



# Proposition 31

## Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco Products

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### Purpose

Prop. 31 is a referendum that gives the voters the chance to approve or reject a recent bill passed by the legislature that would ban the sale of flavored tobacco products in California.

### Background

On August 28, 2020, Governor Newsom signed Senate Bill 793 (SB 793), which would ban the sale of flavored tobacco products and tobacco product flavor enhancers in California, with exceptions for hookah tobacco, loose leaf tobacco, and premium cigars. Retailers would be fined \$250 for each sale violating the law.<sup>1</sup> According to the bill's author, flavored tobacco products have led to a rise in youth smoking.<sup>2</sup> The bill was similar to flavored tobacco bans that had been enacted in several cities in California and Maine.<sup>3</sup>

Flavored tobacco products add sweet flavorings to products such as cigarettes, cigarillos, cigars, hookahs, smokeless tobacco, and electronic cigarettes. Electronic cigarettes have become extremely popular among teenagers in recent years, and may have contributed to a rise in youth smoking. According to the CDC, 13% of high school students reported current use of tobacco products, and 80.2% of high school tobacco users used a flavored tobacco product in the past 30 days.<sup>4</sup>

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<sup>1</sup> Senate Bill 793, "Flavored Tobacco Products," August 28, 2020, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB793](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB793).

<sup>2</sup> Senate Rules Committee, SB 793 Analysis, Author's Statement, June 23, 2020, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB793](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB793).

<sup>3</sup> Robbie Feinberg, "Flavored tobacco bans will take effect in 2 Maine communities this week," *Maine Public*, May 31, 2022, <https://www.mainepublic.org/health/2022-05-31/flavored-tobacco-bans-will-take-effect-in-2-maine-communities-this-week>; Nouran Salahieh, "L.A. to Ban Sale of Menthol, Candy-flavored Tobacco Products," *KTLA News*, June 3, 2022, <https://ktla.com/news/local-news/l-a-to-ban-sale-of-candy-flavored-tobacco-products/>.

<sup>4</sup> Centers for Disease Control and Prevention, "Youth and Tobacco Use," *CDC Data and Statistics*, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/youth\\_data/tobacco\\_use/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm).

Existing law already prohibits a person from selling tobacco products to a person under 21 years of age. Existing law also prohibits the use of tobacco products in county offices of education, on school district property, or near a playground or youth sports event. SB 793 aims to further restrict tobacco use in California to prevent young residents from developing a tobacco use habit.<sup>5</sup> However, the law has not gone into effect because opponents gathered signatures to qualify a referendum against the bill, which suspends the law until the voters decide whether to approve or reject it.

**Proposal**

Prop. 31 will decide the fate of Senate Bill 793. A “Yes” vote would allow the law to go into effect; a “No” vote would essentially veto it. If voters approve the ban, California would prohibit any tobacco retailer or any of its agents or employees from selling most flavored tobacco products. Flavored tobacco products, as defined in the bill’s text, would include products with “tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.”<sup>6</sup> A violation of this prohibition would result in a \$250 fine to the retailer for each violation of the bill’s provisions.<sup>7</sup>

**Fiscal Impact**

According to the Legislative Analyst’s Office (LAO), the flavored tobacco ban likely would cut into the tobacco sales tax revenue that California voters implemented through Prop. 56 in 2016. Last year, Prop. 56 raised almost \$2 billion in revenue, which primarily funds health care programs, while also supporting early childhood programs, tobacco control, and medical research.<sup>8</sup> The LAO anticipates that the drop in tobacco sales resulting from the ban would decrease the state’s tobacco tax revenue anywhere from tens of millions of dollars to up to \$100 million a year, depending on whether consumers switch to a flavorless tobacco product or stop tobacco use entirely.<sup>9</sup>

In addition, Prop. 31’s fiscal effect on local and state governments’ health care costs is uncertain. According to the LAO, the flavored tobacco ban should reduce tobacco use, which in turn would improve people’s overall health and lengthen their lives.<sup>10</sup> State and local

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<sup>5</sup> Senate Bill 793, “Flavored Tobacco Products.”

<sup>6</sup> Senate Bill 793, “Flavored Tobacco Products.”

<sup>7</sup> Senate Bill 793, “Flavored Tobacco Products.”

<sup>8</sup> Legislative Analyst’s Office, “Proposition 31: Referendum on 2020 Law That Would Prohibit The Sale of Certain Flavored Tobacco Products,” printed in the Official Voter Information Guide for November 8, 2022 General Election (California Secretary of State, August 15, 2022), <https://voterguide.sos.ca.gov/>.

<sup>9</sup> Legislative Analyst’s Office, “Proposition 31: Referendum on 2020 Law That Would Prohibit The Sale of Certain Flavored Tobacco Products.”

<sup>10</sup> Legislative Analyst’s Office, “Proposition 31: Referendum on 2020 Law That Would Prohibit The Sale of Certain Flavored Tobacco Products.”

governments would spend less on tobacco-related health problems in the short-term, but they might spend more later in a patient's life due to their increased life span.<sup>11</sup>

### Supporters

Prominent proponents of a Yes vote on Prop. 31 include:<sup>12</sup>

- California Democratic Party
- Governor Gavin Newsom
- The American Lung Association
- Tobacco-Free Kids Action Fund

A full list of supporters for Prop. 31 can be found at [voteyeson31.com](https://voteyeson31.com).<sup>13</sup>

The Committee to Protect California Kids Sponsored by Nonprofit Health Organizations has led the campaign to raise funds in support of the ban. As of September 15, 2022, it has raised about \$6.2 million.<sup>14</sup> Its main contributors include billionaire and former New York Mayor Michael J. Bloomberg (\$4.3 million), the Kaiser Foundation Health Plan Inc. (\$1.1 million), and the California Teachers Association (\$250,000).<sup>15</sup>

### Arguments of Supporters

Supporters argue that:

- A ban on flavored tobacco products will protect children from becoming dependent on highly addictive nicotine products.
- Children are more likely to consume flavored nicotine products, as opposed to tobacco flavored products.
- A ban on flavored tobacco products will save taxpayers money over time because the decreased tobacco use will reduce the strain on publicly funded healthcare programs.<sup>16</sup>

### Opponents

Prominent opponents include:<sup>17</sup>

- Philip Morris, Inc.
- R.J. Reynolds Tobacco Company

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<sup>11</sup> Legislative Analyst's Office, "Proposition 31: Referendum on 2020 Law That Would Prohibit The Sale of Certain Flavored Tobacco Products."

<sup>12</sup> "Endorsing Coalitions," *Vote Yes On 31*, <https://www.voteyeson31.com/our-team>.

<sup>13</sup> "Endorsing Coalitions," *Vote Yes On 31*.

<sup>14</sup> California Secretary of State, "Quick Search: Amount Raised for Ballot Measures," accessed September 15, 2022, <https://powersearch.sos.ca.gov/quick-search.php>.

<sup>15</sup> California Fair Political Practices Commission, "November 2022 General Election: Top Contributors," accessed September 15, 2022, <https://www.fppc.ca.gov/transparency/top-contributors/nov-22-gen.html>.

<sup>16</sup> Karmi Ferguson, *et al.*, "Argument in Favor of Proposition 31 (November 8, 2022 Election)," California Official Voter Information Guide, accessed September 15, 2022, <https://voterguide.sos.ca.gov/>.

<sup>17</sup> Alexander Nieves, *et al.*, "California Ballot Tracker: Interest groups prepare for expensive 2022 fights," accessed September 25, 2022, <https://www.politico.com/interactives/2022/california-ballot-measures-propositions-guide-2022/>.

- Swedish Match North America
- National Association of Tobacco Outlets

Further information can be found on the No on 31 website: <https://votenooprop31.com>.

As of September 15, 2022, The California Coalition for Fairness has raised \$22.6 million in contributions, primarily from large tobacco manufacturing companies.<sup>18</sup> The main contributions came from the R.J. Reynolds Tobacco Company (\$11.1 million) and Philip Morris, Inc. (\$10.6 million).<sup>19</sup>

### Arguments of Opponents

Opponents argue that:

- A ban on flavored tobacco products will lead to a significant tax revenue loss.
- A ban on flavored tobacco products will limit funding for healthcare, education, senior care, and law enforcement.
- A ban on flavored tobacco products will drive these sales in underground and illegal markets.<sup>20</sup>

### Conclusion

A YES vote is to uphold the contested legislation, Senate Bill 793 (SB 793), which would ban the sale of most flavored tobacco products in California.

A NO vote is to reject the contested legislation, Senate Bill 793 (SB 793), thus keeping the sale of flavored tobacco legal in the state.

*Date: October 4, 2022*

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<sup>18</sup> California Fair Political Practices Commission, "November 2022 General Election: Top Contributors."

<sup>19</sup> California Fair Political Practices Commission, "November 2022 General Election: Top Contributors."

<sup>20</sup> Michael Genest, et al. "Argument Against Proposition 31," *California Secretary of State Official Voter Information Guide*, July 25, 2022, <https://elections.cdn.sos.ca.gov/statewide-elections/public-display/prop-31-arg-against.pdf>.