Fiscal Note

March 21, 2024 Ted Barnett, Fiscal Analyst

S.18 – An act relating to banning flavored tobacco products and e-liquids

House Proposal of Amendment

Bill Summary

This bill makes various changes to tobacco product, tobacco substitute, and e-liquid sales in Vermont. These changes largely pertain to sales to people under the age of 21 and the sale of certain types of flavored products.

Changes to tobacco sales and licensing provisions include:

- Increasing penalties for selling to minors and instituting penalties for retailers and employees who knowingly enable the usage of tobacco products, substitutes, or e-liquids by someone younger than 21.
- Prohibiting the sale of discounted tobacco products and substitutes, e-liquids, and tobacco paraphernalia.
- The bill would create a new investigator position responsible for investigating and enforcing direct-to consumer sales and delivery of alcohol and tobacco laws.

Effective January 1, 2026, S.18 would ban the sale of any flavored tobacco substitute and e-liquid as well as menthol flavored tobacco products, including cigarettes, cigars, snuff, and snus. Federal regulations prohibit the sale of cigarette flavors other than menthol but for other tobacco products, non-menthol flavors such as mint and cherry would be permitted.

The bill would require the following reports:

- Health Equity Advisory Commission: Recommend by January 15, 2025 whether the sale of menthol products should be banned in Vermont.
- Office of the Attorney General: Report on or Before December 1, 2024 whether, and to what extent, Vermont may legally restrict advertising and regulate the content of labels on e-cigarettes and other vaping related products in the state.
- Department of Health: Report the results of the 2025 Vermont Youth Risk Behavior Survey on or before March 1, 2027, including data on retail sales of tobacco products, tobacco substructures, and e-liquids during calendar years 2024-2026.
- Department of Health: Report on use of tobacco products, substitutes and e-liquids in Vermont schools and ongoing nicotine and tobacco cessation efforts on or before January 16, 2026.

Fiscal Impact

The bill is estimated to result in a revenue loss of between $3.0 and $5.4 million in fiscal year 2026 from the January 1, 2026 effective date of the full ban, and between $7.1 and $14.2 million in fiscal year 2027. The revenue loss is split between the General Fund and the Education Fund:

Estimated Revenue Impacts of S. 18 (revenue loss in millions of dollars)

	FY2026	FY2027
Cigarette, Tobacco, E-Cigarette Taxes – General Fund Revenue Loss	($2.8) - ($4.7)	($6.7) - ($12.6)
Sales Tax on E-Liquids and Tobacco Products – Education Fund Revenue Loss	($0.2) - ($0.7)	($0.4) - ($1.6)
Total Revenue Loss	**($3.0) - ($5.4)**	**($7.1) - ($14.2)**

Note that the fiscal year 2026 estimate only reflects 6 months of lost revenue due to the January 1, 2026 effective date of the flavor ban.

The estimate ranges in fiscal year 2027 are higher than the fiscal note for the bill last year for several reasons. First, they incorporate the increased consumption of e-cigarettes and related products relative to cigarettes shown in recent tax data. Since a greater proportion of these products are flavored, the revenue loss resulting from a ban may be larger than estimated last year. Second, the flavor bans in Massachusetts and California generated larger than expected revenue losses, which informed the creation of a larger range of potential revenue losses.

This analysis also notes that while there are near-term revenue impacts of banning flavored products, the long-term public health benefits of reducing tobacco use are undeniable. However, the long-term fiscal benefits in reduced healthcare costs are difficult to estimate and may occur decades in the future.

In addition to these revenue impacts, the bill would create a new Investigator position at the Department of Liquor and Lottery (DLL) to enforce and investigate potential violations of laws relating to direct-to-consumer sales and delivery of alcohol and tobacco products. DLL would receive $160,000 from the Tobacco Settlement Fund in fiscal years 2025 and 2026 to pay for the position. The bill intends for the position to be built into DLL's budget starting in fiscal year 2027 and the cost of the position would be offset by revenues generated through fines related to enforcement activities.

Background

In fiscal year 2023, the cigarette tax on both flavored and unflavored cigarettes generated $51.7 million in revenue. Surveys indicate that many menthol cigarette smokers would quit smoking if menthol cigarettes were banned, suggesting that there could be a significant drop in total cigarette sales due to the ban. In fiscal year 2023, sales of other tobacco and tobacco substitute products including cigars, pipes, cigarillos, and e-cigarettes generated an estimated $23.1 million in other tobacco and e-cigarette tax revenue. Estimates of the sales of flavored products in these categories vary, but the data indicate that 20 to 40% of sales could be impacted.

An important, and difficult to predict, variable is the degree to which current users quit using tobacco and tobacco substitutes because of the ban. Surveys of adults and analysis from municipalities that have banned flavored tobacco and flavored tobacco substitutes indicate that between 30% and 65% of users would quit altogether. Surveys of youth tobacco users have indicated quit rates of 60% to 75%.

Two factors could impact this analysis and the range of potential revenue losses. First, even a small change in the quit rate could lead to significant changes in the revenue estimate. If more users switch to unflavored products rather than quitting tobacco altogether, for example, the estimated revenue loss from this proposal could decrease. Estimating behavior changes in response public policy is challenging and hard to pin down precisely.

Second, both California and Massachusetts experienced larger than expected revenue decreases after implementing flavored tobacco bans. These larger than expected revenue losses motivated the analysis of the revenue decline in those two states and the inclusion of a higher range in the estimates above. However, JFO does not expect a response as large as Massachusetts's example for several reasons. First, the Massachusetts ban started on June 1, 2020, during the first summer of the pandemic and data from the time directly after the onset of the COVID-19 pandemic is often unreliable. Additionally, Massachusetts also implemented a 75% tax on ENDS (Electronic Nicotine Delivery Services) products, so the increase in prices may have increased tax revenue loss. Finally, the proximity of Vermont's population to the border is different than in Massachusetts, and it is difficult to know if the same number of cross-border sales will occur as a result of a ban in Vermont. California experienced a larger than expected revenue loss as well, however, the magnitude of variability was not as large as Massachusetts.

Appendix: Resources

January 2024 Consensus Revenue Forecast: https://ljfo.vermont.gov/assets/Subjects/Consensus-Revenue-Forecasts-Legislative-Economic-Outlook/af1507f79a/Commentary-0124-final.pdf

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