

## **BILL ANALYSIS**

Senate Research Center  
77R7053 DAK-F

S.B. 1263  
By: Ellis, Rodney  
Finance  
3/9/2001  
As Filed

### **DIGEST AND PURPOSE**

The comptroller of public accounts has encountered legal challenges involving the construction of tax statutes in three areas: (1) other tobacco products tax, (2) franchise tax, and (3) insurance tax and its effect on other taxes. As proposed, S.B. 1263 clarifies the existing laws in these three areas and attempts to eliminate perceived vulnerabilities in these laws.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 155.001, Tax Code, to define “chewing tobacco,” “dry snuff,” “moist snuff,” “pipe tobacco,” “roll-your-own tobacco,” “snuff,” and redefine “tobacco product.”

SECTION 2. Amends Section 155.0211, Tax Code, by amending Subsection (b) and adding Subsections (c), (d), and (e) as follows:

(b) Provides that the tax rate for tobacco products other than cigars, moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco is 35.213 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

(c) Sets forth the tax rate for each can or package of moist snuff, dry snuff chewing tobacco, pipe tobacco, and roll-your own tobacco.

(d) Requires that for purposes of Subsection (c), the tax on moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco be computed based on the net weight as listed by the manufacturer. Provides that the total tax to be imposed on a multi-unit package is the sum of the taxes imposed by Subsection (c) on each individual package intended for sale or distribution at retail.

(e) Requires an ambiguity regarding the proper classification of a tobacco product for purposes of taxation under this section to be resolved by reference to the classification of the tobacco product for federal tobacco tax purposes.

SECTION 3. Amends Section 155.101, Tax Code, as follows:

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Requires these records to include the certain requirements, except that Subdivision (7) applies to distributors only and Subdivisions (8) and (9) apply to the purchase or receipt of moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco only.

SECTION 4. Amends Section 155.102, Tax Code, by adding Subsection (c), as follows:

(c) Requires that, in addition to the information required under Subsection (b), the records for each sale, distribution, exchange, or use of moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco show certain requirements.

SECTION 5. Amends Section 155.103, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that in addition to the information required under Subsection (a), the records for each sale of moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco show certain requirements.

(c) Requires a manufacturer who sells tobacco products to a permit holder in this state to file with the comptroller, on or before the last day of each month, a report showing the information required to be listed by Subsections (a) and (b), if applicable, for the previous month.

SECTION 6. Amends Section 155.111, Tax Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires that in addition to the information required under Subsection (b), for moist snuff, dry snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco purchased, received, or acquired, the report show certain requirements.

(d) Requires the comptroller to prescribe the form and content of the report.

SECTION 7. Amends Section 171.052, Tax Code, as follows:

Sec. 171.052. CERTAIN CORPORATIONS. Provides that an insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapter 4 or 9, Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. Provides that an insurance organization performing management or accounting activities in this state on behalf of a nonadmitted captive insurance company under Chapter 101, Insurance Code, that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for that same tax year. Deletes language regarding surety, guaranty, or fidelity company.

SECTION 8. Amends Section 171.110(e), Tax Code, as follows:

(e) Provides that a business loss can be carried forward only by the corporation that incurred the loss and cannot be transferred to or claimed by any other entity, including the survivor of a merger if the loss was incurred by the corporation that did not survive the merger.

SECTION 9. Amends Article 4.01, Insurance Code, deleting language regarding domestic insurance companies paying occupation gross receipts tax.

SECTION 10. Amends Article 4.06, Insurance Code, to read as follows:

Art. 4.06. TAXES IMPOSED EXCLUSIVE. (a) Provides that this chapter applies to insurance organizations authorized to do insurance business in this state, other than eligible surplus lines insurers.

(b) Provides that an insurance organization subject to a tax levied by this chapter may not be required to pay any additional tax in proportion to its gross premium receipts levied by this state or any county or municipality, except as otherwise provided by this code or the Labor Code. Provides that this exemption may not be construed to limit the applicability of other taxes, fees, and assessments that are imposed by other

chapters of this code. Provides that this exemption may not be construed to prohibit the levy and collection of state, county, and municipal taxes on the real and personal property of insurance organizations, or the levy and collection of state, county, and municipal taxes that are imposed by other laws of this state, unless a specific exemption for insurance organizations is provided in those laws. Deletes language regarding occupation tax.

SECTION 11. Amends Section 8, Article 9.59, Insurance Code, to read as follows:

Sec. 8. NO OTHER TAXES TO BE LEVIED OR COLLECTED; EXCEPTIONS. (a) Prohibits title insurance companies and title insurance agents subject to the tax levied by this article from being required to pay any additional tax in proportion to their gross premium receipts levied by this state or any county or municipality, except as otherwise provided by this code and the Labor Code. Provides that this exemption may not be construed to limit the applicability of other taxes, fees, and assessments that are imposed by other chapters of this code. Provides that this exemption may not be construed to prohibit the levy and collection of state, county, and municipal taxes on the real and personal property of title insurance companies and title insurance agents, or the levy and collection of state, county, and municipal taxes that are imposed by other laws of this state, unless a specific exemption for title insurance companies and title insurance agents is provided in those laws. Deletes language regarding an occupational tax.

(b) Deletes language regarding tax being levied on a title insurance company.

SECTION 12. Repealer: Section 14, Article 4.10 (Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Nonprofit Group Hospital Service Plans; Tax on Gross Premiums) Insurance Code, and Section 9, Article 4.11 (Life, Health, and Accident Insurance Companies; Premium Tax) Insurance Code.

SECTION 13. Provides that Section 171.110(e), Tax Code, as amended by Section 8 of this Act, is a clarification of existing law and not a substantive change in law.

SECTION 14. Effective date: September 1, 2001.

Makes application of this Act prospective.