

**SUBJECT:** Specifying telecommunications classification for franchise tax calculation

**COMMITTEE:** Ways and Means — favorable, without amendment

**VOTE:** 8 ayes — Y. Davis, Bohac, Darby, Murr, Raymond, Shine, Springer, Stephenson

0 nays

3 absent — D. Bonnen, E. Johnson, Murphy

**WITNESSES:** For — None

Against — None

On — (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

**BACKGROUND:** Tax Code, sec. 171.002 sets the general franchise tax rate at 0.75 percent of taxable margin. For taxable entities primarily engaged in retail or wholesale trade, this rate is 0.375 percent of taxable margin.

Sec. 171.002(c)(3) specifies that taxable entities that provide telecommunications services do not qualify for the reduced retail and wholesale franchise tax rate.

**DIGEST:** HB 2126 would specify that selling telephone prepaid calling cards did not constitute the provision of telecommunications services for the purposes of franchise tax rate calculation.

The bill would take effect on January 1, 2018, and would apply only to a franchise tax report originally due on or after that date.

**SUPPORTERS SAY:** HB 2126 would allow the reduced franchise tax rate for wholesalers and retailers to fulfill its intended purpose. Recently, an administrative law judge held that the sale of prepaid calling cards is a telecommunications

service, effectively disqualifying providers of prepaid cards from receiving the reduced franchise tax rate. Under current law, a large wholesaler that derives even a fraction of revenue from selling prepaid calling cards would be disqualified.

The bill is intended to apply to wholesalers whose primary purpose is the sale of goods and would not alter the administrative law judge's holding determining the meaning of telecommunications services. Rather, the bill would clarify the intent of the telecommunications exclusion in franchise tax statute.

**OPPONENTS  
SAY:**

HB 2126 unfairly would provide reduced tax rates to service providers. The reduced franchise tax rate for wholesale and retail is intended to be applied to the sale of goods, not services, and the bill would circumvent the effect of the administrative law judge's holding that calling cards should be classified as a telecommunications service for tax calculation purposes.

**NOTES:**

A companion bill, SB 1726 by Birdwell, was referred to the Senate Finance Committee on March 23.