

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR Cates/Harper/Chavez/Jaramillo
LAST UPDATED _____
ORIGINAL DATE 1/31/23
SHORT TITLE Prohibit Smoking in Racinos
BILL NUMBER House Bill 168
ANALYST Anderson

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
0	(\$12,800.0)	(\$12,800.0)	Recurring	General Fund

Parenttheses () indicate revenue increases.

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	(\$2.0-\$4.0)	(\$2.0-\$4.0)	(\$2.0-\$4.0)	(\$6.0-12.0)	Recurring	GCB operating budget
Total	(\$2.0-\$4.0)	(\$2.0-\$4.0)	(\$2.0-\$4.0)	(\$6.0-12.0)	Recurring	

Parenttheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Duplicates Senate Bill 130
Relates to House Bills 94, 123, and 124 and Senate Bill 178

Sources of Information

LFC Files
Analysis of House 249 from 2021 Regular Session

Responses Received From
New Mexico Racing Commission (NMRC)
Gaming Control Board (GCB)
Department of Health (DOH)
Administrative Hearings Office (AHO)
State Fair Commission

No Response Received
Regulation Licensing Department (RLD)
Attorney General

SUMMARY

Synopsis of House Bill 168

House Bill 168 prohibits smoking in facilities with a racetrack licensed by the state Racing Commission and with a gaming operator's license issued by the Gaming Control Board while still permitting smoking in other state-licensed gaming facilities, casinos, or bingo parlors. The list of indoor locations where smoking areas are permitted under the Dee Johnson Clean Indoor Air Act (Section 24-16-12 NMSA 1978) includes the following:

- Private residences, unless used for day care for children or adults
- Retail tobacco establishments
- Cigar bars
- Tobacco manufacturing facilities
- State-licensed gaming facilities (from which the exception of racinos would now be enacted)
- Private clubs
- Hotels and motels in smoking-permitted rooms
- Cultural use by Native Americans
- Theatrical or movie productions where actors must smoke
- Indoor or outdoor cannabis consumption areas pursuant to the Cannabis Regulation Act (26-2C-1 to 26-2C-42).

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

A smoking ban in racinos would result in an additional basis on which the Gaming Control Board (GCB) or the Racing Commission (NMRC) could issue citations. GCB states additional citations sometimes result in administrative hearings, which can cost each agency between \$2,000 to \$4,000 per hearing. The estimated operating budget impact in the table above reflects this impact to GCB and is not inclusive of fiscal impacts to NMRC. GCB bases these numbers on the assumption that one citation would proceed to a hearing in any given year and stated the information provided represents the minimal fiscal impact. It is possible that no cases will proceed to hearing or that multiple cases will proceed to hearing in any given year.

Should the ban result in patrons choosing alternate gaming venues or nongaming entertainment, the lower attendance rate could result in less money collected in taxes, which are based on racino revenues. The New Mexico Racing Commission (NMRC) states other jurisdictions that have banned smoking at casinos have net revenue declines of approximately 20 percent. Any decline in net amounts could amount to fewer tax dollars to the general fund and less money for purses for the horse races. NMRC states this could have implications on the number of race days run per season. Chapter 60 NMSA 1978 Section 2E-27 states each racetrack must maintain a minimum of four live race days a week with at least nine live races. GCB indicates four of the five racinos are located close to tribal casinos, which provides an alternative for smokers. GCB also states gaming facilities with nonsmoking game rooms have generally proven to be unpopular and underutilized.

Both GCB and NMRC said a smoking ban would put racinos at a competitive disadvantage that could decrease the amount of gaming and racing revenues, as well as taxes paid based on net wins. Increases in funding for state enforcement and prosecution could be warranted, but those impacts were not estimated by GCB.

Both the State Fair Commission and the Administrative Hearings Office report House Bill 168 will have no impact on their agencies.

SIGNIFICANT ISSUES

The adverse risks of smoking and of second-hand smoke have been documented since Surgeon General Luther Terry's 1964 report, *Smoking and Health*. According to the Department of Health (DOH), House Bill 168 would strengthen the Dee Johnson Clean Indoor Air Act to further protect New Mexicans from the harms of secondhand smoke and e-cigarette aerosols. House Bill 168 could be a public health strategy in reducing morbidity and mortality attributable to exposure to secondhand smoke. In the United States, exposure to secondhand smoke causes more than 41 thousand deaths among nonsmoking adults, according to the federal Centers for Disease Control.

DOH summarizes reasons for support of restrictions on smoking in gambling facilities, including gaming facility employees often suffering more severe secondhand smoke exposure than other workers. DOH indicates prohibiting smoking and vaping is the only way to effectively protect employees and patrons from the dangers of secondhand smoke and e-cigarette aerosols. Twenty states, including the neighboring states of Arizona and Colorado, have passed laws making all their state-regulated gambling facilities 100 percent smoke-free, according to the American Nonsmoker's Rights Foundation (attachment 1). Data from the foundation also shows over 200 gaming venues that closed due to Covid-19 restrictions have reopened with smoke-free indoor policies, adding to the nearly 800 gaming venues that were already smoke-free prior to the pandemic.

In addition to health benefits, smoke-free gambling facilities report financial benefits, such as fewer employee sick days, a reduction in employee healthcare-related costs, less money spent cleaning and removing nicotine tar from surfaces, and less money spent on air filters. In a 2007 report by the Tobacco Control Legal Consortium provided by the Department of Health (attachment 2), claims that smoke-free laws push customers toward casinos where smoking is permitted are unsupported by research. Research indicates that smoke-free laws have no adverse economic impact, and in some cases, could have potential to increase revenue.

PERFORMANCE IMPLICATIONS

Enactment of House Bill 168 could positively impact DOH's ability to reach performance targets. DOH states that House Bill 168 is in alignment with its strategic plan for the following objectives and performance measures:

Program Objective 2: Work with health system and surveillance partners to monitor health status to identify community problems

Performance Measure 7: Percent of adolescents who smoke

Performance Measure 8: Percent of adults who smoke

GCB stated that additional citations issued could result in increased workload for the enforcement and legal departments but did not provide a cost estimate of addressing the violations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB168 duplicates SB130 and relates to

- HB094, which would prohibit the sale, purchase or possession of flavored tobacco products; imposes penalties to minors; and provides a definition for characterizing and flavored tobacco products.
- HB0123, which proposes to increase tax rates for cigarettes and other tobacco products, including e-cigarettes, and reduce tax stamp discounts to distributors,
- HB124, which proposes to increase the rate of tax on tobacco products; including nicotine, regardless of source, in the definition of “tobacco product” in the tobacco products tax act,
- SB178, which proposes to make a distribution from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund in Fiscal Year 2024 (FY24); introduced to the Legislative Finance Committee and the Tobacco Settlement Revenue Oversight Committee

TECHNICAL ISSUES

NMRC stated House Bill 168 indicates smoking will not be allowed at the racetrack. It is not clear that smoking will also be banned at the casino of a gaming operator that also has a racing license issued by the State Racing Commission. NMRC said these are two different operations, one being a racetrack and one being a casino. Clarification might be needed on the ban on smoking at the racetrack and a ban on smoking at a gaming operator’s casino that is licensed by the state racing commission, NMRC pointed out.

GA/rl/hg