

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2667 and 299
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: NOVEMBER 22, 2023

SUMMARY

Synopsis: Prohibits sale of all flavored cigarettes.

Type of Impact: Annual reduction in State revenues. Potential revenue increase to municipalities.

Agencies Affected: Department of the Treasury. Municipal governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2024 and Thereafter</u>
State Revenue Loss	Indeterminate
Potential Local Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that prohibiting the sale of menthol and clove cigarettes would result in an indeterminate 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 and clove cigarettes may seek alternative means of tobacco consumption that are still taxable or may choose to quit smoking.
- The OLS notes that the annual State revenue loss will depend on how many consumers of menthol and clove cigarettes cease to purchase those products or alternative products that are subject to taxation.
- The bill would also result in potential, likely modest, municipal revenue increases from penalty payments received from violators of the new statutory provisions.

BILL DESCRIPTION

The bill extends the current State statutory ban on the sale of flavored cigarettes to include menthol and clove cigarettes.

New Jersey generally banned flavored cigarettes in 2008, but included in that law exceptions for menthol and clove cigarettes. In 2009, the federal government adopted a law banning all flavored cigarettes, including clove, but also provided an exception for menthol cigarettes. Under

the bill, the existing penalties for prohibited sales of flavored cigarettes will apply to sales of menthol and clove cigarettes. The bill makes the prohibitions and penalties under the flavored cigarette ban applicable to retailers rather than individuals.

The revision to the flavor ban means that a retailer is not to, either directly or indirectly by an agent or employee, or by a vending machine owned by the retailer or located in the retailer's establishment, sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person a cigarette, or any component part thereof, which contains a natural or artificial constituent or additive that causes the cigarette product or any smoke emanating from the cigarette or product to have a characterizing flavor other than tobacco. In no event is a cigarette or any component part thereof to be construed to have a characterizing flavor based solely on the use of additives or flavorings, or the provision of an ingredient list made available by any means.

The existing penalties under the current law concerning flavored cigarettes 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. In addition, the retailer's tobacco retailer license may be suspended or revoked upon a second or subsequent violation under certain circumstances. The licensee will also be subject to administrative charges based on a schedule issued by the Director of the Division of Taxation, which may provide for a monetary penalty in lieu of a suspension.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that prohibiting the sale of menthol and clove cigarettes would 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 and clove cigarettes may seek alternative means of tobacco consumption that are still taxable or may choose to quit smoking. The OLS notes that the annual State revenue loss will depend on how many consumers of menthol and clove cigarettes cease to purchase those products or alternative products that are subject to taxation.

For illustrative purposes, the OLS notes that according to the Federal Trade Commission's Cigarette Report for 2022, the domestic market share of menthol cigarettes was 36 percent nationwide in 2022. For reference, in New Jersey in FY 2022, the cigarette tax, imposed at a rate of \$2.70 per pack of 20 cigarettes, generated \$518.4 million in revenue for the State. However, only a portion of this amount appears as budgeted General Fund revenue. Of the amounts collected in FY 2022, \$391.5 million supported the offbudget Health Care Subsidy Fund, \$83.3 million was used off-budget to pay debt service on cigarette tax revenue securitization bonds, and \$5.7 million was dedicated for anti-smoking initiatives. The remaining \$38.0 million was accounted for on-budget as General Fund revenue.

The OLS cannot predict the behavior of smokers who currently purchase menthol and clove cigarettes in this State in response to a ban. Those who currently purchase menthol and clove cigarettes could choose to smoke non-flavored cigarettes or quit smoking altogether. If those who currently purchase menthol and clove cigarettes choose to quit smoking or pursue methods of

acquiring menthol and clove cigarettes that are not subject to the State's cigarette tax, State revenues will decline.

Although actual reductions in cigarette tax and sales and use tax revenues resulting from the bill cannot be known, the OLS assumes the effects of this bill, coupled with the long-term decreasing trend in smoking rates, will result in some decline in 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 and clove 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 bill would also result in potential, likely modest, municipal revenue increases from penalty payments received from violators of the new statutory 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.

Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Lead Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

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.).