cigarettes;

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

“(C) is authorized to purchase on open account unstamped cigarettes direct from all manufacturers who have general distribution of cigarettes in this state and:

“(i) sells cigarettes to licensed wholesalers; or

“(ii) acquires or possesses unstamped cigarettes to make a first sale in this state.

“(10) ‘Wholesale dealer’ means a person, other than a distributor or a salesman who is employed by a manufacturer handling only the products of the salesman’s employer, who sells or distributes cigarettes in this state for resale.

“(11) [‘Retail dealer’ means:

“(A) a person, other than a distributor or wholesale dealer, who sells or distributes cigarettes, offers them for sale or distribution, or possesses them for the purpose of sale or distribution;

“(B) a person, other than a distributor or wholesale dealer, who distributes or disposes of cigarettes in unbroken individual packages or in quantities of 10 or more if no sale is involved; or

“(C) a coin operated cigarette or tobacco products vending machine.

“(12) ‘Distributing agent’ means a person in this state who is an agent of a person outside this state, receives cigarettes in interstate commerce, and stores the cigarettes for distribution or delivery to distributors or [;] wholesale dealers [; and retail dealers] upon orders from the person outside this state.

“(13) [‘Solicitor’ means an individual who offers cigarettes for sale in this state for delivery in this state for any person’s account.]”

SECTION 2. Section 154.058, Tax Code, is amended to read as follows:

“Section 154.058. **INVENTORY IF DENOMINATION CHANGES.** On the effective date of a tax increase, a [retail or] wholesale dealer who has 2,000 or more cigarettes stamped with stamps of an old denomination shall immediately inventory the packages and file a report of the inventory with the comptroller. The dealer shall attach to the inventory a cashier’s check payable to the treasurer equal to the amount of additional tax due because of the tax increase. The dealer shall keep a copy of the inventory and the purchaser’s copy of the cashier’s check.”

SECTION 3. Section 154.101, Tax Code, is amended to read as follows:

“Section 154.101. **PERMITS.** (a) A person may not engage in business as a distributor or [;] wholesale dealer [; or retail dealer] unless the person has applied for and received the applicable permit from the comptroller.

“(b) A distributor or [;] wholesale dealer [; and retail dealer] shall obtain a permit for each place of business owned or operated by the distributor or [;] wholesale dealer [; or retail dealer].”

SECTION 4. Section 154.102, Tax Code, is repealed.

SECTION 5. Section 154.105, Tax Code, is amended to read as follows:

“Section 154.105. **FORMS.** The comptroller shall prescribe the form for an application for a permit to be a wholesale dealer, [retail dealer,] distributor, or distributing agent.”

SECTION 6. Section 154.109, Tax Code, is amended to read as follows:

“Section 154.109. **APPLICATION FOR WHOLESALE [OR RETAIL] DEALER’S PERMIT.** (a) The comptroller shall furnish the application form to an applicant on the applicant’s written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

“(b) The application must include:

“(1) the manner in which the applicant will do business;

“(2) the applicant’s principal office, residence, and place of business in Texas to which the permit is to apply;

“(3) if the applicant is not an individual, the principal officers’ or members’ names and addresses, not to exceed three; and

“(4) any other information the comptroller requests.”

SECTION 7. Section 154.110, Tax Code, is amended to read as follows:

“Section 154.110. **ISSUANCE OF PERMIT.** (a) The comptroller shall issue a permit to a distributor *or* [;] wholesale dealer [; *or* retail dealer] if the comptroller:

“(1) has received the application and fee;

“(2) believes that the applicant has complied with the conditions of issuance; and

“(3) determines that issuing the permit will not jeopardize the revenue.

“(b) The permit shall be issued for a designated place of business.

“(c) The permits are nonassignable and shall be consecutively numbered. The permit must show the kind of permit and authorize the sale of cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or reasonable rules of the comptroller are violated.”

SECTION 8. Section 154.111, Tax Code, is amended to read as follows:

“Section 154.111. **LICENSING YEAR; FEES.** (a) A permit required by this chapter expires on the last day of February of each year.

“(b) An application for a permit required by this chapter must be accompanied by a fee of:

“(1) \$100 for a distributing agent’s permit;

“(2) \$25 for a distributor’s permit; *and*

“(3) \$15 for a wholesale dealer’s permit [;

~~“(4) \$5 for a retail dealer’s permit; and~~

~~“(5) \$1 for a solicitor’s permit].~~

“(c) The comptroller shall prorate the fee for a new or renewal permit required by Section 154.101 or 154.103 of this code by allowing a discount computed by quarters of the licensing year.”

SECTION 9. Section 154.114, Tax Code, is amended to read as follows:

“Section 154.114. **SUSPENSION OR REVOCATION OF A PERMIT.** (a) The comptroller shall give notice to a person at the place of business named in the application for a permit to show cause why a permit should not be suspended or revoked if the comptroller believes that:

“(1) a distributor *or* [;] wholesale dealer [; *or* retail dealer]:

“(A) has engaged in any activity that endangers the revenue;

“(B) has not maintained the premises to protect the revenue; or

“(C) has not notified the comptroller of a business change affecting ownership, operation, or control;

“(2) a distributing agent, distributor *or* [;] wholesale dealer [; *or* retail dealer]:

“(A) has violated a provision of this chapter; or

“(B) has violated a rule made under this chapter;

“(3) a wholesale dealer [*or* retail dealer] fails to make the inventory required by Section 154.058 of this code [; *or*

~~“(4) a solicitor does not make the report required by Section 154.211 of this code]~~

“(b) If the person does not show cause, the comptroller shall revoke the permit or suspend it for a period to be determined by the comptroller.”

SECTION 10. Subsection (b), Section 154.118, Tax Code, is repealed.

SECTION 11. Section 154.120, Tax Code, is amended to read as follows:

“Section 154.120. ~~[VENDING MACHINE, TRAIN,] VEHICLE.~~ If a distributor *or* [;] wholesale dealer [; *or* retail dealer] applies for a permit to sell cigarettes from a ~~[vending machine, train, *or*] vehicle,~~ the applicant must show on the application [:

~~“(1) the serial number of the vending machine;~~

~~“(2) the make, motor number, and license number of the vehicle [; *or*~~

~~“(3) the number of the train and the name of the railway company].”~~

SECTION 12. Section 154.121, Tax Code, is amended to read as follows:

“Section 154.121. **REVENUE.** Revenue from the sale of permits to distributors *and* [;] wholesale dealers [; *and* retail dealers] is allocated in the same manner as other revenue is allocated by Subchapter J of this chapter.”

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

"Section 154.201. **RECORD OF CIGARETTES.** (a) A distributor *or* [;] wholesale dealer [; ~~or retail dealer~~] shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record of cigarettes purchased and of cigarettes received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

"(b) A distributor *or* [;] wholesale dealer [; ~~or retail dealer~~] shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record [in a well-bound book] that provides complete information on cigarettes purchased and on cigarettes received. The record [book] must show:

- "(1) the date cigarettes were received;
- "(2) whether the cigarettes were drop-shipped or otherwise;
- "(3) the name and address of the seller and the shipper;
- "(4) the place from which the cigarettes were shipped or delivered;
- "(5) the place where the cigarettes were received;
- "(6) the name of the carrier;
- "(7) whether or not the cigarettes were shipped by common carrier;
- "(8) the name of the boat or barge if shipped by water;
- "(9) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;
- "(10) the number and kind of stamped cigarettes received;
- "(11) if received by a distributor, the number and kind of unstamped cigarettes;
- "(12) if a distributor, an inventory made on the first of each month showing the number and kind of stamped cigarettes on hand; and
- "(13) if a distributor, an inventory made on the first of each month showing the number and kind of unstamped cigarettes on hand."

SECTION 14. Section 154.206, Tax Code, is repealed.

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

"(b) If a distributor's *or* [;] wholesale dealer's [; ~~or retail dealer's~~] place of business is a [vending machine, train, ~~or~~] vehicle, the distributor *or* [;] wholesale dealer [; ~~or retail dealer~~] shall designate in the application for a permit a permanent place to keep the records. The distributor *or* [;] wholesale dealer [; ~~or retail dealer~~] shall keep the records in the designated place after the cigarettes are delivered from the [vending machine, train, ~~or~~] vehicle."

SECTION 16. Section 154.211, Tax Code, is repealed.

SECTION 17. Section 154.212, Tax Code, is repealed.

SECTION 18. Subsection (a), Section 154.501, Tax Code, is amended to read as follows:

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

- "(1) is a distributor, wholesale dealer, [retail dealer,] or distributing agent and fails to keep records required by this chapter;
- "(2) is a distributor *or* [;] wholesale dealer [; ~~or retail dealer~~] and sells cigarettes taxed under this chapter without a valid permit;
- "(3) is a distributor *or* [;] wholesale dealer [; ~~or distributing agent~~] and fails to make a report or makes a false or incomplete report required by this chapter to the comptroller;
- "(4) is a distributing agent and stores, distributes, or delivers unstamped cigarettes in this state without a valid permit; or
- "(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter."

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

"Section 154.509. **PERMITS.** A person commits an offense if the person:

- "(1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;
- "(2) as a distributor or representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;
- "(3) as a distributor, wholesale dealer, or agent of a distributor or wholesale dealer, does not deliver an invoice required by Section 154.203 of this code to the purchaser;
- "(4) as a wholesale dealer [; ~~retail dealer,~~] or agent of a wholesale dealer [or ~~retail dealer,~~] sells cigarettes without having a valid permit;

"(5) as a wholesale dealer [~~;~~ ~~retail dealer,~~] or agent of a wholesale dealer [~~or retail dealer,~~] sells cigarettes without having a permit posted where it can be easily seen by the public; *or*

"(6) as a distributing agent, stores or distributes unstamped cigarettes without having a valid permit [~~;~~ ~~or~~

"[~~(7) offers for sale or solicits an order in this state for cigarettes to be shipped to a place in this state without having a valid solicitor's permit.~~]"

SECTION 20. Section 154.516, Tax Code, is amended to read as follows:

"Section 154.516. **BOOKS AND RECORDS.** A person commits an offense if the person:

"(1) as a distributor [~~;~~ ~~distributing agent,~~] or agent of a distributor [~~or distributing agent,~~] knowingly makes, delivers to, and files with the comptroller a false return or report or an incomplete return or report;

"(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

"(3) as a distributor, wholesale dealer [~~;~~ ~~retail dealer,~~] distributing agent, or the agent of a distributor, wholesale dealer [~~;~~ ~~retail dealer,~~] or distributing agent, destroys, mutilates, or conceals a book or record required by this chapter;

"(4) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the cigarette business and may be kept;

"(5) knowingly makes a false entry or fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, [~~retail dealer,~~] or distributing agent; or

"(6) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, [~~retail dealer,~~] or distributing agent."

SECTION 21. Section 155.001, Tax Code, as amended, is amended to read as follows:

"Section 155.001. **DEFINITIONS.** In this chapter:

"(1) 'Cigar' means a roll of fermented tobacco wrapped in tobacco. The main stream of smoke from a cigar produces an alkaline reaction to litmus paper. The main stream of smoke from a cigarette produces an acid reaction to litmus paper.

"(2) 'Cigar containing a substantial amount of nontobacco ingredients' means a cigar that contains sheet binder, sheet wrapper, sheet filler, or a combination of sheet binder, sheet wrapper, or sheet filler.

"(3) 'Tobacco product' means:

"(A) a cigar;

"(B) a cheroot;

"(C) a stogie;

"(D) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

"(E) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing; or

"(F) an article or product made of tobacco or a tobacco substitute, but does not include a cigarette.

"(4) 'First sale' means:

"(A) the first sale or distribution in intrastate commerce in this state; or

"(B) the first use or consumption in this state.

"(5) 'Drop shipment' means a delivery of cigars or tobacco products received by a person in this state if payment for the cigars or tobacco products is made to the shipper, seller, or buyer or by a person other than the consignee.

"(6) 'Consumer' means a person who possesses tobacco products to consume or dispose of them.

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

"(A) engages in the business of selling tobacco products in this state and brings, or causes to be brought, into this state from outside this state tobacco products for sale, use, or consumption; or

"(B) manufactures tobacco products in this state for sale, use, or consumption in this state.

"(8) 'Wholesale dealer' means a person:

"(A) whose principal business is that of a wholesale dealer or jobber; *and*

"(B) who is known to the trade as a wholesale dealer or jobber [~~;~~ ~~and~~

“[(C) who sells cigars or tobacco products to licensed retailers for resale, gives away cigars or tobacco products, or displays cigars or tobacco products so that a retailer may acquire them].”

“(9) ‘Retailer’ means a dealer other than a wholesale dealer:

“[(A) whose principal business is selling merchandise at retail; and

“(B) who sells or offers for sale cigars or tobacco products, gives away cigars or tobacco products, or displays cigars or tobacco products so that a consumer may acquire them.

“(10) ‘Solicitor’ means a person who:

“[(A) represents a licensed nonresident supplier; and

“(B) solicits or takes orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this state.

“(11) ‘Distributing agent’ means a person in this state who is an agent of a person outside this state, receives cigars and tobacco products in interstate commerce, and stores the cigars and tobacco products for distribution or delivery to distributors, wholesale dealers, [retailers,] or consumers on orders from the person outside this state.

“(10) [(12)] ‘Dealer’ means a person who:

“(A) manufactures cigars or tobacco products for distribution, sale, use, or consumption in this state; or

“(B) imports cigars or tobacco products from outside this state for distribution, sale, use, or consumption in this state.

“(11) [(13)] ‘Retail price’ means the ordinary price paid by the consumer for individual cigars or tobacco products before adding the tax.”

SECTION 22. Section 155.025, Tax Code, is repealed.

SECTION 23. Subsections (a) and (b), Section 155.041, Tax Code, are amended to read as follows:

“(a) A person may not engage in business as a distributor or [;] wholesale dealer [; or retailer] unless the person has applied for and received the applicable permit from the comptroller.

“(b) A distributor or [;] wholesale dealer [; or retailer] shall obtain a permit for each place of business owned or operated by the distributor or [;] wholesale dealer [; or retailer].”

SECTION 24. Section 155.045, Tax Code, is amended to read as follows:

“Section 155.045. **JOINT PERMIT.** The comptroller may issue a joint permit for cigarettes and tobacco products to a distributor, wholesale dealer, [retailer,] or distributing agent. A person who receives a joint permit pays only one permit fee.”

SECTION 25. Section 155.046, Tax Code, is amended to read as follows:

“Section 155.046. **FORMS.** The comptroller shall prescribe the form for the application for a permit to be a distributor, wholesale dealer, [retailer,] or distributing agent.”

SECTION 26. Subsection (a), Section 155.048, Tax Code, is amended to read as follows:

“(a) The comptroller shall issue a permit to a distributor or [;] wholesale dealer [; or retailer] if the comptroller has received the application fee.”

SECTION 27. Section 155.049, Tax Code, is amended to read as follows:

“Section 155.049. **LICENSING YEAR; FEES.** (a) A permit required by this chapter expires on the last day of February of each year.

“(b) An application for a permit required by this chapter must be accompanied by a fee of:

“(1) \$100 for a distributing agent’s permit;

“(2) \$25 for a distributor’s permit; and

“(3) \$15 for a wholesale dealer’s permit [;]

“[(4) \$5 for a retailer’s permit; and

“[(5) \$1 for a solicitor’s permit].”

SECTION 28. Subsection (b), Section 155.054, Tax Code, is repealed.

SECTION 29. Subsections (b) and (c), Section 155.053, Tax Code, are repealed.

SECTION 30. Section 155.056, Tax Code, is amended to read as follows:

“Section 155.056. **[VENDING MACHINE, TRAIN, BOAT, AIRPLANE,] VEHICLE.** If a distributor or [;] wholesale dealer [; or retailer] applies for a permit to sell tobacco products from a [vending machine, train, boat, airplane, or] vehicle, the applicant must show on the application [;]

- “(1) the serial number of the vending machine;
- “(2) the make, motor number, and license number of the vehicle [;];
- “(3) the name of the airplane;
- “(4) the name of the boat; or
- “(5) the number of the train and the name of the railway company].”

SECTION 31. Section 155.057, Tax Code, is repealed.

SECTION 32. Section 155.060, Tax Code, is repealed.

SECTION 33. Section 155.058, Tax Code, is amended to read as follows:

“Section 155.058. **REVENUE.** Revenue from the sale of permits to distributors and [;] wholesale dealers [; and retailers] is allocated in the same manner that other revenue is allocated by Subchapter H of this chapter.”

SECTION 34. Subsection (a), Section 155.059, Tax Code, is amended to read as follows:

“Section 155.059. **REVOCAION OF DISTRIBUTOR’S OR [;] WHOLESALE DEALER’S [OR RETAILER’S] PERMIT.** (a) The comptroller may revoke or suspend a distributor’s or [;] wholesale dealer’s [or retailer’s] permit if the distributor or [;] wholesale dealer [; or retailer] has violated a provision of this chapter or a rule made under this chapter.”

SECTION 35. Section 155.101, Tax Code, is amended to read as follows:

“Section 155.101. **RECORD OF TOBACCO PRODUCTS.** (a) A distributor or [;] wholesale dealer [; or retailer] shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record of tobacco products purchased and of tobacco products received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

“(b) A distributor or [;] wholesale dealer [; or retailer] shall keep at each place of business in this state, except as provided by Section 155.110 of this code a record [in a well-bound book] that provides complete information on tobacco products purchased and on tobacco products received. The record must show:

- “(1) the date the tobacco products were received;
- “(2) whether the tobacco products were drop-shipped or otherwise;
- “(3) the name and address of the seller and the shipper;
- “(4) the place from which the tobacco products were shipped or delivered;
- “(5) the place where the tobacco products were received;
- “(6) the name of the carrier if shipped by common carrier;
- “(7) the name of the boat or barge if shipped by water;
- “(8) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;
- “(9) the number and kind of tobacco products received on which tax has been paid; and
- “(10) if a distributor, an inventory made the first of each month showing the number and kind of tobacco products on hand on which tax has been paid.”

SECTION 36. Section 155.105, Tax Code, is repealed.

SECTION 37. Section 155.109, Tax Code, is repealed.

SECTION 38. Subsection (b), Section 155.110, Tax Code, is amended to read as follows:

“(b) If a distributor’s or [;] wholesale dealer’s [; or retailer’s] place of business is a [vending machine, train, or] vehicle, the distributor or [;] wholesale dealer [; or retailer] shall designate in the application for a permit a permanent place to keep the records. The distributor or [;] wholesale dealer [; or retailer] shall keep the records in the designated place after the tobacco products are delivered from the [vending machine, train, or] vehicle.”

SECTION 39. Section 155.112, Tax Code, is repealed.

SECTION 40. Section 155.113, Tax Code, is repealed.

SECTION 41. Subsection (a), Section 155.201, Tax Code, is amended to read as follows:

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

- “(1) is a distributor, wholesale dealer, [retailer,] or distributing agent and fails to keep records required by this chapter;
- “(2) is a distributor or [;] wholesale dealer [; or retailer] and sells tobacco products taxed under this chapter without a valid permit;

"(3) is a distributor or [;] wholesale dealer [; or distributing agent] and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report; or
 "(4) is a distributing agent and stores, distributes, or delivers tobacco products on which the tax has not been paid in this state without a valid permit; or

"(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter."

SECTION 42. Section 155.207, Tax Code, is amended to read as follows:

"Section 155.207. PERMITS. A person commits an offense if the person:

"(1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;

"(2) as a distributor or a representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;

"(3) as a distributor, wholesale dealer, or the representative of a distributor or wholesale dealer, does not deliver an invoice required by Section 155.102 of this code to the purchaser;

"(4) as a wholesale dealer [; retailer,] or the representative of a wholesale dealer [or retailer], sells tobacco products without having a valid permit;

"(5) as a wholesale dealer [; retailer,] or representative of a wholesale dealer [or retailer], sells tobacco products without having a permit posted where it can be easily seen by the public; or

"(6) as a distributing agent, stores or distributes tobacco products on which the tax has not been paid without having a valid permit [; or

"[(7) offers for sale or solicits an order in this state for tobacco products to be shipped to a place in this state without having a valid solicitor's permit]."

SECTION 43. Section 155.212, Tax Code, is amended to read as follows:

"Section 155.212. BOOKS AND RECORDS. A person commits an offense if the person:

"(1) as a distributor, distributing agent, or the representative of a distributor or distributing agent knowingly makes, delivers to, and files with the comptroller an incomplete return or report;

"(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

"(3) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the tobacco products business and may be kept;

"(4) knowingly fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, [retailer,] or distributing agent; or

"(5) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, [retailer,] or distributing agent."

SECTION 44. Sections 154.308, 154.521, and 155.185, Tax Code, are repealed.

SECTION 45. Sections 154.413, 154.414, 155.153, and 155.154, Tax Code, are repealed.

SECTION 46. Sections 154.401, 154.402, 155.141, and 155.142, Tax Code, are repealed.

SECTION 47. Sections 1 through 43 of this Act take effect March 1, 1986.

SECTION 48. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 6, 1985, by a viva-voce vote; passed the House on April 18, 1985, by a non-record vote.

Approved: April 30, 1985

Effective: August 26, 1985, except for Sections 1-43, which are effective March 1, 1986.