

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5385

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JULY 5, 2019

SUMMARY

- Synopsis:** Concerns sale, taxation, and forfeiture of container e-liquid.
- Type of Impact:** Indeterminate net impact on State General Fund revenues; potential indeterminate increase in State and local expenditures.
- Agencies Affected:** Department of the Treasury; Local governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2020 and Thereafter</u>
State Net Revenue Impact	Indeterminate
Potential State Expenditure Increase	Indeterminate
Potential Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate net impact on annual State revenue and a potential increase in annual State and local expenditures.
- State revenue collections may decline as a result of this bill since, in certain instances, the new tax that will be imposed on sales of container e-liquid containing nicotine could generate less revenue than the current per milliliter tax. However, other provisions in the bill could partially or entirely offset the revenue loss from changing the tax imposed on these products. Specifically, the bill includes: a) a new retail sales tax on container e-liquid, including sales of container e-liquids that lack nicotine; b) a new annual \$50 licensing fee for vapor business licenses; and c) penalties the Division of Taxation may impose for selling container e-liquid without a license.
- The bill may increase State administrative expenditures associated with the regulation and enforcement of the legal sale of container e-liquid and county expenditures to the extent that offenders are committed to county jail for failing to pay related penalties.

BILL DESCRIPTION

This bill imposes licensing requirements on vapor businesses, limits the sale of container e-liquid to vapor businesses, and imposes a 10 percent tax on the retail sale of container e-liquid. The bill also exempts container e-liquid from the wholesale tax on liquid nicotine (\$0.10 per fluid milliliter).

Container e-liquid is defined as a container of liquid nicotine or other liquid where the liquid is intended for use in an electronic smoking device, but does not include prefilled containers where the container is intended for use in an electronic smoking device (e.g. cartridges). A vapor business is a retail business where more than 50 percent of its retail sales are derived from electronic smoking devices, related accessories, and liquid nicotine. A retail business that does not sell container e-liquid is not included in the definition of vapor business.

The bill requires vapor businesses to be licensed. A seller may be liable for a penalty of up to \$1,000 each day that a seller sells container e-liquid without a license. In addition, container e-liquid will be subject to forfeiture if it is possessed for retail sale by a person that is not licensed. Under the bill, container e-liquid may only be sold by vapor businesses.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in an indeterminate net impact on annual State revenue and an indeterminate potential increase in annual State and local expenditures.

The bill exempts container e-liquid from the wholesale tax on liquid nicotine (\$0.10 per fluid milliliter), which will instead be taxed at the rate of 10 percent of the retail price of container e-liquid. The imposition of this new tax will generate revenue for the State that could partially or entirely offset the revenue loss from eliminating the per-milliliter tax on container e-liquid. For example, a container of 30 milliliters of liquid nicotine is currently subject to \$3.00 in tax (\$0.10 per milliliter). If such an item sells for \$20.00, the tax under this bill will instead be \$2.00 (10 percent of retail sale price), with the net impact being a loss of \$1.00 in revenue.

The OLS notes, however, that the new retail tax is imposed on container e-liquid whether or not there is nicotine in the liquid. In contrast, the current \$0.10 per-milliliter tax only applies to liquid that includes nicotine. The retail tax will therefore apply to more sales of container e-liquid than the current per-milliliter tax and will help to further offset the lost revenue from exempting container e-liquid from the per-milliliter tax.

Besides the tax revenue implications, the bill will generate revenue from the annual \$50 licensing fee for vapor business licenses. The bill may also generate revenue from penalties the Division of Taxation is authorized to impose on persons selling container e-liquid without a license. The penalty is up to \$1,000 each day that a seller sells container e-liquid without a license. However, State administrative expenditures may increase because of costs associated with the regulation and enforcement of the legal sale of container e-liquid.

Finally, the bill allows a court to commit to county jail someone who fails to pay the penalty for selling container e-liquid without a license, up to 60 days for a first offense and up to 180

days for a second offense. Local expenditures may increase to the extent a court takes such action.

Section: Revenue, Finance and Appropriations

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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.).