HB 20-1319

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 20-1020	**Date:**	March 2, 2020
Prime Sponsors:	Rep. Caraveo; Becker Sen. Fields; Priola	**Bill Status:**	House Health & Insurance
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Bill Topic: **PROHIBIT SALE OF FLAVORED NICOTINE PRODUCTS**

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☒ State Transfer
- ☒ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

The bill prohibits the sale of flavored cigarettes, tobacco products, and nicotine products, and flavor enhancers. The bill decreases state revenue and expenditures, increases state workload, reduces transfers between various cash funds, and reduces local government revenue on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of $10.4 million to the Department of Health Care Policy and Financing.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 20-1319

		FY 2020-21	FY 2021-22
Revenue	General Fund	($10.4 million)	($12.6 million)
	Tobacco Tax Cash Fund*	($22.6 million)	($26.9 million)
	Total	**($33.0 million)**	**($39.6 million)**
Expenditures	General Fund**	$8.9 million	$10.7 million
	Cash Funds	($21.9 million)	($26.1 million)
	Total	**($13.0 million)**	**($12.4 million)**
Transfers	Tobacco Tax Cash Fund*	$22.6 million	$26.9 million
	Various Cash Funds	($21.9 million)	($26.1 million)
	General Fund	($0.7 million)	($0.8 million)
	Total	**$0**	**$0**
TABOR Refund	General Fund	($10.4 million)	($12.6 million)

* *Reduced Tobacco Tax Cash Fund revenue decreases transfers to various cash funds and the General Fund.*
** *Includes a decrease in expenditures due to reduced cigarette and tobacco tax revenue, and an increase in General Fund expenditures to replace a portion of the decrease in cash fund revenue.*

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 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 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.

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

The bill decreases state revenue by $33.0 million in FY 2020-21 and $39.5 million in FY 2021-22. The revenue decrease is the net result of decreasing cigarette and tobacco tax revenue and increasing fine revenue.

Tax revenue. The bill is expected to decrease state tax revenue by $33.0 million in FY 2020-21 and $39.6 million in FY 2021-22 and subsequent years. The bill is expected to decrease cigarette and tobacco product consumption, thereby decreasing revenue from excise taxes levied on these products. The revenue decrease will affect statutory tax revenue credited to the General Fund and constitutional tax revenue credited to the Tobacco Tax Cash Fund as shown in Table 2. The General Fund revenue decrease represents tax revenue subject to TABOR, while the cash fund revenue decrease represents voter-approved, TABOR-exempt revenue collected pursuant to Amendment 35. The impact for FY 2020-21 is prorated to reflect the September 1, 2020, effective date for the ban on flavored products.

Table 2
State Tax Revenue Impacts of HB 20-1319*

	FY 2020-21	FY 2021-22
General Fund		
Cigarette Tax	($5.2 million)	($6.1 million)
Tobacco Products Tax	($5.2 million)	($6.5 million)
General Fund Total	**($10.4 million)**	**($12.6 million)**
Tobacco Tax Cash Fund		
Cigarette Tax	($17.3 million)	($20.3 million)
Tobacco Products Tax	($5.3 million)	($6.6 million)
Tobacco Tax Cash Fund Total	**($22.6 million)**	**($26.9 million)**
Total Tax Revenue Impact	**($33.0 million)**	**($39.6 million)**

**Totals may not sum due to rounding.*

Assumptions. Tobacco product manufacturer filings with the U.S. Securities and Exchange Commission indicate that menthol cigarettes and other flavored cigarettes account for between 25 percent and 30 percent of national cigarette sales, and research suggests that this share is higher for non-cigarette tobacco products, especially smokeless tobacco. A subset of flavored product consumers are expected to migrate to unflavored products. However, data are not available on how many people will migrate to unflavored products, as similar policies in other states have been adopted only recently, and policies adopted by local governments are likely result in purchases made in nearby jurisdictions. As a result, the fiscal note assumes that cigarette consumption will decrease by 20 percent, and that wholesale transactions of other tobacco products will decrease by 25 percent. To the extent that more consumers migrate to unflavored products, revenue will decrease by less than the amount estimated.

Assumed tax revenue decreases are applied relative to projections published in the December 2019 Legislative Council Staff forecast and the Amendment 35 revenue supplement to the forecast.

Sales taxes. Cigarettes, tobacco products, and nicotine products are subject to the 2.90 percent state sales tax. The bill will decrease consumption of these products, which 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. The bill increases state fine revenue from violations of the prohibition on the sale of flavored tobacco, nicotine, and cigarette products by at least $40,000. The fiscal note assumes that most retailers will abide by the bill's provisions. Under current law, about 8 percent of compliance checks at retailers result in a violation. Assuming the same percentage of checks result in fines for first-time violations, revenue will increase by $40,000. Revenue will increase in subsequent years if retailers commit subsequent violations within a 24 month period. Fine revenue is deposited in the General Fund.

State Transfers

Under current law, constitutional cigarette and tobacco excise taxes credited to the Tobacco Tax Cash Fund are distributed to two cash funds in the Department of Health Care Policy and Financing, two cash funds in the Department of Public Health and Environment, and the General Fund. Because the bill reduces tax revenue credited to the Tobacco Tax Cash Fund, it is expected to correspondingly reduce these transfers. Table 3 presents the bill's impact on transfers for FY 2020-21 and FY 2021-22.

Table 3
State Transfer Impacts of HB 20-1319

	FY 2020-21	FY 2021-22
Transfers from the Tobacco Tax Cash Fund		
Health Care Expansion Fund (HCPF)	($10.4 million)	($12.4 million)
Primary Care Fund (HCPF)	($4.3 million)	($5.1 million)
Tobacco Education Programs Fund (CDPHE)	($3.6 million)	($4.3 million)
Prevention, Detection, and Treatment Fund (CDPHE)	($3.6 million)	($4.3 million)
General Fund	($0.7 million)	($0.8 million)
Total Transfers	**($22.6 million)**	**($26.9 million)**

**Totals may not sum due to rounding.*

State Expenditures

The bill results in a net decrease in state expenditures of $13.0 million in FY 2020-21 and $15.4 million in FY 2021-22. The change is the result of the decrease in tax revenue discussed above and increased expenditure from the General Fund to replace a portion of reduced cash fund revenue transferred to HCPF. It also increases workload for the Department of Revenue and the Judicial Department. Specific impacts are listed in Table 4 and discussed below.

Table 4
Expenditures Under HB 20-1319

	FY 2020-21	FY 2021-22
Reduced Cash Fund Expenditures		
HCPF - Health Care Expansion Fund	($10,399,833)	($12,385,500)
HCPF - Primary Care Fund	($4,295,583)	($5,115,750)
CDPHE - various programs	($7,234,667)	($8,616,000)
Reduced General Fund Expenditures		
General Fund - Local government distributions	($1,462,500)	($1,715,625)
Increased General Fund Expenditures		
HCPF - Replace revenue to Health Care Expansion Fund	$10,399,833	$12,385,500
Total Cost	**($12,992,750)**	**($15,447,375)**

Department of Revenue. The bill increases workload and potentially increases costs for the Liquor Enforcement Division 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.

The division may incur costs related to the confiscation, transportation, and recycling of prohibited products. No information is currently available on these potential costs; the fiscal note will be updated if more information becomes available. It is expected that additional resources will be requested through the annual budget process, if needed.

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.

Health Care Policy and Financing. As listed in Table 3, the Department of Health Care Policy and Financing receives transfers from the Tobacco Tax Cash Fund that fund a portion of several programs, including Medicaid, CHP+, and services funded through the Primary Care Fund. The bill will reduce the funding available for those programs by at least $15.1 million in FY 2020-21. Of that amount, $10.4 million is from the Health Care Expansion Fund, which will require additional funding from the General Fund to replace the lost revenue. In future years, it is assumed that this funding will be adjusted through the annual budget process based on the actual reduction in revenue that occurs.

Colorado Department of Public Health and Environment. As listed in Table 3, the Department of Public Health and Environment receives transfers from the Tobacco Tax Cash Fund that fund all or a portion of several programs. The bill will reduce the funding available for the following programs by $7.2 million in FY 2020-21, varying by program: the State Tobacco Education and Prevention Partnership; the Cancer, Cardiovascular and Pulmonary Disease Grants Program; the Office of Health Equity Grants Program; the Immunization Program, and the Women's Wellness Connection Breast and Cervical Cancer Screening Program.

Distributions to local governments. The bill decreases state cigarette rebate distributions to local governments by $1.5 million in FY 2020-21 and $1.7 million in FY 2021-22 and subsequent years. Under current law, about 27 percent of statutory cigarette tax revenue credited to the General Fund is distributed to local governments. Because the bill decreases cigarette tax revenue, it also decreases this distribution. The distribution occurs pursuant to statute and no change to appropriations is required.

Other state agencies. The bill decreases state expenditures on any other state programs that receive funding from cigarette and tobacco tax revenue that is deposited into the General Fund.

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. The bill is expected to decrease state General Fund obligations for TABOR refunds by $10.4 million in FY 2020-21 and $12.6 million in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government

The bill decreases state General Fund distributions to local governments via the statutory cigarette tax rebate by an estimated $1.5 million in FY 2019-20 and $1.7 million in FY 2020-21. 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.

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.

State Appropriation

For FY 2020-21, the bill requires an appropriation of $10,399,833 from the General Fund to the Health Care Expansion Fund. In addition, departments that receive transfers may require adjustments to various line items in the Long Bill.

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