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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/19

SPONSOR Lopez **LAST UPDATED** _____ **HB** _____

SHORT TITLE Ban Flavored Tobacco Products **SB** 343

ANALYST Chenier

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	Indeterminate		Recurring	General Fund
	Indeterminate		Recurring	Other Cigarette Tax Beneficiaries

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

Amends the same section of laws as Senate Bill 342 and House Bill 259

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 343 adds a new section to the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act to ban the sale of flavored tobacco products. The bill also defines characterizing flavor, flavored tobacco product, and tobacco product. The new definition of tobacco product closely matches the new definition found in SB342 and HB259, which increase the legal tobacco product sale and purchase age.

FISCAL IMPLICATIONS

Tobacco product taxes are imposed on the sale of tobacco products. If the ban on flavored tobacco products results in a reduction of sales, there may be a small indeterminate reduction in revenue to the general fund and “other cig tax beneficiaries” who include UNM cancer center, UNM health sciences, DOH, and the Rural County Cancer Treatment Fund.

Neither of the respondents noted a base budget fiscal impact.

SIGNIFICANT ISSUES

DOH provided the following:

In September 2009, the Family Smoking Prevention and Tobacco Control Act (TCA) gave the U.S. Food and Drug Administration (FDA) authority over tobacco products. As part of the TCA, cigarettes with certain characterizing flavors, except menthol and tobacco, were prohibited

(www.fda.gov/tobaccoproducts/guidancecomplianceregulatoryinformation/ucm246129.htm). However, according to a November 2018 publication by the Campaign for Tobacco Free Kids, “Despite the FDA’s ban on flavored cigarettes, the overall market for flavored tobacco products is growing”

(www.tobaccofreekids.org/assets/factsheets/0383.pdf). The publication notes that tobacco companies in recent years have significantly stepped up the introduction and marketing of flavored tobacco products other than cigarettes, particularly e-cigarettes and cigars, as well as smokeless tobacco and hookah. As of November 2018, at least two states and over one hundred localities have passed restrictions on the sale of flavored tobacco products, although laws differ in their application to specific products and store types (<https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>).

The Centers for Disease Control (CDC) reports that “Flavoring has become the leading reason for current tobacco use among adolescents. The concurrent use of flavored products is prevalent among youths. E-cigarettes were the leading flavored product and often used with other flavored tobacco products” (www.cdc.gov/pcd/issues/2018/17_0389.htm).

In New Mexico, flavored tobacco use was highest among high school tobacco users (72%) and young adults ages 18-29 (74%). By comparison, 49% of adults ages 30 and older reported using flavored tobacco (2015 NM Youth Risk and Resiliency Survey and 2016 Tobacco Evaluation Survey). New Mexico’s unit sales of flavored e-cigarettes as a percentage of all e-cigarettes sold (30.8%) was significantly higher than the U.S. average (18.9%) and the highest among all states in 2015-2016

(www.cdc.gov/pcd/issues/2018/17_0576.htm).

The 2016 *Surgeon General’s Report on E-Cigarette Use Among Youth and Young Adults* concluded that the marketing of e-cigarettes is focused on promoting flavors and utilizing approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.

(https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf)

In December 2018, the *Surgeon General’s Advisory on E-Cigarette Use Among Youth* officially declared e-cigarette use among youth an "epidemic" in the United States. The *Advisory* stated “Most e-cigarettes contain nicotine. Nicotine exposure during adolescence can impact learning, memory, and attention. Many e-cigarettes come in kid friendly flavors. In addition to making e-cigarettes more appealing to young people, some of the chemicals used to make certain flavors may also have health risks.” The Surgeon General urged officials to act now by using a variety of policies and strategies, specifically including limiting access to flavored tobacco products by young people (<https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>).

State restrictions on flavor include: 1) general prohibitions or within certain buffer zones; 2) prohibition of menthol; 3) restriction of flavors used in e-cigarettes; and, 4) exemptions for certain retailers (Public Health Law Center, Tobacco Control Legal Consortium, <https://publichealthlawcenter.org/sites/default/files/resources/US-Sales-Restrictions-Flavored-Tobacco-Products-2018.pdf>). It is not clear whether “characterizing flavor” as defined in SB343 would include menthol, as other state laws specifically list “menthol.”

EC/gb