

BILL ANALYSIS

C.S.H.B. 211
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Electronic cigarettes, or e-cigarettes, are battery-operated devices that use an electric pulse to heat and aerosolize a flavored liquid that typically contains nicotine. Often referred to as "vaping," the liquids used to create the vapor in e-cigarettes contain a number of harmful chemicals which can lead to lung injuries. The Department of State Health Services recently determined that e-cigarette use has reached epidemic status among teens and has been investigating cases of severe lung illness in people with a recent history of vaping.

E-cigarettes were heavily marketed by tobacco companies as a safe method to help smokers quit tobacco cigarettes, however this claim lacks evidence. Recent studies comparing the use of e-cigarettes, placebos, and nicotine patches demonstrated no significant differences in abstinence rates. Despite the high level of nicotine contained in vapor products, e-cigarettes have managed to avoid the scrutiny of tobacco cigarettes, and the industry has evaded state excise tax or an increase in additional sales and use taxes. C.S.H.B. 211 seeks to address these issues by imposing additional sales and use taxes on e-cigarette vapor products and certain alternative nicotine products.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 211 amends the Tax Code to impose an additional sales tax on each sale in Texas of an e-cigarette vapor product or alternative nicotine product and an additional use tax on the storage, use, or other consumption in Texas of an e-cigarette vapor product or alternative nicotine product purchased from a retailer. The bill sets the rate of those taxes as follows:

- for vapor products, the tax rate is seven cents for each milliliter or fractional part of a milliliter of vapor product sold, stored, used, or otherwise consumed in Texas; and
- for alternative nicotine products, the tax rate is \$1.22 for each ounce or fractional part of an ounce of product sold, stored, used, or otherwise consumed in Texas, which is computed based on the net weight of the product as listed by the manufacturer.

These taxes are imposed in addition to the state sales and use tax and do not apply to the sale, storage, use, or consumption of a product unless that tax also applies. The bill defines "vapor product" as a consumable nicotine liquid solution or other material containing nicotine suitable for use in an e-cigarette and "alternative nicotine product" as a noncombustible product containing nicotine, but not containing tobacco leaf, that is intended for human consumption,

not including an e-cigarette, a vapor product, a product regulated as a drug or device by the FDA, or a tobacco product.

C.S.H.B. 211 establishes that the vapor product and alternative nicotine product taxes are administered, imposed, collected, and enforced in the same manner as the state sales and use tax and are subject to the law governing that tax, except as otherwise provided by the bill, and to any change in that law relating to the taxation of the sale or use of a vapor product or alternative nicotine product. The bill requires the comptroller of public accounts to deposit the proceeds from the vapor product and alternative nicotine product taxes in the general revenue fund.

C.S.H.B. 211 sets out reporting and recordkeeping requirements for sellers, retailers, or purchasers who are required to file a report for the state sales and use tax and also required to collect or pay the vapor product or alternative nicotine product tax. The bill specifies the information that must be reported to the comptroller and for which a record must be maintained with respect to vapor product and alternative nicotine product taxes and establishes that the report is due on the same date that the tax payment for the period is due.

C.S.H.B. 211 establishes that the rate of a tax applicable to a modified risk tobacco product, as that product is defined by federal law, for which an order under that law allowing the product to be commercially marketed is effective is one-half of the rate provided for the following taxes that would otherwise apply to the product under state law:

- the cigarette tax;
- the cigar tax;
- the tax imposed on tobacco products other than cigars;
- the vapor product sales and use tax; and
- the alternative nicotine product sales and use tax.

The bill authorizes the comptroller to adopt rules to implement the modified risk tobacco product tax rate.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 211 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original created an additional sales and use tax on e-cigarette vapor products and set out provisions regarding the application of certain other law to the tax, reporting requirements, recordkeeping requirements, and the disposition of proceeds from the taxes. The substitute retains that tax but also imposes an additional sales and use tax on alternative nicotine products and extends the applicability of those provisions to the alternative nicotine product tax. The substitute establishes that an alternative nicotine product is measured by net weight as listed by the manufacturer for those purposes. The substitute includes a definition for "alternative nicotine product."

The substitute increases the vapor product tax rate from five cents for each milliliter or fractional part of a milliliter, as in the original, to seven cents for each milliliter or fractional part of a milliliter.

The substitute does not include the original's provision restricting the appropriation of vapor product tax proceeds to the Health and Human Services Commission for the purpose of providing CHIP coverage.

The substitute includes provisions absent from the original establishing that the rate of certain taxes applicable to a modified risk tobacco product for which an order allowing the product to be commercially marketed is effective is one-half of the rate that would otherwise apply to the product. The substitute includes a requirement absent from the original for the comptroller to adopt rules to implement the modified risk tobacco product tax rate.

The substitute includes a provision absent from the original clarifying the bill's prospective applicability.