

LFC Requester:	Noah Montano
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 5 FEB 2025 *Check all that apply:*
Bill Number: HB 268 Original Correction
 Amendment Substitute

Sponsor: Art De La Cruz **Agency Name and Code** 790 – Department of Public Safety
Short Title: Relating to the Tobacco **Number:** _____
 Products Act **Person Writing** Randy Larcher
Phone: 575-386-7712 **Email:** Randyt.larcher@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

HB 268 authorizes the NM Department of Justice to have concurrent jurisdiction with the Department of Public Safety over all investigations and enforcement activities related to the new section of the Act, Section 3.

Adds definitions for “snuff” and “timely filed premarket tobacco product application.”

Section 3 outlines requirements for the registration and certification of electronic nicotine delivery systems (ENDS) and nicotine liquid products sold in the state. Manufacturers must submit an annual certification by August 1, 2025, confirming compliance with U.S. Food and Drug Administration (FDA) regulations, including marketing orders or pending applications. They must list product details such as brand names, categories, and flavors. The certification must include documentation from the FDA and a \$250 fee per product. Manufacturers are required to notify the alcohol beverage control division of any changes in their certification. The alcohol beverage control division will maintain a public directory of compliant products, which will be updated monthly. Non-compliant products will be removed from the directory, and retailers have 30 days to sell any remaining inventory before those products are subject to seizure and destruction.

Section 3 also prescribes penalties for violations, including fines for manufacturers, retailers, and distributors who fail to comply. Manufacturers not registered to do business in the state must appoint a local agent and post a \$25,000 surety bond. The alcohol beverage control division will conduct compliance checks and publish results annually. The section also requires annual reports to the legislature and specifies that all fees and penalties collected will be deposited in a fund for enforcement. The act becomes effective on July 1, 2025.

FISCAL IMPLICATIONS

No fiscal impact to DPS.

SIGNIFICANT ISSUES

No significant issues to DPS.

PERFORMANCE IMPLICATIONS

The primary goal of these regulations is to ensure that only safe, FDA-approved electronic nicotine delivery systems (ENDS) and nicotine liquids are available on the market. By requiring manufacturers to demonstrate compliance with federal regulations and submit annual certifications, this bill would safeguard public health by ensuring that products are properly vetted for safety and efficacy before being sold. Moreover, the requirement for manufacturers to provide accurate certifications and supporting documents, along with penalties for non-compliance, would enable more effective enforcement of tobacco and nicotine laws.

Establishing a legally enforceable framework that includes provisions for penalties, fines, and enforcement procedures aligns with DPS’s mission to ensure public safety and maintain order. This framework strengthens law enforcement’s ability to target illegal distribution and sales of non-compliant ENDS products.

According to the Center for Disease Control (CDC) website, <https://www.cdc.gov/tobacco/e-cigarettes/about.html>, the types of e-cigarette products that are available and being sold changes rapidly. Between February 2020 and June 2024, e-cigarette unit sales increased from 15.7 million units to 21.1 million (34.7% increase) based on sales data from brick-and-mortar retailers only. As of June 2024, nearly 6,300 different e-cigarette products are available for purchase in the United States. Disposable e-cigarettes in youth-appealing flavors are the most commonly sold device type. In June 2024, e-cigarette dollar sales totaled \$488.9 million.

The CDC reports that in 2024, e-cigarettes were the most commonly used tobacco product among middle and high school students in the United States. 1.63 million (5.9%) students currently used e-cigarettes. This includes: 410,000 (3.5%) middle school students and 1.21 million (7.8%) high school students. Among

students who had ever used e-cigarettes, 43.6% reported current use. <https://www.cdc.gov/tobacco/e-cigarettes/youth.html>. These statistics are alarming, especially considering that there currently is very little regulation for ENDS. This bill will provide much-needed regulations and enforcement ability to protect our children and the public at large.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship, or relationship to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain.

AMENDMENTS

None at this time.