

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. In the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 17, 2020

Bill No: SB 9

Sponsor: Ramos, Gabriel
Short Title: E-Cig and E-liquid Act

Agency Name and Code AODA 264
Number: _____
Person Writing Rosanna C Vazquez
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$1,000,000.00	recurring	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

SB 9 creates an E-Cig and E-liquid Act that governs the Sale, Manufacturing and Distribution of E-Cigs and E-liquids. It provides for the Regulation and Licensing Department to administer the act and also provides administrative and criminal penalties.

Requirement of Licenses:

The Bill requires a license for the manufacture, distribution or sale of e-cigs or liquid. The Department has authority to issue licenses for up to a period of five years. The Department is given rulemaking authority and presumably will create rules to apply to issuance of licenses.

A license shall not be issued when:

1. A license has been revoked by any state; (not clear if there is reciprocity of this information with other states or if this will be outlined further in regulations.)
2. The location of the license or license transfer is within 300 feet of a church religious building or school. Any locations in existence prior to enactment of law are grandfathered.
3. Does not comply with existing local zoning ordinances.

License Requirements:

The requirements include a criminal background check, basic information of location and of licensee.

Licenses are also required to provide documentation of manufacturing compliance with 21 USCA Section 387f(e), and of applicable ingredient listing submission as set forth in 21 USCA Section 387(a)(1). Presumably this also will be more clearly articulated in the regulations of the Department.

Licensee is required to submit within ten days from any change affecting the license to notify the Department within ten days. The department has authority to impose an administrative fee if the change constitutes a violation of the act. Transfers of the license either to a different person or location are prohibited without an application and approval of such.

Department is required to issue the license within 60 days otherwise the license is

deemed approved. The License application must be a complete submission. The license application may be denied and Department has the duty to state reasons for denial. The Applicant may appeal the denial or resubmit within 30 days.

E-Cig Fund:

SB9 creates an E-Cig fund within the state treasury. The fund will consist of fees and administrative penalties and appropriations, gifts and grants. This money is for the purpose the administration of the Act and does not revert to any other fund.

Appeals:

Section 14 of SB9, provides and applicant the right to appeal of department decisions and are governed by the Uniform Licensing Act.

Sales of E-Cigs and E Liquids:

First and foremost sales to minors are prohibited. Sales of E-liquid are prohibited unless it is in a child resistant container. Neither e-cigs, nor e-liquid shall be packaged in a manner that is “knowingly attractive” to minors. (defined in Bill)

E liquid manufacturing is allowed to have flavoring.

An employer is prohibited from allowing employee who is a minor to sell e-cigs or e-liquid. Sales are required to verify age of buyer to assure they are not minors. To verify age, a government issued picture id is required. Age limit is 21.

Delivery sales, are required to attain “third party age verification service to establish legal age of consumer prior to sale. SB9 does not require the age verification documents to be kept.

Self-service of e-cigs and liquid is prohibited, and vending sales are only allowed for sales in an “age control” location. Free samples are also prohibited across the board. The location of sale must have signs notifying sales are not allowed to minors and the penalties.

Criminal Penalties:

1. Any sale, manufacture or distribution without a license is guilty of a misdemeanor. Department may also suspend or revoke a license and fine up to \$10,000.00.
2. Sale or manufacture to or by a minor is guilty of a petty misdemeanor and a fine of \$100.00 or 8 hours of community service.
3. Each sale to a minor is considered a separate offense.

Administrative Penalties:

1. When a retailer fails to verify age, the department is required to impose penalties against a retailer. Penalties increase by location and are stacked within a 2year period, increasing up to 4 penalties. SB9 does not go beyond the cost of 4 violations. And while it may revoke or rescind a license, a retailer may still re-apply and if it they meet the requirements should get a license.

Enforcement is to be a joint effort between the Department, and the Department of Public Safety. The department has subpoena power, and rulemaking authority for details of requirements of applications. SB9 does not give a timeline for creation of rules and is silent on whether violations of rules are subject civil penalties.

SB9 has a preemption clause, requiring local government to be consistent with SB9. In many cases, administrative rules allow for a local government to be stricter than state law. (ie. Santa Fe County was allowed to impose water restrictions limiting the use of water in the county from a well greater than OSE allowed.) This should be addressed either in SB9, or included in regulations to allow municipalities the authority to further restrict should they feel a need to within their jurisdiction.

FISCAL IMPLICATIONS

There is no appropriation for 2020 yet the bill is effective July 1, 2020.

SIGNIFICANT ISSUES

SB9 imposes both criminal and civil penalties for sales to minors. It sets out cost of fines for each violation. Each sale is considered a separate violation. However, it may be problematic that possible violation of sales to a minor is set per location not holder of license. If an owner of a license holds many licenses in differing locations and is negligent about their business practices they may keep their license despite the negligence.

While SB9 sets out penalties for up to four violations it does not ban submission for a new license of applicants with many violations. Multiple violations at any location should be addressed on the requirements for application or within the penalty section.

PERFORMANCE IMPLICATIONS

1. On delivery sales, SB9 does not require the seller to hold the evidence of third party age verification as evidence which may lead to issues when investigating a case, and possibly prosecuting a case if and when the third party is out of the state.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

1. Regulations should be enacted prior to enactment of the Bill. However enactment date is July 1st, leaving little time to create all appropriate regulations.
2. Bill does not give funding for 2020.
3. Section 9B should have a reference to the right to appeal section found in Section 14 herein.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Much of the language is found in NMSA Section 30 Article 49. SB9 separates the E-Cigs and E-liquid from Tobacco products, expands the definition section and expands violations section addressing the health concerns over e-cigs and e-liquid.

AMENDMENTS