

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 179** HLS 23RS 301

Bill Text Version: **REENGROSSED**

Opp. Chamb. Action: **w/ SEN COMM AMD**

Proposed Amd.:

Sub. Bill For.: **REVISED**

Date: June 1, 2023	10:18 AM	Author: WHEAT
Dept./Agy.: Revenue		Analyst: Deborah Vivien
Subject: Prohibition of sales of certain vaping products		

TOBACCO/TOBACCO PRODUCTS

RE1 DECREASE GF RV See Note

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Provides relative to the sale of certain vapor products for electronic cigarettes and similar devices

Current law imposes a tax of \$0.05 per milliliter of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used. Vaping products are also subject to state sales tax. The proceeds primarily accrue to the state general fund.

Proposed law prohibits the sale or service of consumable nicotine liquid solution containing a characterizing flavor on or about any premises which sells tobacco products, alternative nicotine products or vapor products. Proposed law limits nicotine products sold in the state to those with a pending, appealed or granted application for a FDA marketing order (product on market by 8/1/16 and applied by 9/9/20) with information submitted by the manufacturer to ATC beginning 10/1/23. The ATC must maintain and publish a directory of products eligible for sale in the state and will limit remittances of sales and excise taxes to the reported products.

EXPENDITURES	2023-24	2024-25	2025-26	2026-27	2027-28	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$95,000	\$77,000	\$77,000	\$77,000	\$77,000	\$403,000
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$95,000	\$77,000	\$77,000	\$77,000	\$77,000	\$403,000

REVENUES	2023-24	2024-25	2025-26	2026-27	2027-28	5 -YEAR TOTAL
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total						

EXPENDITURE EXPLANATION

Initially, the Office of Alcohol and Tobacco Control (ATC) indicated that enforcement efforts are currently accommodated in the budget, and no additional permits will be required. However, after publication of the engrossed bill fiscal note, ATC submitted a revised fiscal note response stating that this bill will require 4 additional agents at a total cost of \$381,000 in FY 24 and \$225,000-\$250,000 annually thereafter. The justification concerned enforcement efforts spread among the 30 agents at ATC that will take longer given the specific nature of the prohibited products as conducted by more than 7,000 businesses selling tobacco products. The reengrossed version of the bill retains the prohibitions but also limits sales for resale to those made through a wholesaler in the state. ATC is required to create and maintain a directory of approved products that may be sold in the state. Compared to current enforcement, the bill appears to streamline efforts once fully operational but could require additional resources for the initial implementation. At publication, LFO has not received an updated expenditure estimate from ATC so assumes these efforts can be accomplished with the engrossed bill expenditure estimate.

The Legislative Fiscal Office does not concur that four agents are needed to implement this bill but concedes that one additional agent may alleviate the extra time requirements possible with enforcement of more nuanced product prohibitions

EXPENDITURE EXPLANATION CONTINUED ON PAGE 2

REVENUE EXPLANATION

The sale prohibition portion of the bill will serve to reduce state general fund revenue by an amount equal to current excise and sales taxes collected on products that would no longer be allowed for sale, namely nicotine-containing vaping products with any characterizing flavors, which are defined in the bill as distinguishing flavor, taste or aroma other than tobacco, imparted prior to or during consumption. However, ATC must create a directory of products eligible to be sold in the state tied to federal provisions. The timing and effectiveness of these enforcement provisions lack the certainty to place an explicit value on potential impacts, particularly since vaping is a relatively new market and the enforcement provisions may require a substantial ramp up.

Current collections of excise tax on liquid nicotine are roughly \$5 M per year and sales tax of an indeterminate amount is collected on the retail purchase of vaping products. The magnitude of the impact to sales if only non-flavored vaping products are available is unknown, though CDC data indicates that roughly 75% of current sales are flavored (not specific to nicotine). However, the addictive nature of nicotine may prompt elevated sales substitution to non-flavored vaping products. Based on other state's experiences, even with substitution effects, it is expected that prohibiting sales of all flavors of vaping products except tobacco will reduce state general fund revenue in excess of \$500,000, possibly in the millions.

REVENUE EXPLANATION CONTINUED ON PAGE 2

<u>Senate</u>	<u>Dual Referral Rules</u>	<u>House</u>
<input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}		<input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
<input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}		<input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

Alan M. Boxberger

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CONTINUED EXPLANATION from page one:
CONTINUED FROM PAGE 1

EXPENDITURE EXPLANATION

as compared to existing efforts. To the extent one agent proves insufficient, additional resources may be required. The expense of one agent is valued from the submitted ATC figures divided by 4, which is rounded to \$95,000 in FY 24 and \$55,000 annually thereafter (plus 40% for related benefits). ATC indicates that self-generated revenue (SGR) is available to cover the additional expenses, which is substantiated by actual collections compared to appropriations over the last 5 years. As an agency allowed to retain SGR each year, ATC currently has about \$11.2 M in reserve and has collected an average of \$372,000 more than appropriated each year for the last 5 years. When comparing actual collections to actual spending through FY 22, ATC has added an average of \$1.1 M to reserves annually since FY 18.

REVENUE EXPLANATION

The bill does not appear to address the availability of these products online as the sale and service prohibition in the bill is based on the premises of the sale. However, it is also not clear whether online vendors are in compliance with sales and excise tax remittance requirements.

Senate Dual Referral Rules

13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}

13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House

6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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