

"a device, including its component parts, containing nicotine in a solution or other form that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Vapor device" includes any electronic:

- (1) cigarette;
- (2) cigar;
- (3) cigarillo; or
- (4) pipe."".

6. On page 8, line 4, after "municipality", insert ", home rule municipality".

7. On page 8, between lines 18 and 19, insert the following new section:

SECTION 12. TEMPORARY PROVISION.--Not later than August 1, 2014, the public education department shall revise its tobacco, alcohol and drug free school districts policy to include alternative nicotine products and vapor devices as defined in Section 30-49-2 NMSA 1978.".,

These changes eliminate the reference to the Dee Johnson Clean Indoor Air Act.

In addition it redefines a vapor device.

Finally, the new section 12 requires the Public Education Department revise policies to conform to the new definition.

Synopsis of Bill

Senate Bill 232 creates a new section of the Dee Johnson Clean Indoor Air Act prohibiting minors from possessing any alternative nicotine devices on school premises or at school sponsored events.

The remainder of the bill amends the Tobacco Products Act to include the same alternative nicotine devices (e-cigarettes) within the existing provisions of the Tobacco Products Act, which bans sale of these products to minors, creates definitions of the new alternative devices, prohibits sales in vending machines, authorizes vendors to deny sales to minors, requires signs regarding the prohibition to be displayed, requires inspections by the alcohol and gaming division and appropriate law enforcement authorities, and prevents a municipality or county from adopting an ordinance that is not consistent with the act.

In addition, it changes the name to Tobacco Products, Alternative Nicotine Products and Vapor Devices Act.

FISCAL IMPLICATIONS

RLD notes that the bill requires monitoring of establishments including random inspections by the Alcohol and Gaming Division (AGD) and appropriate law enforcement authorities in counties and municipalities. This measure would extend that monitoring to e-cigarettes as well. Since AGD has no inspectors or funding to hire staff to conduct the required inspections, RLD interprets this to mean that enforcement would rely on certified peace officers.

If this is correct, then the no fiscal impact estimate applies. However, AGD does not have any field officers and if AGD is responsible directly for inspections, then RLD estimates a cost of approximately \$200 thousand annually to perform this function.

SIGNIFICANT ISSUES

DOH reports that 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. The Food and Drug Administration is considering classifying e-cigarettes as "tobacco products," which would extend its reach and potentially subject e-cigarettes to a host of rules and regulations that apply to tobacco products (Food and Drug Administration, 2013).

Several states and local jurisdictions are applying laws governing tobacco products to e-cigarettes. Currently, 23 states ban sales to minors, 3 states ban use in public and work places, and 1 state broadened the definition of taxable tobacco products to include e-cigarettes (Correspondence with Campaign for Tobacco Free Kids, 9/10/13). As of January 6, 2014, the City of Albuquerque passed an ordinance prohibiting sale of vapor products to minors. The City of Santa Fe is currently considering similar action.

RLD adds that since AGD is not a law enforcement agency there is no jurisdiction or authority to issue non-traffic citations under the criminal code. Therefore, any enforcement of this measure would likely continue to be performed by appropriate law enforcement authorities, including the Department of Public Safety Special Investigations Division, just as it is for citations for violating the Liquor Control Act.

TECHNICAL ISSUES

PDD notices that the bill does not propose any changes to Section, 30-49-12 NMSA 1978, the existing penalty section which makes it a misdemeanor for sellers to sell and a fine/community service for minors who violate. The current section only refers to the Tobacco Products Act and not the proposed amended act, the "Tobacco Products, Alternative Nicotine Products and Vapor Devices Act." This appears to be an oversight.

DOH offers that the bill may create unintended consequences by recognizing e-cigarettes as a separate, rather than an included, category of tobacco product. This would create the need for an extensive edit of the bill but may ultimately lessen confusion and ensure the electronic delivery system is subject to all prohibitions and statutory inclusions as any other tobacco product. DOH recommends changing the definition of tobacco products to:

Tobacco product" means any product that is made from or derived from tobacco or contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does not include any product specifically approved by the U.S. Food and Drug Administration for sale as a

tobacco cessation product that is being marketed and sold solely for the approved purpose.

MW/jl:ds