

LFC Requester:	Noah Montano
-----------------------	---------------------

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: 19 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** Dale R. Wagoner
Phone: 505-629-2803 **Email:** _____

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	1,466.0	800.0	2,266.0	RECURRING	GF

(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 there is 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

DPS recognizes the potential benefits of the proposed bill, but it places significant, additional burdens on DPS. It is important to note that the New Mexico State Police (NMSP) is currently grappling with significant challenges in filling its commissioned officer vacancies. Across the state’s 12 uniformed districts, a considerable number of positions remain unfilled, which is increasingly hindering the department’s ability to maintain adequate law enforcement coverage, particularly in rural areas. This staffing shortage is also placing strain on specialized bureaus, including the Investigations Bureau, Crime Suppression Bureau, Special Operations, Commercial Vehicle Enforcement, and the Special Investigations Unit. Given these ongoing staffing issues, it would be extremely difficult for NMSP and DPS to manage the additional responsibilities outlined in this bill. The current vacancies already affect core law enforcement functions, and reallocating personnel to fulfill this new mandate could further compound these challenges. Additionally, DPS is exploring the creation of twelve (12) civilian positions to support the Special Investigations Unit, where the enforcement of this bill would be situated. By adding these positions, we can ensure each of the 8,091 licensed establishments will be inspected twice a year. These positions will give more time to focus on alcohol and tobacco operations. Like other NMSP units that have successfully utilized civilians to augment shortages, these added civilian positions will bolster SIU and allow NMSP to repurpose commissioned personnel to fill the vacancies mentioned above and better address the violent crime in New Mexico. These (former) SIU commissioned positions could be moved to various understaffed bureaus.

The initial cost for the twelve (12) FTE’s would be \$1,466,000 for FY 26 and a recurring cost of \$800,000 for FY 27 and beyond.

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.

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.

Although the performance implications could be positive, other factors must be taken into consideration. Ongoing recruitment and retention challenges within law enforcement present another obstacle to the timely execution of HB 268. As of January 2025, the New Mexico State Police (NMSP) had filled 641 of its 722 authorized officer positions, leaving a vacancy rate of approximately 11%. A new recruit school began in early February 2025 with 27 recruits, and only 23 remain. Even if all 23 successfully graduate, the vacancy rate will still stand at 8%. These figures underscore the persistent hiring difficulties faced by law enforcement agencies, which could further complicate efforts to enforce the proposed regulations. Additionally, the bill imposes numerous responsibilities on law enforcement agencies, further stretching their limited resources and capacity.

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.