FISCAL IMPACT REPORT

SPONSOR De La Cruz **LAST UPDATED** 02/07/2025
ORIGINAL DATE 02/06/2025
SHORT TITLE Tobacco Product Act Changes **BILL NUMBER** House Bill 268
ANALYST Montano

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Penalty	$0	Up to $127.0	Up to $127.0	Up to $127.0	Up to $127.0	Recurring	Tobacco Products Administration Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD	No fiscal impact	Up to $2,000.0	No fiscal impact	Up to $2,000.0	Nonrecurring	Tobacco Products Administration Fund/General Fund
RLD	No fiscal impact	At least $860.0	At least $860.0	At least $1,720.0	Recurring	Tobacco Products Administration Fund/General Fund
DOH	No fiscal impact	About $95	About $95	About $95.0	Recurring	General Fund
Total	No fiscal impact	At least $2,955.0	At least $955.0	At least $3,815.0		Tobacco Products Administration Fund/General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Regulation and Licensing Department (RLD)
Department of Public Safety (DPS)
Department of Health (DOH)

Agency Analysis was Solicited but Not Received From
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 268

House Bill 268 (HB268) amends the Tobacco Products Act to introduce new regulations, reporting requirements, and penalties for manufacturers, distributors, and retailers of electronic nicotine delivery systems and nicotine liquids in New Mexico. The bill establishes state registration requirements for these products, creates a public directory of approved electronic nicotine delivery systems and nicotine liquids, and grants enforcement authority to the New Mexico Attorney General (NMAG). It also requires surety bonds for certain manufacturers, mandates detailed reporting, and introduces penalties for noncompliance.

The bill defines key terms, including "snuff" and "timely filed premarket tobacco product application", clarifying product classifications and regulatory obligations. It requires manufacturers of electronic nicotine delivery systems and nicotine liquids to register their products with the state and certify compliance with federal premarket tobacco product application requirements under the U.S. Food and Drug Administration (FDA). By August 1, 2025, and annually thereafter, manufacturers must submit a certification to the Regulation and Licensing Department (RLD) affirming that their products either have received market approval from the FDA or have a pending premarket tobacco product application that remains under review. Manufacturers must also submit supporting FDA documentation and pay a $250 certification fee per product.

The bill directs the Alcoholic Beverage Control Division of RLD to maintain and publish a directory of all approved electronic nicotine delivery systems and nicotine liquids. Products not listed in the directory may not be sold in New Mexico, and retailers and distributors must ensure that they only sell products included in the directory. The directory will be updated monthly, and retailers will have a 60-day grace period to remove non-listed products from their inventory.

HB268 also expands enforcement authority by allowing the New Mexico Attorney General (NMAG) to investigate violations related to electronic nicotine delivery systems and nicotine liquids. The bill strengthens penalties for noncompliance, allowing state regulators to seize, forfeit, and destroy unauthorized products and impose civil penalties on retailers, distributors, and manufacturers. Retailers who sell unregistered products face fines ranging from $500 to $2,500 per violation, with progressive penalties for repeat offenses, including license suspension and permanent revocation. Manufacturers that sell unapproved products are subject to a $10,000 penalty per violation and may be criminally charged if they provide false information on certification forms.

The bill also introduces a surety bond requirement for out-of-state manufacturers seeking to list their products in the directory. These manufacturers must submit a $25 thousand surety bond payable to the state to ensure compliance with the law, and the state may execute the bond to cover unpaid fines, penalties, or product seizure costs.

Additionally, HB268 requires RLD to conduct at least two unannounced compliance checks annually at all retailers and distributors of electronic nicotine delivery systems and nicotine

liquids. Retailers found in violation must undergo a follow-up compliance check within 30 days. The department must publish the results of these inspections annually and provide a report to the Legislature detailing directory status, manufacturer compliance, revenues from fees and penalties, and enforcement activities.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

To implement HB268, RLD asserts the department will need to add a new certification option into the NM-plus licensing system and permitting system. The integration of this new option is projected to cost RLD a little less than $2 million. $1.5 million is projected to be needed to update the salesforce platform that NM-plus is built on to integrate the new requirements of this certification, and to also update the certification if needed. An additional $500 thousand is needed to compensate a six-person tech support team for six months. RLD also asserts $300 thousand will be needed for a year's worth of maintenance on the directory on Salesforce. RLD is also projecting a need of 2 FTEs to review the initial applications and then to manage future applicants and updates. This is projected to be a recurring cost of $180 thousand for both FTEs. This equates to RLD needing slightly less than $500 thousand for recurring costs. RLD would prefer to use the tobacco product administration Fund, but RLD notes:

> The projected balance for the tobacco products administration fund is only one million nine hundred thousand dollars ($1,900,000) for the start of FY26. Thus, it appears the tobacco products administration fund would not be able to fund the full amount needed to cover the costs involved if this legislation is enacted. Likely general fund dollars would be required to cover the remaining expenses.

RLD is also required to conduct two annual compliance checks with every retailer in the state but fail to cite a need for additional FTE for this. Realistically, RLD would need at least an additional 4 FTE to satisfy this requirement, and if they are paid similarly to the other FTE that were requested, then there should be an additional operating budget impact of $360 thousand. This will increase RLD's total operating budget impact to at least $860 thousand.

RLD projects a yearly revenue of $127 thousand by looking at Louisiana's current e-cigarette product directory. This is only a revenue floor because potential penalties assessed to e-cigarette distributors would increase revenue; however, it is difficult to assess potential penalty revenue.

The Department of Health (DOH) notes:

> Given the need to establish and maintain a directory of electronic nicotine delivery systems and nicotine liquids that may be sold in the state, DOH would be required to support these efforts. The cost is unforeseeable and unknown at this time, but based on three laws passed in other states, it would appear the maintenance of the registry, staff associated costs, and enforcement costs would be significant.

This analysis assumes a salary and benefits cost of $95 thousand for an additional FTE at DOH.

SIGNIFICANT ISSUES

RLD notes House Bill 268 permits the sale of electronic nicotine delivery systems and nicotine liquids in New Mexico even if they lack full FDA authorization, allowing products under FDA review, subject to a stayed denial order, or vacated by court order to be included in the state's required directory. While the FDA is the sole governing body for approving tobacco products in the U.S., the bill allows non-FDA-authorized products to be marketed in New Mexico and remain available for 30 days after an FDA determination that they cannot be legally sold. RLD notes that, if HB268 required full FDA authorization as a condition for state certification, only FDA-approved products would be legally available in New Mexico.

The Department of Public Safety (DPS) highlights that the primary goal of these regulations is to ensure that only safe, FDA-approved electronic nicotine delivery systems and nicotine liquids are available on the market. DPS states:

> 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 electronic nicotine delivery systems products.

DOH had this commentary to add regarding registry bills such as HB268:

> "Registry bills" have emerged as another tactic to divert state resources away from strategies that are known to be evidence-based and effective at impacting youth consumption rates. The FDA already publishes a registry of authorized e-cigarettes, currently 34 products. Registries may distract from more meaningful regulations when it comes to restricting the sale of electronic nicotine delivery systems (i.e., e-cigarette products) that have not been approved by the FDA. According to the Public Health Law Center, strong tobacco retail licensure laws, either at the state or local level, have proven that regular inspections, compliance checks, licensure fees, zoning, density caps, and prohibitions on price promotions and discounts (to name just a few) are all more effective measures to protect against youth access to and use of e-cigarettes compared to registries.

ADMINISTRATIVE IMPLICATIONS

The Alcohol Beverage Control of RLD would have an increased workload of managing these new certifications and would also be required to upgrade the current NM-plus licensing system and permitting system to be able to manage the initial list of certified products and mange future updates.

OTHER SUBSTANTIVE ISSUES

DPS added this commentary of statistics collected by the Centers for Disease Control (CDC):

> According to the CDC the types of e-cigarette products that are available and being sold change rapidly. Between February 2020 and June 2024, e-cigarette unit sales increased from 15.7 million units to 21.1 million (34.7 percent 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. 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 percent)students currently use e-cigarettes. This includes: 410 thousand (3.5 percent) middle school students and 1.21 million (7.8 percent) high school students. Among students who had ever used e-cigarettes, 43.6 percent reported current use.

DOH added this commentary relating health impacts of using nicotine:

> Use of Nicotine through electronic nicotine delivery systems and nicotine liquids is considerably harmful to developing brains. The dependence has been shown to negatively impact mental health by amplifying feelings of anxiety, depression, and stress. There is no safe level of nicotine use for youth and the majority of products do not have FDA authorization.

NM/hj/SL2