

## CHAPTER 580

## H.B. No. 1587

## AN ACT

relating to the payment of cigarette taxes and to the establishment and use of the cigarette tax recovery trust fund to secure the payment of cigarette taxes by certain distributors.

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

SECTION 1. Section 154.050(b), Tax Code, is amended to read as follows:

(b) The treasurer may not ship stamps or set a meter without advance payment under this section unless the distributor has *satisfied all requirements imposed under* [~~filed the bond provided for in~~] Section 154.051 of this code.

SECTION 2. Section 154.051, Tax Code, is amended to read as follows:

Sec. 154.051. *CIGARETTE TAX RECOVERY TRUST FUND* [~~PAYMENT BOND~~].

(a) *The cigarette tax recovery trust fund is a private trust fund established outside the state treasury and as provided by this section secures the payment of cigarette taxes by distributors who contribute to the fund. The fund is composed of the total amount in the separate accounts maintained in trust for all contributing distributors as provided by this section. The assets of the fund, including interest earned by those assets, are to be held in trust for the benefit and protection of the state treasury, and may not be diverted, distributed, or appropriated for any purpose other than as provided by this section. Interest earned by a distributor's account but not yet refunded to the distributor pursuant to Subsection (d) of this section shall be credited to the distributor's account on a monthly basis.*

(b) *The treasurer is the trustee of the fund as provided by Section 3.051, Treasury Act (Article 4393-1, Vernon's Texas Civil Statutes), and shall manage the fund as provided by this section. In investing the assets of the fund, the treasurer has the obligations, duties, and powers provided for the investment of state funds by Sections 2.011 through 2.015, Treasury Act, and by the orders of the State Depository Board.*

(c) *A distributor who orders stamps or requests a meter setting from the state treasurer under this chapter without advance payment shall contribute to an account maintained in the distributor's name in the fund money in the amount of each*

one person of at least *One Thousand Dollars (\$1,000)* [~~Two Hundred Fifty Dollars (\$250)~~], the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, and the Department finds that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than *One Thousand Dollars (\$1,000)* [~~Two Hundred Fifty Dollars (\$250)~~] to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, subject to the provisions of Subsection (c) of this section, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, if there is found to be a reasonable probability of a judgment being rendered against that person as a result of the accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department or by a person presiding at a hearing and in no event less than *One Thousand Dollars (\$1,000)* [~~Two Hundred Fifty Dollars (\$250)~~], and unless such operator and owner shall give proof of financial responsibility.

Before suspension of a license, registration, or privilege, the Department must find that there is a reasonable probability of a judgment being rendered against the person as a result of the accident and the amount of security that must be deposited. For this purpose it may consider the report of the investigating officer, the accident reports of all parties involved, and any affidavits of persons having knowledge of the facts. Notice of the determination by the Department shall be served personally on the person or mailed by certified mail, return receipt requested, to the affected person's last known address, as shown by the records of the Department. The notice shall specify that the license to operate a motor vehicle and the registration, or nonresident's operating privilege, will be suspended unless the person, within twenty (20) days after personal service or the mailing of the notice, establishes that the provisions of this section are not applicable to him and that he has previously furnished such information to the Department or that there is no reasonable probability of a judgment being rendered against him as a result of the accident. The notice shall recite that the person to whom it is addressed is entitled to a hearing as provided in this Act if a written request for a hearing is delivered or mailed to the Department within twenty (20) days after personal service or the mailing of the notice. The person's license to operate the vehicle and his registration or nonresident's operating privilege may not be suspended pending the outcome of the hearing and any appeal.

If a hearing is requested, the Department shall summon the person requesting the hearing to appear for the hearing as provided in this subsection. The hearing shall be held not less than ten (10) days after notice is given to the person requesting the hearing and written charges shall be made and a copy given to the person requesting the hearing at the time he is given the hearing notice. Jurisdiction for the hearing is vested in the judge of a police court, or a justice of the peace in the county and precinct in which the person requesting the hearing resides. The hearing officer may receive a fee for hearing these cases if the fee is approved by the commissioners court of the county of jurisdiction, but the fee may not be more than Five Dollars (\$5) a case and shall be paid from the general revenue fund of the county. The hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Such proceeding shall have precedence over all other matters of a different nature, and shall be tried before the judge within fifteen (15) days from the filing thereof, and neither party shall be entitled to a jury. At the hearing, the issues to be determined are whether there is a reasonable probability of a judgment being rendered against the person requesting the hearing as a result of the accident and, if so,

the amount of security that will be sufficient to satisfy any judgment or judgments for damages resulting from the accident, but in no event less than *One Thousand Dollars (\$1,000)* [~~Two Hundred Fifty Dollars (\$250)~~], that may be recovered from the person requesting the hearing. The officer who presides at the hearing shall report the findings in the case to the Department. Notice as required by this paragraph shall be served personally on the person or mailed by certified mail, return receipt requested, to the person's last known address, as shown by the records of the Department.

If, after a hearing, the determination is that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the person may appeal the findings to the county court of the county in which the hearing was held and the appeal shall be de novo.

If a written request for a hearing is not delivered or mailed to the Department within twenty (20) days after personal service or the mailing of notice and the person has not established within that time that the provisions of this section do not apply to him or if within twenty (20) days after a hearing and exhaustion of the appeal procedure, if an appeal is made in which the decision is against the person requesting the hearing, security and proof of financial responsibility are not deposited with the Department, the Department shall suspend the person's license to operate a motor vehicle, the vehicle registration, or nonresident's operating privilege until the person complies with the provisions of this Act.

Notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 2, 3, and 4 of Subsection (c) of this Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it or correct information with respect to said matters.

The determination by the Department or by a person presiding at a hearing of the question of whether there is a reasonable probability of a judgment being rendered against a person as a result of an accident may not be introduced in evidence in any civil suit for damages arising from the accident.

SECTION 3. Subsection (a), Section 36, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) *Except for fees collected under Section 1C(e) of this Act, the [All] fees and charges required by this Act shall be remitted without deduction to the Department at Austin, Texas, and all such fees so collected shall be deposited in the Treasury of the State of Texas to the credit of a fund to be known as the Operator's and Chauffeur's License Fund. In addition to statutory recording fees of county clerks required in Section 24, any [filing with, certification or notice to the Department in compliance with any of the provisions of this Act, or] request for certified abstract of operating record required in Section 3[~~except report of accident required in Section 4,~~] shall be accompanied by a fee of Twenty Dollars (\$20) for each transaction. Statutory fees required by the State Department of Highways and Public Transportation in furnishing certified abstracts or in connection with suspension of registrations, or such statutory fees which shall become due the State Treasurer for issuance of certificates of deposits required in Section 25, shall be remitted from such Fund.*

SECTION 4. Subsection (c), Section 17, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Licenses and registrations suspended or revoked [~~under this Section~~] shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the Motor Vehicle Laws of this State and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

SECTION 5. (a) This Act takes effect September 1, 1987.

(b) A court may not assess the fee required by this Act for offenses allegedly committed before the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. 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 by the House on May 7, 1987, by the following vote: revenue dedication: Yeas 129, Nays 2, 2 present, not voting; remainder of the bill: non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1294 on May 28, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1294 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 26, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1294 on June 1, 1987, by a viva-voce vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.