

AUGUST 2, 2022

# **Proposition 31: Referendum on 2020 Law That Would Prohibit the Retail Sale of Certain Flavored Tobacco Products**

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PRESENTED TO:

Senate Committee on Health  
Hon. Richard Pan, Chair

Assembly Committee on Health  
Hon. Jim Wood, Chair



LEGISLATIVE ANALYST'S OFFICE

# LAO Role in the Referendum Process

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## Analyses for Qualified Measures

- State law requires our office to provide impartial analyses of all statewide ballot propositions, including referenda, for the statewide voter information guide. This analysis includes a description of the proposition and its fiscal effects.



# Background

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## Tobacco Products

- People use different types of tobacco products, including:
  - Cigarettes, which can be menthol flavored.
  - Electronic Nicotine Delivery Systems (ENDS), such as e-cigarettes. These might contain nontobacco flavors. Users can also add flavors separately.
  - Other tobacco products, such as cigars, chewing tobacco, and shisha tobacco. These might have nontobacco flavors.

## Tobacco Use in California

- Various surveys suggest:
  - About 10 percent of adults and youth use tobacco products.
  - Adults are much more likely than youth to smoke cigarettes. Among smokers, about 20 percent of adults and 50 percent of youth use menthol cigarettes.
  - Youth are more likely than adults to use ENDS products. Most ENDS users use flavored products.

## Regulation of Flavored Tobacco

- **Federal Rules.** A 2009 law authorizes the federal Food and Drug Administration (FDA) to regulate tobacco, including authorizing new products. Some recent federal actions include:
  - Banned cigarettes with nontobacco flavors, except menthol, beginning in 2009.
  - Proposed to ban menthol cigarettes and all nontobacco-flavored cigars. The FDA is still deciding whether to finalize this rule.
  - Made determinations on new tobacco products. As of June 2022, the FDA had authorized 23 ENDS products (tobacco-flavored or unflavored) and 19 other tobacco products (menthol-, mint-, or wintergreen-flavored or unflavored). It had denied more than 1 million nontobacco-flavored ENDS products.



## Background

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(Continued)

- Stepped up enforcement against certain unauthorized ENDS products starting in 2020.
- **State and Local Rules.** State and local governments can have additional rules for tobacco. For example, about one-third of Californians live in areas with local bans on certain sales of flavored tobacco products.

### State Tobacco Tax Revenues

- **State Tobacco Tax Revenues Fund a Variety of Programs.** The state's tobacco taxes raised about \$2 billion last year. Previous voter-approved propositions direct tobacco tax-related funding to specific programs as shown in the figure.

#### 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

### Recent Legislative Effort to Ban Flavored Tobacco Is Subject of This Referendum

- **Senate Bill (SB) 793 Passed in 2020.** SB 793, passed by the Legislature and signed by the Governor in 2020, would ban in-person stores and vending machines from selling most flavored tobacco products and tobacco product flavor enhancers.
- **Voters Will Decide Fate of SB 793.** SB 793 did not go into effect because this referendum qualified for the ballot. Voters will decide whether to put SB 793 into effect.



# Proposal

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Proposition 31 is a referendum on SB 793 of 2020.

## What a “Yes” and “No” Vote on Proposition 31 Mean

- A “yes” vote means SB 793 goes into effect.
- A “no” vote means SB 793 does not go into effect.

## Main Provisions of Proposition 31 (SB 793)

- ***Imposes a Flavor Ban.*** Bans in-person stores and vending machines from selling most flavored tobacco products and tobacco product flavor enhancers. The ban does not apply to shisha (hookah) tobacco, certain cigars, and loose-leaf tobacco.
- ***Defines Flavored Tobacco Product.*** Defines a flavored tobacco product as one that has a flavor, apart from the regular tobacco flavor. Flavors could include fruit, mint, menthol, honey, chocolate, and vanilla, for example.
- ***Charges a Penalty for Each Violation.*** Charges a \$250 penalty for each violation of these requirements.



# Fiscal Effects

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## Lower State Tobacco Tax Revenues

- Proposition 31 likely would reduce state tobacco tax revenues by an amount ranging from tens of millions of dollars per year to around \$100 million annually.
  - Revenue loss would reduce funding for the types of programs listed in the figure.
  - Size of the revenue loss depends largely on consumer response to the proposition.
  - If the FDA finalizes its proposed ban on menthol cigarettes and flavored cigars, the revenue loss due to Proposition 31 would be smaller (due to the overlap between the federal and the Proposition 31 bans).

## Impact on State and Local Government Health Care Costs Uncertain

- Proposition 31 likely would improve health due to reduced tobacco use, which could reduce some government health care costs in the short term. On the other hand, better health could lengthen some peoples' lives, which could increase long-term government health care costs. Given the possibility of both savings and costs, the resulting long-term net impact on government health care costs is uncertain.

