

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1989

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JULY 8, 2022

SUMMARY

- Synopsis:** Prohibits sale of menthol cigarettes and flavored substances intended for hookah use.
- Type of Impact:** Annual reduction in State revenues to the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2023 and Thereafter</u>
State Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) finds that prohibiting the sale of menthol cigarettes, clove cigarettes, and flavored consumable hookah products could result in an annual indeterminate 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, clove cigarettes, and flavored consumable hookah products may seek alternative means of tobacco consumption that are still taxable or may choose to quit smoking.
- The OLS notes that imposing the ban on menthol cigarettes alone could reduce cigarette tax revenues by as much as \$205 million and sales and use tax revenues by as much as \$38 million annually if all consumers of menthol cigarettes cease to purchase those products or alternative products that are subject to taxation. The OLS cannot quantify the revenue impact of banning clove cigarettes and flavored consumable hookah products.

BILL DESCRIPTION

This bill extends the current ban on the sale of flavored cigarettes to include menthol cigarettes, clove cigarettes, and flavored consumable hookah products, which are defined under the bill to mean any substance, including, but not limited to, tobacco, that is marketed, designed, or otherwise intended to be smoked or otherwise consumed using a hookah. The bill additionally makes the

prohibitions and the penalties under the flavored cigarette ban applicable to retailers, rather than individuals. The existing penalties under the flavored cigarette bill will continue to apply, such that a retailer who makes a prohibited sale will 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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According to the Federal Trade Commission's (FTC) Cigarette Report for 2020, the domestic market share of menthol cigarettes was 37 percent in 2020. Based on FY 2021 revenue performance, approximately 205 million packs of cigarettes were sold in New Jersey during that period, which, based on the FTC's report, suggests that roughly 76 million packs sold contained menthol cigarettes. Thus, the amount of revenue generated from sales of menthol cigarettes was roughly \$205 million in FY 2021.

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 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 would fall by as much as \$205 million annually. The OLS recognizes that this ban would also reduce sales and use tax collections by as much as \$38 million annually.

Although actual reductions in cigarette tax revenues are unlikely to reach the maximum impact, the effects of this bill coupled with the long-term decreasing trend in smoking rates will result in some decline in cigarette tax revenues. This decline could negatively affect statutory dedications for this revenue source, including the dedication to the Health Care Subsidy Fund and anti-smoking initiatives. 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. A reduction in the smoking population could reduce health care related expenses covered by the State-funded health benefits program.

The OLS notes the bill will result in indeterminate annual municipal revenue accruing from penalty payments received from violators of the new statutory provisions.

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.).