



PROPOSITION 31 – IN DEPTH SUPPLEMENT

Referendum on 2020 Law That Would Prohibit the Retail Sale of Certain Flavored Tobacco Products Referendum

Introduction

This proposition is a referendum asking that a law already passed by the legislature and signed by the governor be approved by the voters. An entity or person that disagrees with a law has 90 days from the date of enactment of the law to circulate a petition asking for a referendum on the law. The law at issue cannot be enforced until the election is held.

Background

In August, 2020, SB793 which prohibited in-store retailers and vending machines from selling or possessing flavored tobacco products with the intent to sell passed the legislature and was signed into law. The ban included flavored juices which can be used to “vape”, menthol cigarettes, chewing tobacco, and flavored cigarillos, but excluded hookah and premium cigars.

Federal, state, and local governments have implemented various laws and regulations aimed at protecting the public from the harmful health effects of tobacco.

Federal law banned cigarettes with nontobacco flavors, except menthol, beginning in 2009. The federal Food and Drug Administration (FDA) has the authority to regulate the manufacture, marketing, sale, and distribution of tobacco products. The FDA also reviews and authorizes new tobacco products, such as electronic nicotine delivery systems (ENDS) before they can be sold legally. In April 2022, the FDA proposed (1) banning menthol-flavored cigarettes and (2) banning all nontobacco flavored cigars. A final decision has not been released at the time of this writing.

State and local governments regulate tobacco sales and use. 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.

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.

Tobacco tax 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. Previous ballot propositions approved by the voters direct most of these revenues to specific programs. 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 that provides health coverage to eligible low-income California residents. Tobacco taxes also fund tobacco control efforts, such as preventing tobacco sales to youth.

Proposal

A "yes" vote is to approve SB 793, which would ban the sale of flavored tobacco products so that it can be enforced as law.

A "no" vote is to repeal the contested legislation, SB 793, thus keeping the sale of flavored tobacco legal in the state.

Fiscal effects

Proposition 31 likely would reduce state tobacco tax revenues by an amount ranging from tens of millions of dollars to around \$100 million annually. The size of this revenue loss depends largely on how consumers respond to the proposition. Consumers might switch from flavored to unflavored tobacco, therefore having little effect on tobacco tax revenues. If consumers stop tobacco use entirely tobacco tax revenues would be reduced. The Legislative Analyst Offices estimates that the tax revenue loss could be from tens of millions up to around \$100 million each year.

State and local governments pay for health care for their employees and for qualifying low-income people. If Proposition 31 passes it 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. However over time, better health could lengthen some people's lives, which could increase health care costs. The bottom line is that the net change in state and local government health care costs is uncertain.

Supporters Say:

- Big Tobacco has spent millions lobbying so California retailers could keep selling the candy flavored products they market to children. More than 2 million middle and high school students now use e-cigarettes. Four out of five kids who have used tobacco started with a flavored product. Many e-cigarette users say they use e-cigarettes for the flavors, they like.
- SB 793 doesn't criminalize individuals from purchasing, using, or possessing flavored tobacco products which refutes a claim that the tobacco industry has been using: that the passage of SB 793 will make it easier for police to harass people who use menthol cigarettes, especially among African American



Opponents Say:

- Youth should never have access to any tobacco products, but this can be achieved without imposing a total prohibition on products that millions of adults choose to use.
- This law is unfair, particularly since lawmakers have exempted hookah, expensive cigars, and flavored pipe tobacco from the prohibition.
- This prohibition will hurt small, local businesses and jobs as products are pushed from licensed, conscientious retailers to an underground market, leading to increased youth access, crime and other social or criminal justice concerns for many California residents
- The state will lose valuable revenue that supports healthcare.

***Supporters:** (Signers of arguments are shown in bold)

Yes on Proposition 31, Committee to Protect California Kids sponsored by Nonprofit Health Organizations.

<https://voteyeson31.com/>

American Academy of Pediatrics, California
American Heart Association
American Cancer Society Cancer Action Network
California Hawaii State Conference NAACP
California Medical Association
Governor Gavin Newsom

***Opponents:** (Signers of arguments are shown in bold)

No on Prop 31- Californians Against Prohibition, California Coalition for Fairness.
(no website listed at time of writing)

Michael Genest, former Director, California Department of Finance
California Hispanic Chamber of Commerce
California Taxpayer Protection Committee
Yasha Nitkin, California Police Officer
Central Valley Business Federation
CalAsian Chamber of Commerce

*For information about total funding and major contributors, consult one of these sources: Voter's Edge (votersedge.org/ca), Power Search (powersearch.sos.ca.gov/quick-search.php), or Fair Political Practices Commission (www.fppc.ca.gov/transparency/top-contributors/nov-22-gen.html). The latter lists only the contributions of the campaign committees.