



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1319

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 2, 2020)

Drafting Number: LLS 20-1020
Prime Sponsors: Rep. Caraveo; Becker
Sen. Fields; Priola

Date: March 16, 2020
Bill Status: House Second Reading
Fiscal Analyst: Anna Gerstle | 303-866-4375
Anna.Gerstle@state.co.us

Bill Topic: **PROHIBIT SALE OF FLAVORED NICOTINE PRODUCTS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill prohibits the sale of flavored cigarettes, tobacco products, and nicotine products, and flavor enhancers, except by retailers with age-restricted premises. The bill decreases state revenue and transfers, increases state workload, and may reduce local government revenue on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Health and Insurance Committee.

Summary of Legislation

The bill prohibits retailers from selling, offering for sale, or otherwise providing flavored cigarettes, tobacco products, nicotine products, or flavor enhancers, beginning September 1, 2020. Flavored products include those that impart a taste or smell other than that of tobacco, including menthol, mint, wintergreen, fruit, herb, and spice, among other flavors.

The ban does not apply to retailers' age-restricted premises. An age-restricted premises is a retail premises at which a customer must present valid government-issued identification demonstrating that they are at least 21 years old in order to enter the premises.

The bill establishes a rebuttable presumption that a cigarette, tobacco product, nicotine product, or flavor enhancer is flavored if the retailer, manufacturer, employee, or agent has made a public statement or claim, uses any text or image on the product label, package, or signage, or has taken any action towards consumers that would indicate that the product has a taste or smell other than that of tobacco.

The Liquor Enforcement Division (LED) in the Department of Revenue has the authority to enforce the ban. The bill establishes the following fine schedule for violations:

- \$250 for the first violation within a 24-month period;
- \$500 for the second violation within a 24-month period;
- \$1,000, and the retailer is prohibited from selling cigarette, tobacco, or nicotine products at the location for seven days, for the third violation within a 24-month period;

- between \$1,000 and \$15,000, and the retailer is prohibited from selling cigarette, tobacco, or nicotine products at the location for 15 days, for the fourth violation within a 24-month period; and
- \$15,000, and the retailer is prohibited from selling cigarette, tobacco, or nicotine products at the location for at least one year, for the fifth or subsequent violation within a 24-month period.

The bill requires that retailers submit documentation to LED demonstrating that any flavored products have been destroyed. LED may promulgate rules regarding the form of the documentation.

Background

Statutory tax revenue. Colorado assesses a tax of \$0.01 per cigarette (\$0.20 per pack of 20) and an excise tax of 20 percent on non-cigarette tobacco products. This tax revenue is subject to TABOR and is deposited in the General Fund. Of statutory cigarette tax revenue, 27 percent is allocated to local governments based on the cigarette consumption in each jurisdiction. Based on the December 2019 Legislative Council Staff forecast, revenue from statutory cigarette and tobacco taxes is expected to total \$129.3 million in FY 2020-21.

Amendment 35 tax revenue. Pursuant to Amendment 35, Colorado assesses a tax of \$0.032 per cigarette (\$0.64 per pack of 20), and an excise tax of 20 percent on non-cigarette tobacco products. This tax revenue is exempt from TABOR and deposited in the Tobacco Tax Cash Fund, which is allocated as follows:

- 46 percent to the Health Care Expansion Fund;
- 19 percent to the Primary Care Fund;
- 16 percent to the Tobacco Education Programs Fund;
- 16 percent to the Prevention, Early Detection, and Treatment Fund; and
- 3 percent to the General Fund, which is further distributed for health related services, local governments, immunization programs, Child Health Plan Plus (CHP+), and other state programs.

Based on the December 2019 Legislative Council Staff forecast, revenue from Amendment 25 cigarette and tobacco taxes is expected to total \$56.3 million in FY 2020-21.

State Revenue

Beginning in FY 2020-21, the bill decreases state tax revenue by an indeterminate amount, and increases state General Fund revenue from fines.

Cigarette and tobacco taxes. The bill decreases state revenue from cigarette and tobacco tax revenue by an indeterminate amount beginning in FY 2020-21. This fiscal note assumes that current consumers are likely to purchase flavored products at retailers with age-restricted premises, or switch to unflavored products that are more widely available; these changes are not expected to impact the amount of cigarette or tobacco tax collections. To the extent that consumers reduce or eliminate consumption, the bill will reduce cigarette and tobacco tax revenue. The amount of this reduction is unknown; however, it is expected to become more significant in future years if fewer consumers begin to purchase such products. The analysis will be updated if more data becomes available.

Sales taxes. Cigarettes, tobacco products, and nicotine products are subject to the 2.90 percent state sales tax. To the extent that the bill decreases consumption of these products, the bill will correspondingly reduce state sales tax revenue. However, it is assumed that the bill will not change overall household saving and consumption patterns, such that decreased sales taxes paid on banned products are expected to be recouped in sales taxes paid on other products. To the extent that overall consumer spending decreases, or that consumers purchase tax-exempt goods instead, General Fund revenue will decrease by a greater amount than estimated.

Tobacco Master Settlement Agreement. Colorado receives annual payments from tobacco manufacturers under the Tobacco Master Settlement Agreement (MSA). Payments to the state depend in part on national cigarette consumption. The bill is expected to decrease national cigarette consumption by a minimal amount; therefore, any decrease in Tobacco MSA payments resulting from the bill is likewise assumed to be minimal.

Fine revenue. Because the prohibition on the sale of flavored products does not apply to retailers with an age-restricted premises, it is estimated that General Fund revenue from fines will be minimal. The fiscal note assumes that most retailers will abide by the bill's provisions. Based on recent data on the number of retailers and the assumption that up to three percent of compliance checks result in a violation, it is expected that fine revenue will not exceed \$15,000 in FY 2020-21. Revenue will increase in subsequent years if retailers commit subsequent violations within a 24 month period.

State Transfers

To the extent that the state collects less tobacco and cigarette tax revenue, the bill will reduce the amount transferred from the Tobacco Tax Cash Fund to various cash funds and the General Fund for programs administered by the Department of Health Care Policy and Financing, the Colorado Department of Public Health and Environment, and other state agencies.

State Expenditures

Beginning in FY 2020-21, the bill increases workload in the Department of Revenue and the Judicial Department and may decrease state expenditures for various state programs.

Department of Revenue. The bill increases workload for the LED in the Department of Revenue to enforce the ban. The division currently completes about 2,000 compliance checks per year at tobacco, nicotine, and cigarette retailers related to sales to minors. Enforcement of the ban on flavored products will be included in currently completed compliance checks. Workload will also increase to provide training for investigators.

Legal services. The Department of Revenue requires additional legal services hours to conduct rulemaking and handle additional administrative actions related to violations. Legal services are provided by the Department of Law. No change in appropriations is required.

Programs funded with cigarette and tobacco tax revenue. Any reduction in the transfers discussed above, or other programs funded by cigarette and tobacco tax revenue, will result in a corresponding decrease in expenditures for those programs. This analysis assumes that any change in appropriations for these programs will be handled through the annual budget process.

Judicial Department. To the extent that retailers challenge an agency decision to assess a fine or a prohibition on sale, the bill increases workload in the trial courts in the Judicial Department. Any increase is expected to be minimal.

TABOR refunds. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Local Government

To the extent the bill decreases state revenue from statutory cigarette tax revenue, it will decrease state General Fund distributions to local governments. Distributions are allocated based on consumption in the local jurisdiction; as a result, the revenue impact to local governments will vary based on changes in consumption patterns and the actual decrease in cigarette tax revenue.

The bill will also decrease revenue for municipal governments that impose excise taxes on cigarettes and tobacco products. Across all local governments, the bill is not expected to decrease total sales tax revenue; however, individual local governments may experience revenue increases or decreases as local economies respond to the ban on flavored tobacco products.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Health Care Policy and Financing	Higher Education
Human Services	Judicial
Law	Personnel
Public Health and Environment	Public Safety
Revenue	