

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 359**  
**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

DATED: MARCH 11, 2016

**SUMMARY**

**Synopsis:** Raises minimum age for purchase and sale of tobacco products and electronic smoking devices from 19 to 21.

**Type of Impact:** A recurring State revenue reduction to the General Fund.  
An indeterminate net impact on municipal governments.

**Agencies Affected:** Department of the Treasury. Municipal governments.

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>                               | <b><u>Fiscal Year 2017*</u></b>                            | <b><u>Fiscal Year 2018</u></b>        | <b><u>Fiscal Year 2019</u></b>        |
|--|--|---------------------------------------|---------------------------------------|
| <b>State Revenue Loss</b>                          |  |                                       |                                       |
| <b><u>TOTAL</u></b>                                | <b><u>\$5.8 to \$16.2 million</u></b>                      | <b><u>\$5.6 to \$15.7 million</u></b> | <b><u>\$5.4 to \$15.1 million</u></b> |
| Cigarette Tax                                      | \$4.5 to \$12.5 million                                    | \$4.3 to \$12.0 million               | \$4.1 to \$11.6 million               |
| Sales and Use Tax                                  | \$1.1 to \$3.0 million                                     | \$1.1 to \$3.0 million                | \$1.0 to \$2.9 million                |
| Tobacco Products<br>Wholesale Sales and<br>Use Tax | \$0.2 to \$0.6 million                                     | \$0.2 to \$0.7 million                | \$0.2 to \$0.7 million                |
| <b>Net Local Cost</b>                              | <b>Potential indeterminate impact – See comments below</b> |                                       |                                       |

\*Assumes July 1, 2016 effective date

- The Office of Legislative Services (OLS) finds that prohibiting the sale of cigarettes and other tobacco products to individuals aged 19 and 20 would result in a reduction in State revenue from related taxes. The precise magnitude of this reduction is uncertain due to a variety of factors, particularly the rate at which individuals affected by the bill would circumvent its provisions, such as by acquiring taxable cigarettes through noncompliant retailers or through older buyers.
- The OLS estimates that, assuming an effective date of July 1, 2016, the bill would decrease State revenue by \$6 million to \$16 million in Fiscal Year 2017. The amount of forgone revenue would gradually decline over time, primarily as a result of a long-term declining trend in cigarette sales.

- The OLS also notes that the bill might indirectly affect State spending on health care (e.g. Medicaid or the State Health Benefits Program), by preventing some young people from developing tobacco habits that can cause health problems. Most of this impact would occur outside of the timeframe of this fiscal estimate. Effects on maternal and child health might manifest sooner, but the OLS lacks sufficient data to estimate the magnitude or net direction of such effects on State health care spending in the first few years.

## **BILL DESCRIPTION**

Senate Bill No. 359 of 2016 raises the minimum age for purchasing tobacco and electronic smoking devices from 19 to 21 years, and raises the minimum age from 19 to 21 years of a person to whom a vendor may sell, offer for sale, distribute, give, or furnish such products in New Jersey. The bill also amends various related statutes concerning penalties, fines, signage requirements, non face-to-face transactions, and enforcement provisions to reflect the increased minimum age.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS finds that prohibiting the sale of cigarettes and other tobacco products to individuals aged 19 and 20 would result in a reduction in State revenue from related taxes: the cigarette tax, the sales and use tax, and the tobacco products wholesale sales and use tax. The precise magnitude of this reduction is uncertain due to a variety of factors, particularly the rate at which individuals affected by the bill would circumvent its provisions, such as by acquiring cigarettes through noncompliant retailers or through older proxies. The OLS estimates that, assuming an effective date of July 1, 2016, the bill would decrease State revenue by \$6 million to \$16 million in Fiscal Year 2017. The amount of forgone revenue would gradually decline over time, primarily as a result of a long-term declining trend in cigarette sales.

The OLS expects the revenue reductions to affect only the General Fund. Parts of the cigarette tax and the tobacco products wholesale sales and use tax are dedicated to the Health Care Subsidy Fund and to debt service on cigarette tax revenue securitization bonds, but statutory law shields these dedications from the effects of decreasing revenue. Consequently, the General Fund portion of the cigarette tax collections would absorb the entirety of the revenue loss from the anticipated decrease in sales.

### ***Cigarette Tax***

According to a policy brief published in the American Journal of Public Health,<sup>1</sup> American smokers aged 18 to 20 consume an average of approximately 8.6 cigarettes per day. Data from the federal Centers for Disease Control and Prevention (CDC) indicate that the prevalence of

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<sup>1</sup> Winickoff, et. al. "Retail Impact of Raising Tobacco Sales Age to 21 Years." *American Journal of Public Health*: November 2014, Vol. 104, No. 11, pp. e18-e21.

smoking among New Jersey residents aged 18 to 24 is approximately 20.0 percent. Based on these estimates and current population data from the U.S. Census Bureau, the OLS estimates that New Jersey currently has approximately 44,000 smokers aged 19 and 20, who will purchase about 6.6 million packs of cigarettes per year in New Jersey in FY 2017 in the absence of the bill. At the current tax rate of \$2.70 per pack, this would suggest that individuals aged 19 and 20 will pay \$17.9 million in cigarette taxes in FY 2017. The OLS assumes that cigarette sales will decline by about four percent annually, consistent with recent trends.

However, the OLS expects that some individuals aged 19 and 20 would continue to consume cigarettes in spite of the bill's ban on their obtaining cigarettes, which they might obtain through either State-taxable sources (older social connections in New Jersey, vending machines, or noncompliant retailers), or non-taxable sources (out-of-State retailers, internet retailers, or black market sellers). The OLS is aware of no research to provide a reliable estimate for the magnitude of this effect on taxable sales, but based on information from the Institute of Medicine, the Surgeon General, and similar fiscal estimates conducted by other states, the OLS also assumes that the bill will result in a decrease in State-taxed tobacco consumption by individuals aged 19 and 20 between 25 and 70 percent. These assumptions yield an estimated reduction in cigarette tax revenue of approximately \$4.5 million to \$12.5 million in FY 2017, trending downward with the long-term trend in consumption.

#### Sales and Use Tax

By prohibiting certain sales, the bill may also lead to a reduction in revenue from the sales and use tax. With regard to cigarette sales, the estimate assumes the reduction in sales described above. It also assumes an average retail price of \$7.60 per pack of cigarettes in New Jersey, based on October 2015 data published by the Campaign for Tobacco-Free Kids. This results in a reduction in revenue from the sales and use tax of approximately \$0.9 million to \$2.5 million per year from taxable cigarettes alone, trending downward with the anticipated decline in consumption.

Available information on total retail sales of non-cigarette tobacco products and electronic smoking devices lead the OLS to project much smaller reductions in sales and use tax revenue associated with these products. However, sales of these products and associated revenues are expected to grow over time, in contrast to cigarettes. As revenue from the tobacco wholesale sales and use tax has grown at an average annual rate of five percent in recent years, this estimate assumes the same rate of sales and use tax growth associated with non-cigarette tobacco products. No State-specific data on sales of electronic smoking devices are available, but some market research suggests that sales may grow by approximately 25 percent per year, if not more. The total reduction in revenue from the sales and use tax, including revenue from taxable cigarettes, non-cigarette tobacco products, and electronic smoking devices, is estimated at \$1.1 million to \$3.0 million annually.

These estimates do not account for any shifting of prohibited expenditures to other taxable goods. To the extent that individuals may shift from buying products that are prohibited under the bill to other taxable items, the reduction in sales and use tax revenue attributable to the bill may be lower than estimated above.

#### Tobacco Wholesale Sales and Use Tax

The estimate applies similar assumptions to non-cigarette tobacco wholesale sales that are applied to sales of other products affected by the bill. The estimate also assumes that base revenue from the tobacco products wholesale sales and use tax will grow by about five percent annually, consistent with current trends. These assumptions yield an estimated reduction in

revenue of approximately \$0.2 million to \$0.6 million annually, trending slightly upward over time.

Other State revenue effects

It is also possible that the bill could also reduce payments from cigarette manufacturers made under the Tobacco Master Settlement Agreement (MSA), as cigarette sales are a major component in the formula that calculates MSA payments. Some of these payments are eventually received as State revenue from the Tobacco Settlement Fund. However, the State's allocable share of MSA payments is a fixed percentage (approximately 3.9 percent) of total MSA payments made nationwide, and the resulting State revenue is not directly influenced by State-specific sales. Consequently, this estimate assumes that the bill's impact on the Tobacco Settlement Fund revenue would be negligible.

Spending effects

The OLS also notes that, by limiting the access of young adults to cigarettes and other tobacco products, it is possible that some individuals may be diverted from developing tobacco habits that would lead to negative health outcomes. If the individual is enrolled in a State-funded health benefits program (e.g. Medicaid or the State Health Benefits Program), the State may be responsible for paying for health care services related to such health problems.

Most of these negative outcomes, such as cancer or diabetes, would take years or decades for a young person to develop as a result of smoking, and thus any effects would be outside of the scope of this fiscal estimate. Effects on maternal and child health might manifest sooner; smoking is associated with potentially costly health problems such as preterm delivery and stunted fetal growth, but smoking is also associated with lower fertility, which would have the opposite effect on health care costs. The OLS lacks sufficient data to estimate the magnitude or net direction of such effects on State health care spending.

Local effects

In addition to the impacts on the State discussed above, the OLS notes that the bill may have an indeterminate net fiscal impact on municipal governments, due to potentially increased municipal court costs offset by municipal revenue collected from penalties assessed under the bill. Although the OLS has insufficient information to estimate the number of additional court cases likely to occur under the bill, or resulting court costs and penalty revenue, the potential impact on any given municipality may be relatively minimal, given the relatively limited size of the affected population and the dispersion of applicable cases across the State. Further, the bill may not significantly increase local law enforcement costs, assuming that efforts to enforce the current restrictions applying to individuals under age 19 might be easily adapted to the new age range.

*Section:* Human Services

*Analyst:* David Drescher  
Senior Research Analyst

*Approved:* Frank W. Haines III  
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).