

BILL ANALYSIS

Senate Research Center

H.B. 1543
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Transportation
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Out-of-state motorcycle dealers, particularly in Oklahoma and New Mexico, advertise into Texas that Texans can avoid all taxes by buying a new off-road vehicle outside of Texas, and then bringing it back to Texas, tax free. Texas law requires our dealers to collect sales tax from out-of-state buyers. They legally explain on Internet websites how to do it. These off-road vehicles range from dirt bikes, to 4-wheelers, to utility vehicles like Polaris Rangers or Kawasaki Mules which can cost up to \$20,000 each.

The basic problem is that current Texas law provides no enforcement mechanism to stop this cheating. The Office of the Comptroller of Public Accounts of the State of Texas (comptroller) has spent much time and energy trying to fight the problem over the past several years, but current law simply does not provide them the needed tools.

H.B. 1543 will enforce Texas law, and level the playing field. The bill is based on a law recently passed by Washington State to successfully stop cheating by Oregon dealers.

First, the bill requires verification by local Texas tax assessor-collectors that taxes have been paid before they issue a certificate of title for a new off-road vehicle. This will remove the incentive for most Texan buyers to purchase off-road vehicles out of state, since most need a Texas certificate of title for warranty purposes. This mechanism has proved successful in Washington State.

Second, the bill requires off-road vehicle manufacturers to annually report to the Texas comptroller on sales to Texas residents by out-of-state dealers, so that the comptroller can confirm that proper taxes have been paid. This mechanism has also proven successful in Washington State. Manufacturers have no opposition to the bill.

H.B. 1543 amends current law relating to methods to enhance the enforcement of the collection of the use tax due on certain off-highway vehicles purchased outside this state, and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 151.483, Tax Code) and SECTION 2 (Section 501.0301, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 151, Tax Code, by adding Subchapter I-2, as follows:

SUBCHAPTER I-2. REPORTS BY MANUFACTURERS OF CERTAIN OFF-HIGHWAY VEHICLES PURCHASED OUTSIDE THIS STATE

Sec. 151.481. DEFINITIONS. Defines "manufacturer," "new off-highway vehicle," and "off-highway vehicle" for purposes of this subchapter.

Sec. 151.482. **REPORTS BY MANUFACTURERS.** (a) Requires the comptroller of public accounts of the State of Texas (comptroller) to require each manufacturer to file with the comptroller a report not later than March 1 of each year listing each warranty issued by the manufacturer for a new off-highway vehicle that was, during the preceding calendar year, sold to a resident of this state by a retailer located outside this state. Requires the report to meet certain criteria.

(b) Requires the comptroller to, as soon as practicable after receiving a report submitted under this section, use the information in the report to investigate and collect any unpaid use taxes imposed under Subchapter D (Imposition and Collection of Use Tax) on an off-highway vehicle described in the report.

Sec. 151.483. **RULES.** Authorizes the comptroller to adopt rules as necessary to implement this subchapter.

Sec. 151.484. **CONFIDENTIALITY.** Provides that, except as provided by Section 111.006 (Confidentiality of Information), information contained in a report required to be filed by this subchapter is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 151.485. **CIVIL PENALTY.** (a) Authorizes the comptroller, if a manufacturer fails to file a report required by this subchapter or fails to file a complete report, to impose a civil penalty under Section 151.703(d) (relating to requiring a person who fails to file a report to pay a penalty of \$50).

(b) Requires a manufacturer, in addition to the penalty imposed under Subsection (a), to pay the state a civil penalty of not less than \$25 or more than \$2,000 for each day a violation continues if the manufacturer:

(1) violates this subchapter; or

(2) violates a rule adopted to administer or enforce this subchapter.

Sec. 151.486. **ACTION BY TEXAS DEPARTMENT OF MOTOR VEHICLES.** Authorizes the comptroller, if a manufacturer fails to file a report required by this subchapter or fails to file a complete report, to notify the Texas Department of Motor Vehicles (TxDMV) of the failure and authorizes TxDMV to take administrative action against the manufacturer for the failure under Chapter 2301 (Sale or Lease of Motor Vehicles), Occupations Code.

Sec. 151.487. **AUDIT; INSPECTION.** Authorizes the comptroller to audit, inspect, or otherwise verify a manufacturer's compliance with this subchapter.

Sec. 151.488. **ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S FEES.** (a) Authorizes the comptroller to bring an action to enforce this subchapter and obtain any civil remedy authorized by this subchapter or any other law for the violation of this subchapter. Requires the Texas attorney general (attorney general) to prosecute the action on the comptroller's behalf.

(b) Provides that venue for and jurisdiction of an action under this section is exclusively conferred on the district courts in Travis County.

(c) Entitles the comptroller and attorney general, if the comptroller prevails in an action under this section, to recover court costs and reasonable attorney's fees incurred in bringing the action.

SECTION 2. Amends Subchapter B, Chapter 501, Transportation Code, by adding Section 501.0301, as follows:

Sec. 501.0301. CERTAIN OFF-HIGHWAY VEHICLES PURCHASED OUTSIDE THIS STATE. (a) Defines "off-highway vehicle" and "retailer" for purposes of this section.

(b) Prohibits a county assessor-collector from issuing a title receipt and prohibits TxDMV from issuing a certificate of title for an off-highway vehicle purchased from a retailer located outside this state and designated by the manufacturer as a model year that is not more than one year before the year in which the application for title is made unless the applicant for the title delivers to the assessor-collector or TxDMV, as applicable, satisfactory evidence showing that the applicant meets certain criteria regarding taxes.

(c) Requires the comptroller to promulgate forms to be used by each county assessor-collector for purposes of implementing this section.

(d) Authorizes the comptroller to adopt rules as necessary to implement this section, including rules that define "satisfactory evidence" for purposes of this section.

SECTION 3. Requires a manufacturer, not later than March 1, 2020, to submit the first report required by Subchapter I-2, Chapter 151, Tax Code, as added by this Act.

SECTION 4. Makes application of Section 501.0301, Transportation Code, as added by this Act, prospective to March 1, 2020.

SECTION 5. (a) Requires the comptroller, as soon as practicable after the effective date of this Act, to shall establish a work group composed of members determined by the comptroller and the Tax Assessor-Collectors Association of Texas for the purpose of assisting the comptroller in developing the forms required by Section 501.0301(c), Transportation Code, as added by this Act.

(b) Requires the forms described by Subsection (a) of this section, not later than March 1, 2020, to be completed and distributed to each county assessor-collector in this state.

(c) Provides that this section expires and the work group established under Subsection (a) of this section is abolished April 1, 2020.

SECTION 6. Effective date: September 1, 2019.