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## FISCAL IMPACT REPORT

SPONSOR Lopez ORIGINAL DATE 2/5/15  
LAST UPDATED 3/19/15 HB \_\_\_\_\_  
SHORT TITLE Electronic Nicotine Devices to Minors SB 360/aSPAC/aSFI#1  
ANALYST A. Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB42; HB 148; HB213; SB65

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Regulation and Licensing Department (RLD)  
Department of Health (DOH)  
Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of SFI#1 Amendment

The Senate Floor Amendment #1 to Senate Bill 960 strikes Section 9: Explicit Nonpreemption. The section stated nothing in the act precluded counties and municipalities through ordinance to prohibit the sale of tobacco products to minors.

#### Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment to Senate Bill 360 clarifies that the provisions of the Tobacco Products and E-Cigarette Act do not apply to the use of tobacco products in connection with cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act. It also clarifies that the \$1,000 fine assessed for each violation by the owner of a retail location that sells tobacco products to a minor is a civil fine.

#### Synopsis of Original Bill

Senate Bill 360 adds the definition tobacco product, including electronic devices that deliver

nicotine and excluding products used for therapeutic or cessation purposes, amends where those products may be sold via a vending machine, allows for the provision of free tobacco products for Native American cultural or ceremonial activities to minors, adds electronic devices to tobacco products sold to or purchased by minors, and sets a fine of \$1000 for each violation to any retailer selling to a minor. SB 360 also allows for county or municipal agencies to pass laws/ordinances to prohibit the sale of tobacco products; however, those laws/ordinances must be inclusive of all minimum standards of this proposed legislation.

## **FISCAL IMPLICATIONS**

AOC reports SB 360 will have minimal fiscal impact on it and proportional to enforcement of the law.

## **SIGNIFICANT ISSUES**

According to DOH, SB360/aSPAC would weaken protections to youth that currently exist in statute. By making the civil fine assessed to the owner an option rather than a requirement, SB360/aSPAC may diminish accountability from businesses that profit from knowingly selling tobacco products to children. Rigorous enforcement of restrictions against sales to minors is critical to minimizing the accessibility of tobacco products and, ultimately, reducing youth tobacco use.

DOH reports that (1) electronic smoking devices, including e-cigarettes, are battery-operated products designed to deliver nicotine, flavor, and other chemicals. They turn highly addictive nicotine, and other chemicals, into a vapor that is inhaled by the user. Most electronic smoking devices are manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble everyday items such as pens and Universal Serial Bus (USB) memory sticks (U.S. Food and Drug Administration, 2013). Electronic smoking devices, including e-cigarettes, first sold primarily over the Internet and in shopping mall kiosks, are widely available now in many local convenience stores, gas stations, retail tobacco stores and standalone “vapor shops.” There is currently no federal or New Mexico state statutes or regulations governing the manufacturing, marketing, or sale of electronic smoking devices, including e-cigarettes. These products have not been proven to be safe and the health risks associated with their use are unknown (Campaign for Tobacco-Free Kids, 2013). (2) Popularity of e-cigarettes among youth has been rapidly escalating nationwide. According to the Centers for Disease Control and Prevention (CDC) (September, 2013), “... e-cigarette experimentation and recent use doubled among U.S. middle and high school students between 2011 and 2012. For students in grades 6-12, “ever use of e-cigarettes” increased from 3.3 percent to 6.8 percent, and “current e-cigarette use” increased from 1.1 percent to 2.1 percent. Another study released by CDC (August, 2014) showed a three-fold increase in the number of youth who had tried an e-cigarette but had never smoked a tobacco cigarette, from 79 thousand youth in 2011 to 263 thousand in youth in 2013.

DOH further states that the potential for e-cigarette use to escalate among youth is enhanced by e-cigarette manufacturers using flavoring strategies once used by cigarette manufacturers. According to the Campaign for Tobacco-Free Kids (October, 2013), e-cigarette manufacturers “are offering kid-friendly flavors reminiscent of kids’ cereal (e.g., Fruit Loops and Cinnamon Toast Crunch), baked goods (chocolate chip cookies and brownies), and candy (banana Laffy Taffy, cherry crush, and gummi bear).”

According to the Food and Drug Administration (2013), the safety and efficacy of e-cigarettes have not been fully studied, so it is unknown whether they are safe for their intended use; how much nicotine or other chemicals may be inhaled; whether there are any risks from the secondhand vapors for non-users; or whether the use of e-cigarettes can increase nicotine addiction among youth or lead them to try other tobacco products.

A number of states and local jurisdictions, as noted by DOH, are applying laws governing tobacco products to electronic smoking devices, including e-cigarettes. As of November 30, 2014, 40 states ban sales of e-cigarettes to minors and three states ban e-cigarette use in 100 percent smoke-free public places, including workplaces, restaurants, and bars (CDC, December 2014). Fifteen additional states ban e-cigarette use in various other locations, such as certain government facilities, public transportation, and educational campuses (Americans for Nonsmokers Rights, January 2015). In 2014, the cities of Albuquerque, Santa Fe, and Carlsbad passed local laws prohibiting the sale of electronic smoking devices, including e-cigarettes, to minors. Also in 2014, Santa Fe and Carlsbad passed laws prohibiting the use of electronic smoking devices, including e-cigarettes, in public places (work places, restaurants, and bars in Santa Fe and work places in Carlsbad). Additionally, Albuquerque Public Schools has recently prohibited the use and/or possession of tobacco products, including e-cigarettes, in the Albuquerque Public Schools 2014-15 Student Behavior Handbook.

AOC reports that New Mexico's former Attorney General is among 40 attorneys general who signed a letter to the federal Food and Drug Administration urging regulation of e-cigarettes in the same manner as tobacco products.

According to the AOC and DOH, the Tobacco Control Legal Consortium (Consortium) recommends that, in most circumstances, existing definitions of "tobacco products" in tobacco control laws should be broadened to include e-cigarettes and similar products. Defining e-cigarettes solely as standalone products instead of including them in a broad definition of "tobacco products" runs the risk of disqualifying these devices from current tobacco products restrictions. Broadening the general definition of "tobacco products" to clearly include electronic smoking devices would subject such devices to the same legal restrictions applied to other tobacco products, such as youth access, sales, and marketing restrictions. The Consortium recommends including – in the same section of the statute or ordinance – a separate definition of e-cigarette in addition to the broadened definition of "tobacco product." The Consortium emphasizes the need for clear definitions and concise language to avoid confusion about what constitutes an e-cigarette. They advise that, "...definitions should be explicit about what they cover yet broad enough to anticipate future product innovations. This eliminates ambiguity if new products or components are released that are similar to those already in existence but would not fall under a narrow definition." (Tobacco Control Legal Consortium, 2013). SB 360 does not contain a separate definition of e-cigarette in addition to the broadened definition of "tobacco product."

Currently, inspections and enforcement of the Tobacco Products Act is performed by the Special Investigations Division (SID) of DPS. Adding e-cigarette sales outlets will increase the number of inspections required to be performed by SID.

## **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the measures of the district courts in the following areas: cases disposed of as a percentage of cases filed; and percentage change in case filings by type.

SB 360 relates to the 2014-2016 NM State Health Improvement Plan and the FY2016 NM Department of Health Strategic Plan, Result 1: Improved health outcomes for the people of New Mexico, Objective: Reduce tobacco use, Program Performance Measure: Percent of QUIT NOW enrollees who successfully quit using tobacco at 7-month follow-up.

### **ADMINISTRATIVE IMPLICATIONS**

According to DPS, for several years now it has had little to no enforcement of e-cigarette sales to minors and the possession of e-cigarettes because of a lack of statutory authority. With the passing of this bill, DPS will be able to take necessary enforcement action when confronted with a clear violation.

### **RELATIONSHIP**

Relates to HB42 (Include E-Cigarettes In Tobacco Products Act); HB213 (Child-Resistant Nicotine Liquid Packages); SB 65 (Regulation & Labeling Of Nicotine Products); HB148 (No Smoking in Cars with Minors).

### **OTHER SUBSTANTIVE ISSUES**

According to DOH, youth are particularly vulnerable to nicotine addiction. Smoking and smokeless tobacco use are initiated and established primarily during adolescence. Nearly 9 out of 10 smokers first tried cigarettes by age 18, and 99 percent first tried cigarettes by age 26. (<http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.html>)

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