

# REFERENDUM ON 2020 LAW THAT WOULD PROHIBIT THE RETAIL SALE OF CERTAIN FLAVORED TOBACCO PRODUCTS.

## OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on page 121 and the Secretary of State's website at [voterguide.sos.ca.gov](http://voterguide.sos.ca.gov).

A "Yes" vote approves (and allows to take effect) a law enacted by the State Legislature in 2020 that:

- Prohibits the retail sale of certain flavored tobacco products (including, but not limited to, cigarettes, e-cigarettes, chewing tobacco, and snuff) and tobacco flavor enhancers.
- Excludes from prohibition certain premium handmade cigars, loose leaf tobacco (not intended for making cigarettes), and shisha tobacco products (if sold by a hookah tobacco retailer meeting specified conditions).

A "No" vote rejects the law and prevents it from taking effect.

## SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Decreased state tobacco tax revenues ranging from tens of millions of dollars annually to around \$100 million annually.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

#### TOBACCO PRODUCTS

People use different types of tobacco products, including:

- **Cigarettes.** Smoking cigarettes is a common way to use tobacco. Aside from the naturally occurring tobacco flavor, cigarettes may be menthol flavored.
- **Electronic Nicotine Delivery Systems (ENDS).** These battery-operated devices (such as e-cigarettes, e-cigars, vapes, vape pens, cartridges, tanks, and mods) turn special liquid, which contains nicotine, into an aerosol. The user inhales the aerosol. The liquids might contain nontobacco flavors, such as fruit or mint flavors. Users also can add flavors separately.

- **Other Tobacco Products.** Other tobacco products can be used by smoking, inhaling, chewing, or other ways. These products include cigars, chewing tobacco, loose leaf tobacco, shisha tobacco (typically used in hookahs, a type of waterpipe), smokeless tobacco, heated tobacco, and nicotine pouches. Similar to ENDS, these products might have nontobacco flavors.

#### TOBACCO USE IN CALIFORNIA

According to survey data, around 10 percent of adults and youth in California use tobacco products. Surveys suggest that adults are much more likely than youth to smoke cigarettes regularly, while youth are more likely than adults to use ENDS products regularly. Among cigarette smokers, surveys suggest

ANALYSIS BY THE LEGISLATIVE ANALYST

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that about 20 percent of adults and about 50 percent of youth use menthol cigarettes. Surveys suggest that most ENDS users (both adults and youth) use flavored products.

## REGULATION OF TOBACCO

Tobacco use and secondhand smoke increase the risk of many health problems, such as cancer, heart disease, stroke, respiratory diseases, and complications during pregnancy. The federal, state, and local governments have implemented various laws and regulations aimed at protecting the public from the harmful health effects of tobacco.

**Federal Government Regulates Tobacco Products.** Federal law approved in 2009 gives the federal Food and Drug Administration (FDA) authority to regulate the manufacture, marketing, sale, and distribution of tobacco products. Federal law also requires the FDA to review and authorize new tobacco products, such as ENDS, before they can be sold legally. Federal regulations specifically affecting flavored tobacco products include:

- **Federal Law Banned Cigarettes With Flavors, Except Menthol.** Federal law banned cigarettes with nontobacco flavors, except menthol, beginning in 2009.
- **FDA Recently Proposed Rules Banning Menthol From Cigarettes.** In April 2022, the FDA proposed (1) banning menthol-flavored cigarettes and (2) banning all nontobacco flavored cigars. The FDA now is deciding whether to finalize these bans.

- **FDA Continues to Review Applications to Sell New Tobacco Products Legally.**

As of June 2022, the FDA had authorized 42 new tobacco products—23 ENDS products (tobacco flavored or unflavored) and 19 other tobacco products (menthol, mint, or wintergreen flavored or unflavored). It has denied more than 1 million nontobacco-flavored ENDS products.

- **FDA Has Taken Some Steps to Limit Access to ENDS Products.** In 2020, the FDA began stepping up enforcement against certain unauthorized ENDS products, including ENDS products targeted toward youth.

**State and Local Governments Can Have Additional Rules for Tobacco.** While they cannot change product standards, state and local governments can have additional, stricter rules for tobacco. For example, California raised the minimum age for buying tobacco from 18 to 21 in 2016, a few years before the federal government did so nationwide in 2019.

**Many Local Governments Have Banned Certain Sales of Flavored Tobacco Products.**

Around one-third of Californians live in areas with rules banning certain sales of flavored tobacco products. Most of these local policies include a ban on the sale of menthol cigarettes.

## STATE TOBACCO TAX REVENUES

**State Tobacco Tax Revenues Fund a Variety of Programs.** California charges tobacco taxes on cigarettes, ENDS, and other tobacco products. Last year, the state's tobacco taxes raised about \$2 billion.

## ANALYSIS BY THE LEGISLATIVE ANALYST

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Figure 1

### Program Areas Funded by State Tobacco Tax Revenues

Program Area	Share of Revenue Last Year
Health care	56%
Early childhood programs	21
Tobacco control	12
Medical research	4
Other	7

Previous ballot propositions approved by the voters direct most of these revenues to specific programs. Figure 1 lists the main program areas funded by these revenues.

As shown in the figure, most state tobacco tax revenue goes to health care programs. For example, tobacco taxes are one of many funding sources for the Medi-Cal program. (The federal-state Medicaid program, known as Medi-Cal in California, provides health coverage to eligible low-income California residents.) Tobacco taxes also fund tobacco control efforts, such as preventing tobacco sales to youth.

### RECENT EFFORT TO BAN FLAVORED TOBACCO

In 2020, the Legislature passed and the Governor signed a law—Senate Bill (SB) 793—to ban in-person stores and vending machines from selling most flavored tobacco products and tobacco product flavor enhancers. This law did not go into effect because a referendum on the law qualified for this ballot. When a referendum on a new state law qualifies for the ballot, the law is on hold until voters decide whether to put it into effect.

## PROPOSAL

Proposition 31 is a referendum on SB 793 of 2020.

### WHAT A “YES” AND “NO” VOTE MEAN

A “yes” vote on this referendum means that SB 793 goes into effect. A “no” vote means that SB 793 does not go into effect. SB 793 is described in more detail below.

### MAIN PROVISIONS OF PROPOSITION 31 (SB 793)

***Bans Most Sales of Flavored Tobacco Products and Tobacco Product Flavor Enhancers.*** Proposition 31 (SB 793) prohibits in-person stores and vending machines from selling most flavored tobacco products or tobacco product flavor enhancers. The proposition does not ban shisha (hookah) tobacco sold and used at the store, certain cigars, or loose-leaf tobacco.

***Defines Flavored Tobacco Products.*** Proposition 31 defines flavored tobacco products as those that have a flavor, apart from the regular tobacco flavor. For example, the flavor could include fruit, mint, menthol, honey, chocolate, or vanilla. The proposition defines a tobacco product flavor enhancer as a product that creates a flavor when added to a tobacco product.

***Charges a \$250 Penalty for Each Violation.*** Proposition 31 charges a \$250 penalty against stores and vending machine owners for each violation of the requirements described previously.

ANALYSIS BY THE LEGISLATIVE ANALYST

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## FISCAL EFFECTS

### ***Lower Tobacco Tax Revenues.***

Proposition 31 likely would reduce state tobacco tax revenues by an amount ranging from tens of millions of dollars to around \$100 million annually. (Last year, state tobacco tax revenue was about \$2 billion.) This revenue loss would reduce funding for the types of programs listed in Figure 1, such as health care.

The size of this revenue loss depends largely on how consumers respond to the proposition. Some responses—such as consumers switching from flavored to unflavored products—could have very little effect on tobacco tax revenues. Some other responses—such as consumers stopping tobacco use entirely—would reduce tobacco tax revenues. If this second type of response is very common, then the revenue loss could be around \$100 million annually. If it is less common, then the revenue loss could be in the low tens of millions of dollars annually. How consumers would respond to the proposition is uncertain, leading to a range of likely revenue losses. (As noted previously, the FDA has proposed banning menthol cigarettes and flavored cigars. If the FDA finalizes its ban, then the revenue loss due to the proposition would be smaller.)

### ***Uncertain Changes in State and Local Government Health Care Costs.***

State and local governments pay for health care for their employees and for qualifying low-income people. Proposition 31 likely would reduce tobacco use, leading to better health. In the short term, better health likely would reduce some health care costs for state and local governments. The amount of savings is uncertain. Over time, better health could lengthen some people's lives, which could increase health care costs. Given that the proposition could result in both health care savings and increased health care costs for state and local governments over time, the resulting long-term net change in state and local government health care costs is uncertain.

Visit <https://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/2022-ballot-measure-contribution-totals> for a list of committees primarily formed to support or oppose this measure.

Visit <https://www.fppc.ca.gov/transparency/top-contributors.html> to access the committee's top 10 contributors.