

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB248 by Johnson (Relating to the sale of cigarettes, tobacco products, and e-cigarettes; requiring occupational permits; imposing fees; providing civil and administrative penalties; creating criminal offenses.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB248, As Passed 2nd House : a positive impact of \$4,080,500 through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	\$2,597,000
2023	\$1,483,500
2024	\$3,293,500
2025	\$1,523,500
2026	\$3,343,500

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable Revenue Gain/(Loss) from General Revenue Fund - E-Cigarette Retailer Permits 1</i>	<i>Probable Revenue Gain/(Loss) from General Revenue Fund - Alternative Nicotine Products Tax 1</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Change in Number of State Employees from FY 2021</i>
2022	\$2,219,000	\$1,580,000	(\$1,202,000)	3.0
2023	\$46,000	\$1,600,000	(\$162,500)	3.0
2024	\$1,836,000	\$1,620,000	(\$162,500)	3.0
2025	\$46,000	\$1,640,000	(\$162,500)	3.0
2026	\$1,836,000	\$1,670,000	(\$162,500)	3.0

Fiscal Analysis

The bill would amend the Health and Safety Code, by adding Chapter 147, to create a new e-cigarette retailer permit.

The bill would require a new e-cigarette retailer permit for anyone engaged in business as an e-cigarette retailer in Texas. The permit would function in the same manner as cigarette and tobacco retailer's permits under

Chapters 154 and 155 of the Tax Code. The e-cigarette retailer permit would expire on the last day of May of even numbered years and a separate permit would be required for each business location. The fee for the permit would be \$90 for e-cigarette retailers already holding a cigarette or tobacco retailer's permit and \$180 for e-cigarette retailers that do not. The new permit requirement would not apply to products approved by the FDA to treat nicotine or smoking addiction or those having a drug facts label. A late fee of \$50 would be added to permittees who do not renew their permits in a timely manner. Revenue from the permit fee would be deposited to the credit of the General Revenue Fund and appropriated in the same manner as that of cigarette and tobacco permit fees.

The bill would also broaden the definition of e-cigarette to include consumable liquids and other materials aerosolized or vaporized during the use of an electronic cigarette or similar device regardless of if the material contains nicotine.

The Comptroller would be required to prescribe the form and content of the e-cigarette retailer permit application by October 1, 2021 and to begin accepting applications by that date. Retailers would not be required to hold the permit until January 1, 2022.

The bill would amend Chapters 154 and 155 of the Tax Code to create a new interstate warehouse's permit. The new permit would allow an interstate warehouse to receive untaxed tobacco products and store them exclusively for sale or delivery to licensed or permitted cigarette and tobacco taxpayers in another state. A permitted Texas distributor could not hold an interstate warehouse's permit at the same location where they hold a distributor's permit. An interstate warehouse permittee would be prohibited from intrastate sales of tobacco products without written authorization from the Comptroller. The fee for an interstate warehouse's permit would be \$300 and it would expire on the last day of February each year. The bill would also allow for credit card payments for the permit fees under Chapters 154 and 155 of the Tax Code.

The bill would impose a tax on alternative nicotine products, as defined in the bill. The tax rate would be \$1.22 per ounce or fractional part of an ounce. This tax would be administered, imposed, collected, and enforced in the same manner as taxes on tobacco under Chapter 155.

The bill would make conforming changes to Chapter 111 of the Tax Code.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect September 1, 2021.

Methodology

This analysis assumes that 20,000 taxpayers already holding cigarette or tobacco retailer's permits and 200 taxpayers who do not have one of those permits would get the e-cigarette retailer permit. The holders of cigarette or tobacco retailer's permits would pay \$90 and the retailers who do not have one of those permits would pay \$180 every even-numbered year. Because the permits expire at the end of May of even-numbered years and the permit first would be required in January 2022, fiscal year 2022 would see additional revenue compared to future years as retailers would be paying the fee for a 5-month period by January 2022 and then the full 2-year permit by June 2022. For odd years, it is assumed that 5 percent of the taxpayer roster would turn over and prorated permit fees would be remitted.

The bill would add Section 161.0901 to the Health and Safety Code which would provide for higher fine amounts for certain violations than the fine amounts prescribed by Sections 154.1142 and 155.0592 of the Tax Code, which would be repealed. The amount of increased fine revenue is not expected to be significant.

The new interstate warehouse's permit would produce a small revenue gain but because there are expected to be few permittees, the revenue gains are not expected to be significant.

The analysis of the tax on alternative nicotine products is based on published convenience store market share

information and using tax data from similar product categories to calculate what volumes of alternative nicotine products are estimated to be sold in Texas. collections of the alternative nicotine products tax are expected to follow population growth.

The Comptroller's office reports that the administrative costs to implement the provisions of the bill would total \$1.2 million in fiscal year 2022 and \$162,500 in each subsequent year. The cost include a one-time technology cost of \$1,039,500 and the funds necessary to hire three Taxpayer Compliance Officer IIs to handle the new permit type. The Comptroller's office indicates that two additional field collectors and one additional phone collector would be needed to address delinquencies and other enforcement activities.

Technology

The Comptroller's office reports a one-time technology cost of \$1,039,500 to build a new system for permittees to register as sellers of electronic nicotine delivery system vapor products.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD, BRI