

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3178

STATE OF NEW JERSEY  
218th LEGISLATURE

DATED: JANUARY 3, 2020

SUMMARY

Synopsis:	Prohibits sale of menthol cigarettes and sale or distribution of flavored electronic smoking devices and related products.
Type of Impact:	Annual State cost increase; annual state revenue loss; annual local revenue and cost increases.
Agencies Affected:	Department of Law and Public Safety; Administrative Office of the Courts; Municipal Courts; and Local Health Departments; Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Loss		Indeterminate	
Local Cost Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) finds the provision of the bill prohibiting the sale of menthol cigarettes could result in an annual indeterminate reduction in State revenues from the cigarette tax and the sales and use tax. The precise magnitude of this impact is uncertain, since consumers of menthol cigarettes may seek alternative means of tobacco consumption that are still taxable or may choose to quit smoking. The OLS notes that imposing this ban could reduce cigarette tax revenues by as much as \$195 million and sales and use tax revenues by as much as \$36 million annually if all consumers of menthol cigarettes cease to purchase those products or alternative products that are subject to taxation.
- The OLS expects any revenue impacts on cigarette tax collections to initially affect only the State’s General Fund, given that certain amounts of cigarette tax collections are statutorily dedicated for specific purposes before any residual tax revenues flow into the General Fund. Impacts on sales tax collections will affect the General Fund and the Property Tax Relief Fund.
- The OLS estimates that the bill will also cause indeterminate annual expenditure increases to the Department of Law and Public Safety, the Administrative Office of the Courts, municipal

courts, and local health departments from the additional workload to implement the provisions of the bill and adjudicate violations.

- The OLS also finds this legislation will result in additional annual municipal revenue from penalties received from individuals in violation of the bill's provisions. Penalties recovered are required to be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

## **BILL DESCRIPTION**

This bill prohibits the sale and commercial distribution of menthol cigarettes and updates current law to reflect the federal ban on clove-flavored cigarettes. The bill provides that a retailer who violates this provision of the bill pertaining to menthol cigarettes is to be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. A retailer may also have his license revoked after a second or subsequent violation. This bill also prohibits the sale, offer for sale, and distribution of flavored electronic smoking devices and related products and a retailer who violates this prohibition will be liable for a civil penalty of not less than \$500 for the first violation, not less than \$750 for the second violation, \$1,000 for the third violation, and not less than \$1,000 and a three-year suspension of the person's retail dealer license for the fourth and each subsequent violation. Civil penalties are to be collected in a summary proceeding before the municipal court having jurisdiction. Penalties will be recovered by and in the name of the State by the local health agency, and will be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

#### ***Prohibition on Sale of Menthol Cigarettes***

The OLS finds that prohibiting the sale of menthol cigarettes could result in an annual reduction in State revenues from the cigarette tax and the sales and use tax. The precise magnitude of the bill's impact is uncertain, since consumers of menthol cigarettes may seek alternative means of tobacco consumption that are still taxable or may choose to quit smoking. The OLS notes that imposing this ban could reduce cigarette tax revenues by as much as \$195 million and sales and use tax revenues by as much as \$36 million annually if all consumers of menthol cigarettes cease to purchase those products or alternative products that are subject to taxation.

The OLS expects any revenue impacts of the bill on cigarette tax collections to initially affect only the State's General Fund, given that certain amounts of cigarette tax collections are statutorily dedicated for specific purposes before any residual tax revenues flow into the General Fund. Impacts on sales tax collections will affect the General Fund and the Property Tax Relief Fund.

The cigarette tax is imposed at a rate of \$0.135 per cigarette, or \$2.70 per pack of 20 cigarettes. Preliminary cigarette tax collections<sup>1</sup> for FY 2019 totaled \$591 million. Of the \$591 million collected, \$391.5 million was dedicated to the Health Care Subsidy Fund, \$94.8 million was dedicated to debt service, \$5.9 million was dedicated for anti-smoking initiatives, and \$98.7 million was deposited into the State's General Fund. Based on the \$591 million in cigarette tax collections for FY 2019, approximately 218.9 million packs of cigarettes were taxed and sold in the State during the fiscal year.

According to the Federal Trade Commission's Cigarette Report for 2017, the domestic market share of menthol cigarettes was 36 percent in 2017<sup>2</sup>, and the five-year average for 2013 through 2017 was 33 percent. Applying the five-year average to the total number of packs sold during FY 2019 in this State yields approximately 72.2 million packs of menthol cigarettes (218.9 million packs of cigarettes \* 33 percent = 72.2 million packs of menthol cigarettes), valued at roughly \$195 million in revenue (72.2 million \* \$2.70 per pack = \$195 million).

The OLS cannot predict the behavior of smokers who currently purchase menthol cigarettes in this State in response to a menthol cigarette ban. Those who currently purchase menthol cigarettes could choose to smoke non-flavored cigarettes, switch to alternatives like vaping, cross over into neighboring states where the sale of menthol cigarettes is still legal, purchase menthol cigarettes illegally, or quit smoking altogether. If those who currently purchase menthol cigarettes choose to quit smoking or pursue methods of acquiring menthol cigarettes that are not subject to the State's cigarette tax, cigarette tax revenues could fall by as much as \$195 million annually (the total estimated share of State cigarette tax collections attributable to menthol cigarettes). Although the actual reduction in cigarette tax revenues will not be of this magnitude, the effects of this bill coupled with the long-term decreasing trend in smoking rates will result in some decline in cigarette tax revenues over the next ten years. This decline will negatively affect statutory dedications of this revenue source, including the dedication to the Health Care Subsidy Fund and anti-smoking initiatives.

The OLS recognizes that this ban could have additional revenue impacts, such as decreasing sales and use tax collections from sales of menthol cigarettes. Assuming that the estimated 72.2 million packs of menthol cigarettes were sold at the State's average retail price per pack of \$7.51<sup>3</sup>, the sales tax would yield roughly \$36 million from those sales (72.2 million packs \* \$7.51 per pack \* 6.625 percent = \$36 million). Given that sales tax revenues are mostly deposited into the State's General Fund (a portion is dedicated to the State's Property Tax Relief Fund - \$5.4 million in this calculation), that fund could see a reduction in available resources of as much as \$30.5 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.

The OLS also notes that, by prohibiting the sale of menthol cigarettes, it is possible that some individuals will be diverted from developing or continuing 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. The OLS lacks sufficient data to estimate the magnitude or net direction of such effects on State health care spending.

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<sup>1</sup> The cigarette tax collections were obtained from various accounts in the State's accounting system as of November 8, 2019. These numbers do not represent audited amounts and could be subject to change.

<sup>2</sup> Table 7B – Domestic Market Share of Menthol and Non-menthol Cigarettes (2001-2017) ([https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2017-federal-trade-commission-smokeless-tobacco-report/ftc\\_cigarette\\_report\\_2017.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2017-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_2017.pdf))

<sup>3</sup> State Excise and Sales Tax Per Pack of Cigarettes Total Amounts and State Rankings – Campaign for Tobacco-Free Kids (June 28, 2019).

*Prohibition on Sale of Distribution of Flavored Electronic Smoking Devices and Related Products*

The OLS concludes that the bill will cause indeterminate annual expenditure increases to the Department of Law and Public Safety, the Administrative Office of the Courts, municipal courts, and local health departments from the additional workload to enforce the ban on flavored electronic smoking devices and related products. The OLS also finds this legislation will result in indeterminate annual municipal revenue accruing from penalty payments received from violators of the new statutory provisions. The civil penalty established by the bill is a minimum of \$500 for a first offense, a minimum of \$750 for the second offense, \$1,000 for the third offense, and not less than \$1,000 and a three-year suspension of the person's retail dealer license for the fourth and each subsequent offense.

As this is a new offense, the OLS has insufficient data to serve as a basis for projecting the frequency of civil penalty violations subject to the provisions of the bill. The OLS cannot determine 1) the number of violations that will result from the bill's provisions and, by extension, 2) the total of any resultant fine, fee, or assessment collections. The bill requires that any penalties recovered are to be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality. The OLS additionally notes that due to financial constraints many penalties assessed on those persons convicted of crimes are not paid.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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