

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 1144 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: FEBRUARY 25, 2021

### SUMMARY

- Synopsis:** Prohibits sale of tobacco products and electronic smoking devices at certain pharmacies.
- Type of Impact:** Annual revenue loss to the State and annual increase in local expenditures and revenues.
- Agencies Affected:** Department of the Treasury; New Jersey Board of Pharmacy; and Local Governments.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2022 and Thereafter</u></b>
<b>State Revenue Loss</b>	Indeterminate
<b>Local Expenditure Increase</b>	Indeterminate
<b>Local Revenue Increase</b>	Indeterminate

- The Office of Legislative Services (OLS) finds that the bill could reduce the availability of cigarettes, tobacco products, and electronic smoking devices for purchase in this State. However, the OLS cannot predict the extent to which individuals who currently purchase those products from pharmacies located in New Jersey, as well as at any business that has a pharmacy located on its premises, will continue to purchase those products elsewhere in the State. If sales shift to other establishments that can legally sell these products, State revenues should remain largely unaffected. However, if the bill negatively affects taxable sales of those products in this State, the State could see a decrease in revenues collected from the taxes imposed on those products. For example, if the bill reduces taxable sales by 10 percent, total State revenues from those products could decrease annually by as much as \$60 million.
- Local municipalities could see an increase in expenditures and revenues from the enforcement of civil penalties prescribed in the bill. The OLS cannot determine whether revenues collected from the civil penalties will be enough to offset any additional costs incurred by the municipalities because of the enactment of the bill.

## **BILL DESCRIPTION**

The bill prohibits the sale of all tobacco products and electronic smoking devices, including any cartridge or other component of an electronic smoking device, at pharmacies located in New Jersey, as well as at any business in New Jersey that has a pharmacy located on its premises. The owner of a pharmacy or other business entity that violates this prohibition is subject to a civil penalty of not less than \$250 for a first violation, not less than \$500 for a second violation, and \$1,000 for a third or subsequent violation. A pharmacy at which a violation occurs may also be subject to disciplinary action by the Board of Pharmacy in the Department of Law and Public Safety's Division of Consumer Affairs, and any other business entity at which a violation occurs may be subject to disciplinary action by an agency, board, office, or other appropriate governmental entity having jurisdiction.

The bill will not apply to a department store or food retailer that is licensed to operate as a pharmacy practice site or that leases space on its premises to a third party for the operation of a pharmacy practice site. A "department store" is defined as a retail establishment where foodstuffs, ready-to-wear apparel, and accessories for adults and children, yard goods and household textiles, small household wares, furniture, electrical appliances, and accessories are regularly and customarily sold. The bill defines "food retailer" to mean a grocery store, super market, or retail establishment where groceries and other food stuffs are regularly and customarily sold in a bona fide manner for off-premises consumption, and the sale of groceries and other food stuffs constitutes at least 65 percent of the store's total annual sales.

The bill clarifies that nothing in the bill should be construed to prohibit the sale of smoking cessation products approved by the federal Food and Drug Administration and nothing in the bill is to prohibit a pharmacy or other business entity that has been issued a medical cannabis dispensary permit from dispensing medical cannabis in any form, along with paraphernalia and related supplies, to registered qualifying patients.

The bill takes effect on the first day of the seventh month next following the date of enactment.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The OLS finds that the bill could reduce the availability of cigarettes, tobacco products, and electronic smoking devices for purchase in this State. However, the OLS cannot predict the extent to which individuals who currently purchase those products from pharmacies located in New Jersey, as well as at any business that has a pharmacy located on its premises, will continue to purchase those products elsewhere in the State. If sales shift to other establishments that can legally sell these products, State revenues should remain largely unaffected. However, if the bill negatively affects taxable sales of those products in this State, the State could see a decrease in revenues collected from the taxes imposed on those products. For example, if the bill reduces taxable sales by 10 percent, total State revenues from those products could decrease annually by as much as \$60 million.

Local municipalities could see an increase in expenditures and revenues from the enforcement of civil penalties prescribed in the bill. The OLS cannot determine whether revenues collected

from the civil penalties will be enough to offset any additional costs incurred by the municipalities because of the enactment of the bill. The bill imposes civil penalties on owners of business entities that have pharmacy practice sites located on the premises and that violate the prohibition set forth in the bill. Those penalties are progressive, increasing from \$250 for an owner's first violation to \$1,000 for an owner's third violation and subsequent violations thereafter. The civil penalty is to be collected in a summary proceeding before the municipal court that has jurisdiction. Any penalty recovered pursuant to the provisions in the bill are paid into the treasury of the municipality in which the violation occurs. Thus, the bill could produce an indeterminate annual expenditure increase for municipalities that take on additional workloads because of the bill's enactment. However, the increase in expenditures may be offset by the collection of civil penalties from those owners found to be in violation of the provisions of the bill.

Lastly, those businesses found to be in violation of the provisions of the bill could be subject to disciplinary action. Such actions may include suspensions or revocations of licenses, which may entail indeterminate administrative costs and forgone licensure revenue, counteracted by civil penalties that may be applied by the State.

*Section: Revenue, Finance and Appropriations*

*Analyst: Jordan M. DiGiovanni  
Revenue 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.).