

SUBJECT: Taxing e-cigarettes and alternative nicotine products; reducing other taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer,
Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — Jay Maguire, Texas Vapor Coalition; (*Registered, but did not testify*: Matt Burgin, Texas Food and Fuel Association)

Against — Charlotte Owen, American Vapor Manufacturers Association; James Hubbard, SFATA; Suzi Kennon, Texas PTA; Micah Sanchez; (*Registered, but did not testify*: Joel Romo, American Heart Association; Troy Alexander, Texas Medical Association; Betty Hubbard; Kellen Kruk)

On — Tom Currah, Comptroller of Public Accounts; Maria Monge, Texas Medical Association, Texas Pediatric Society, and Texas Public Health Coalition; Dale Craymer, Texas Taxpayers and Research Association; Steve Kelder, University of Texas Health Science Center at Houston, School of Public Health; (*Registered, but did not testify*: Shannon Brandt and Tetyana Melnyk, Comptroller of Public Accounts; Mia McCord, Texas Conservative Coalition)

DIGEST: CSHB 211 would impose additional sales and use taxes on e-cigarette vapor products and alternative nicotine products and would reduce by half the taxes imposed on modified risk tobacco products.

E-cigarette vapor product tax. The bill would impose sales and use taxes of 7 cents for each milliliter of a vapor product sold or used in the state.

"Vapor product" would mean a consumable nicotine liquid solution or other material containing nicotine suitable for use in an e-cigarette.

Alternative nicotine product tax. The bill would impose sales and use taxes of \$1.22 for each ounce of an alternative nicotine produce sold or used in the state. The computation of such taxes would be based on the net weight of the product as listed by the manufacturer.

"Alternative nicotine product" would mean a noncombustible product containing nicotine, but not containing tobacco leaf, that was intended for human consumption, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term would not include an e-cigarette, vapor product, drug or device regulated by the U.S. Food and Drug Administration, or tobacco product.

Administration of taxes. The taxes imposed by this bill would be in addition to the state sales and use taxes and would be administered, imposed, collected, and enforced in the same manner as those existing taxes.

The comptroller would deposit the proceeds of the taxes in the general revenue fund.

Reports. A person required to collect or pay a tax imposed by the bill would have to file with the comptroller a report stating the amount of products sold or used, the amount acquired by a purchaser who did not pay use tax to a retailer, the amount of taxes due, and any other information required by the comptroller. The report would be due on the same date the tax payment for that period was due.

Records. The person required to collect or pay a tax and file a tax report would have to keep a complete record of the amount of products sold or used in the state, the amount of products purchased, taxes collected, and any other information required by the comptroller.

Modified risk tobacco product tax reduction. The bill would reduce by one-half the rates of taxes imposed on a federally approved modified risk tobacco product, including cigarette, cigar, and tobacco product taxes and

taxes under this bill.

The bill would take effect September 1, 2021, and would not affect tax liability accruing before that date.

**SUPPORTERS
SAY:**

CSHB 211 would impose additional sales and use taxes on e-cigarette vapor products to disincentivize customers, especially young Texans, from buying harmful products. The popularity of e-cigarettes among the youth has skyrocketed in recent years, leading to higher rates of nicotine addiction and harming brain development. The e-cigarette industry has not been taxed or regulated like the traditional cigarette industry, even though e-cigarettes may contain even higher levels of nicotine and are often marketed to youth. The bill would impose a fair tax on e-cigarette products based on their associated risks that would be in line with rates recently imposed by other states.

CSHB 211 also would clarify the tax rate on alternative nicotine products that contain nicotine but do not contain tobacco leaf. The tax rate on those products would follow the rates on similarly packaged tobacco products. By reducing taxes imposed on modified risk tobacco products, the bill would encourage cigarette users to transition to less harmful products and incentivize the market to produce more of them. The products receive designation by the federal government by proving that they significantly reduce harm and risk of tobacco-related disease and benefit the health of the population.

While some may be concerned that the tax rates on e-cigarettes under the bill would be too high or not high enough, CSHB 211 would establish effective and fair rates in the middle ground.

**CRITICS
SAY:**

CSHB 211 would impose burdensome excise taxes on e-cigarette vapor products. Many people use e-cigarettes, vape pens, or similar products to transition away from traditional cigarettes by gradually reducing their nicotine intake. E-cigarette taxes would increase costs for customers and eliminate cost or health savings they receive for choosing less harmful products over smoking traditional tobacco products like cigarettes. This

would be burdensome to Texas businesses and punish adults trying to overcome a nicotine addiction.

OTHER
CRITICS
SAY:

CSHB 211 would not go far enough to tax harmful e-cigarette vapor products. The tax rate should be higher and more on par with taxes on traditional cigarettes to properly discourage use by young Texans. Further, the bill would impose taxes per milliliter of product but would not take into account products that contain small amounts of liquid but high concentration of nicotine. The tax should be imposed by nicotine concentration or on the price, rather than amount or weight, to discourage the most harmful products and protect youths.

NOTES:

According to the Legislative Budget Board, the bill would cost about \$41.7 million in general revenue related funds and about \$5.6 million from the Property Tax Relief Fund in fiscal 2022-23, due primarily to the reduction in modified risk tobacco product tax rates. The loss to the Property Tax Relief Fund would have to be made up with an equal amount of general revenue to fund the Foundation School Program.