

SUBJECT: Taxing e-cigarettes and vapor products, adding penalties for sale to minors

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Burrows, Bohac, Cole, Murphy, Noble, E. Rodriguez, Sanford, Wray

0 nays

3 absent — Guillen, Martinez Fischer, Shaheen

WITNESSES: For — (*Registered, but did not testify:* Dick Lavine, Center for Public Policy Priorities; Jessica Schleifer, Teaching Hospitals of Texas; Andrew Cates, Texas Nurses Association; Suzi Kennon, Texas PTA)

Against — Kathleen Russell, Smoke Free Alternative Trade Association; Justin Gibson, Vintage Vapor, LLC; (*Registered, but did not testify:* Ron Hinkle, Turning Point Brands, Inc; Brandy Marquez, Vapor Technology Association; Brian Giuffrida, VAPRO Supply; Felicity Gibson, Vintage Vapor, LLC; Betty Hubbard; James Hubbard; Jessica Quick)

On — Steven Kelder, UTHealth, School of Public Health; (*Registered, but did not testify:* Max Behlke, JUUL Labs; Troy Alexander, Texas Medical Association)

BACKGROUND: Health and Safety Code ch. 161, subch. H regulates the distribution of cigarettes, e-cigarettes, or tobacco products. Sec. 161.081 defines "e-cigarette" as an electronic cigarette or another device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device.

Under sec. 161.082, it is an offense for a person, with criminal negligence, to sell or give an e-cigarette to someone younger than 18 years old. The offense is a class C misdemeanor (maximum fine of \$500).

DIGEST: CSHB 4013 would impose a sales tax on each sale of an e-cigarette or vapor product in the state and a use tax on the storage, use, or other consumption of an e-cigarette or vapor product purchased from a retailer.

The sales and use taxes imposed by the bill would apply to the sale or use of products that otherwise were liable for sales and use taxes. The taxes imposed by the bill would be administered, imposed, collected, and enforced in the same manner as other sales and use taxes.

"Vapor product" would mean a consumable liquid solution or other material aerosolized or vaporized during the use of an e-cigarette, regardless of whether the liquid contained nicotine.

Tax reports. The bill would require a seller or retailer to report to the comptroller:

- the total receipts from e-cigarettes and vapor products sold by the seller during the reporting period;
- the total receipts from products sold by the retailer for use in the state;
- the total sales prices of products subject to the use tax that were acquired by a purchaser who did not pay the tax to a retailer;
- the taxes due; and
- any other required information.

The report would be due on the same date that tax payment was due.

Sales and use records. CSHB 4013 would require a seller or retailer to keep a complete record of:

- gross receipts from each sale;
- purchases of e-cigarettes and vapor products, including constituent parts of those products, from every source;
- sales and use taxes collected; and
- any other required information.

Tax proceeds. The comptroller would have to deposit the proceeds from taxes imposed by this bill to the credit of the Foundation School Fund.

Disciplinary action for violations. A seller or retailer would be subject to disciplinary action if an agent or employee committed an offense under state law regarding the distribution of cigarettes, e-cigarettes, and tobacco under Health and Safety Code ch. 161, subch. H, and the seller or retailer with criminal negligence failed to prevent the offense through adequate supervision and training of an agent or employee.

If the comptroller found that a person violated that law at a place of business for which a sales tax permit was issued, the comptroller could suspend the business's permit or assess:

- a fine up to \$500, if no violation had occurred in the preceding year;
- a fine of up to \$750, if only one violation occurred in the preceding year; and
- a fine of up to \$1,000 or suspension of the permit for up to three days, if at least two violations had occurred in the preceding year.

The comptroller would have to revoke the sales tax permit for a business if a person violated laws prohibiting the distribution of cigarettes, e-cigarettes, or tobacco products to individuals younger than 18 years old on four or more occasions at the same place of business during the preceding 24 months.

A person whose sales tax permit had been revoked could not apply for a permit for the same place of business until six months after the effective date of the revocation.

Seller training program. For purposes of laws regarding the sale or delivery of e-cigarettes to a minor in connection with a sale by an employee or the owner of a store, the comptroller could not revoke a person's sales tax permit if:

- the person had not violated the law more than four times at the place of business in the preceding 24 months;
- the person required its employees to attend a comptroller-approved seller training program;
- the employee attended the training program; and
- the person did not directly or indirectly encourage the employee to violate the law.

The bill would require the comptroller to adopt rules or policies establishing minimum requirements for approved seller training programs. On application, the comptroller would have to approve programs meeting those requirements that were sponsored privately or by public community colleges. The comptroller could charge an application fee.

The comptroller also could approve a seller training program sponsored by a person for the purpose of training the person's employees, without regard to whether the employees were located at the same place of business. This would apply only to a person who employed at least 100 persons who sold e-cigarettes.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 4013 would help reduce the number of young people who were addicted to nicotine by placing e-cigarettes under similar taxing and enforcement regulations as traditional cigarettes. Recently, the U.S. surgeon general declared that youth e-cigarette rates are at epidemic levels, and according to some estimates, as many as one in five high school students are regular users of e-cigarettes. Young people do not always know that e-cigarettes contain nicotine, and some specific e-cigarette brands specifically advertise a variety of flavors to target teens.

E-cigarettes are especially harmful to young users who have developing brains. The nicotine in e-cigarettes is highly addictive, and the devices can deliver even higher doses than traditional cigarettes. Aerosols in e-cigarettes can include heavy metals, volatile organic compounds, and ultrafine particles with carcinogenic effects. Research has proven taxing

traditional cigarettes was an effective deterrent for youth and underage use of tobacco products and also could prevent e-cigarette use.

By establishing a modest excise tax on e-cigarettes and vaping products, CSHB 4013 would curb the purchasing of e-cigarettes by teenagers without greatly affecting adult purchasers. As shown from the imposition of the cigarette tax on traditional cigarettes, teen purchasers receive a greater disincentive to purchase more costly products than adults. Similarly, seller training programs already are instituted to help traditional cigarette sellers correctly identify the age of prospective buyers. The bill would establish a similar program for e-cigarette sellers, which should help prevent sales to minors.

The bill also would direct revenues from this tax, which the Legislative Budget Board estimates to be about \$36 million for fiscal 2020-21, to the Foundation School Fund. This would be an appropriate use of this revenue because middle and high schools are central to the issue of e-cigarettes, as many students either use or feel pressured to use these products.

OPPONENTS
SAY:

CSHB 4013 would discourage adult users of traditional cigarettes and tobacco products from using e-cigarettes and vaping alternatives to reduce their nicotine dependency and could burden businesses that benefit the state economy.

Vaping products can be adjusted for different concentrations of nicotine or for no nicotine at all and can help addicted individuals slowly lower nicotine levels over time. This bill, however, would tax all vaping products the same, regardless of the concentration of nicotine. If the intent of CSHB 4013 is to protect young people from becoming addicted to nicotine through e-cigarettes, the bill should tax or better regulate brands and products targeting young people with high concentrations of nicotine. Many vaping businesses are good actors who hope to help individuals with their smoking addictions and already pay taxes and incur costs to adequately train employees to correctly check for the age of purchasers. The bill should not burden businesses that bring stable jobs and more money into Texas.

NOTES: According to the Legislative Budget Board, the bill would have an estimated positive impact of about \$36 million to general revenue related funds in fiscal 2020-21.