

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3036

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: AUGUST 18, 2023

SUMMARY

- Synopsis:** Prohibits sale of crayon and chalk products containing lead.
- Type of Impact:** Annual State expenditure and revenue increases.
- Agencies Affected:** Department of Law and Public Safety; the Judiciary; Department of Corrections; State Parole Board.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) projects that this bill will result in annual State expenditure and revenue increases. The bill prohibits the sale, distribution, and manufacture of crayon and chalk products containing lead, which would be punishable as an unlawful practice or a crime of the second, third, or fourth degree.
- The following State agencies would incur caseload and expenditure increases: i) the Department of Law and Public Safety would have to prosecute additional cases; ii) the Judiciary would have to adjudicate additional cases; and iii) the Department of Corrections may have to house additional inmates and the State Parole Board would have to supervise their return to society.
- The OLS does not have sufficient information on the increase, if any, in the number of convictions and terms of imprisonment resulting from the bill's provisions and therefore is unable to estimate the costs to the State.
- In the event the bill's prohibitions would lead to any incarceration, the OLS notes that the Department of Corrections estimates the average annual cost of housing an inmate in a State correctional facility in FY 2023 was \$75,574.

- The OLS also notes the State may receive indeterminate revenue from fines and fees imposed on individuals guilty of crimes under the bill. However, the State's ability to collect criminal fines and penalties has historically been limited.

BILL DESCRIPTION

This bill prohibits the sale, distribution, and manufacture of chalk and crayon products made with or containing lead.

Under the bill, knowingly selling, offering for sale, distributing, or manufacturing a chalk product or crayon product made with or containing lead would constitute an unlawful practice under the State's consumer fraud act. A retailer's failure to remove a recalled product from retail display or return the product to the manufacturer or distributor as required under the bill would also constitute an unlawful practice under the State's consumer fraud act. A manufacturer or distributor's failure to issue a recall or to destroy and dispose of a recalled product as required under the bill would constitute a crime of the fourth degree in the case of a first offense, a crime of the third degree for a second offense, and a crime of the second degree for a third or subsequent offense.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects the bill's prohibition of the sale, distribution, and manufacture of crayon and chalk products containing lead will result in annual State expenditure and revenue increases. Violations would be punishable as an unlawful practice or a crime of the second, third, or fourth degree. The following State agencies would incur caseload and expenditure increases: i) the Department of Law and Public Safety would have to prosecute additional cases; ii) the Judiciary would have to adjudicate additional cases; and iii) the Department of Corrections may have to house additional inmates and the State Parole Board would have to supervise their return to society.

An unlawful practice under the consumer fraud act is punishable by a monetary penalty of up to \$10,000 for a first offense and up to \$20,000 for any subsequent offense. In addition, the Attorney General may issue cease and desist orders, and a violation may be subject to an assessment of punitive damages, treble damages, or costs to the injured party. The Department of Law and Public Safety may experience an increase in workload due to the new unlawful practice under the bill. However, under the current statute, P.L.2007, c.124, it is an unlawful practice to sell or resell or otherwise place in the stream of commerce a children's product that is deemed unsafe in that it is subject to a federal recall or safety warning. Since crayon and chalk products containing lead may be covered by the current statute in certain instances, it is unclear whether the unlawful practice under the bill would increase the caseload of the Department of Law and Public Safety.

A crime of the fourth degree is punishable by imprisonment for up to 18 months, a fine of up to \$10,000, or both. A crime of the third degree is punishable by imprisonment for three to

five years, a fine of up to \$15,000, or both. Generally, a presumption of non-incarceration applies for first-time offenders of the crime of the third and fourth degree. A crime of the second degree is punishable by imprisonment for five to 10 years, a fine of up to \$150,000, or both.

The OLS does not have sufficient information on the increase, if any, in the number of convictions and terms of imprisonment resulting from the bill's provisions and therefore is unable to estimate the costs to the State. Any increase in incarceration will result in increased costs to the Department of Corrections for housing inmates. In an informal estimate provided by the department, the average annual cost of housing an inmate in a State correctional facility was \$75,574 with a daily cost of \$207. The cost was based on FY 2023 actual expenditures and is an average of all facilities, not including the Special Treatment Unit at the Adult Diagnostic and Treatment Center that houses civilly committed residents. Any increase in incarceration under the bill also would result in increased costs to the State Parole Board to supervise the return to society of additional convicted persons.

The OLS notes the State may receive indeterminate revenue from fines and fees imposed on individuals guilty of crimes under the bill. However, the State's ability to collect criminal fines and penalties has historically been limited.

Section: Judiciary

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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.).