

SUBJECT: Prohibiting importation of cigarettes not meant for U.S. sale

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Wolens, S. Turner, Bailey, Brimer, Counts, Danburg, Hilbert,  
Hunter, Longoria, Marchant, McCall, Merritt

0 nays

3 absent — Alvarado, Craddick, D. Jones

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 15 — 31-0

WITNESSES: None

BACKGROUND: Cigarettes imported for distribution in Texas are subject to an excise tax of \$4.10 per pack. Upon importation, a stamp must be affixed to each individual package of cigarettes to show payment of the tax. Each violation is subject to a fine of not more than \$2,000, payable to the state.

The comptroller with or without process may seize cigarettes imported in violation of the law. Seized cigarettes are forfeited to the state and remain in the custody of the comptroller for disposition.

Under the Deceptive Trade Practices Act (Business and Commerce Code, chapter 17, subchapter E), a consumer harmed by a deceptive trade practice may sue for economic damages. If the court finds that the defendant committed the crime knowingly, the consumer also may recover damages for mental anguish. A consumer also may collect court costs and attorney's fees.

DIGEST: SB 1122 would amend Tax Code, chapter 154 to prohibit a person from affixing a stamp to a package of cigarettes if the package:

! did not comply with the requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. sec. 1331 et seq.) for cigarettes to be sold in the United States;

- ! was labeled “For Export Only,” “U.S. Tax Exempt,” or “For Use Outside U.S.,” or had other wording indicating that the package was not intended for sale in the U.S.;
- ! showed alteration of any of the above wording;
- ! was imported after January 1, 2000, in violation of Internal Revenue Service excise tax rules (26 U.S.C. sec. 5754); or
- ! violated U.S. trademark or copyright laws.

The bill would make it an offense, subject to a fine of not more than \$2,000 per violation, to affix stamps to a pack of cigarettes in violation of these regulations. The bill also would designate as a deceptive trade practice the sale of cigarettes with improper labeling as described above, with or without an affixed stamp.

Cigarettes seized by the comptroller under these circumstances could not be resold. The comptroller could destroy or dispose of the cigarettes or return them to the manufacturer for credit, solely for the purpose of export.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

SB 1122 would make it illegal to affix a tax stamp to a package of cigarettes not intended for sale in the United States. This would end diverters’ practices of undercutting U.S. wholesalers and retailers.

While cigarettes intended for sale in the United States are subject to a federally mandated minimum price, the same cigarettes intended for sale in other countries are not. Diverters sometimes buy U.S. cigarettes in other countries, where retail prices are much cheaper, and then import these cigarettes back into the U.S. with intent to sell them as domestic cigarettes. Even considering the cost of affixing stamps to these imported cigarettes, the diverters can sell these “domestic” cigarettes much more cheaply than can honest wholesalers, who must charge the federal minimum.

Under Texas’ multibillion-dollar settlement with the tobacco industry, the formula for determining the state’s receipts takes into account the number of cigarettes sold in Texas that were intended explicitly for sale in Texas. Thus, every pack of imported cigarettes sold as domestic cigarettes takes money away from the state, both in the form of excise taxes and settlement money.

A federal law to curb the sale of diverted cigarettes will go into effect on January 1, 2000. In the meantime, Texas should take steps to end this practice immediately.

Consumers should receive truthful information about the cigarettes they buy. False labeling of imported cigarettes should be considered a deceptive trade practice, for which consumers could sue for damages.

**OPPONENTS  
SAY:**

Retailers should be able to offer their customers lower-priced products if they are available. Cigarettes purchased in other countries can be sold for a lower price over the Internet, through catalogs, and even over the telephone. This practice helps small business owners compete with large convenience store chains and discount retailers. The practice is not illegal, and the products are not compromised in any way. This alternative method of sale should not be prohibited.

SB 1122 would be redundant. A federal law with the same goal will take effect January 1, 2000, making the Texas law unnecessary.