

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 <u>Thomson</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/2/24</u>
SHORT TITLE <u>No Smoking in Racinos</u>	BILL
	NUMBER <u>House Bill 99</u>
	ANALYST <u>Anderson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
GCB	\$4.0 to \$8.0	\$4.0 to \$8.0	\$4.0 to \$8.0	\$12.0-\$24.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Gaming Control Board (GCB)
 Racing Commission (SRC)
 Tourism Department (NMTD)
 Economic Development Department (EDD)
 Department of Health (DOH)

SUMMARY

Synopsis of House Bill 99

House Bill 99 (HB99) 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 (GCB) 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, and
- 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 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

This bill contains no appropriation. A smoking ban in racinos would result in an additional basis for GCB or the Racing Commission (SRC) to issue citations, which could bring an indeterminate amount of revenue into the general fund. 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 on GCB and is not inclusive of fiscal impacts to SRC. 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. According to the 2023 GCB annual report, the five racetrack casinos in New Mexico brought in \$70.1 million in revenue in gaming tax.

SRC 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. SRC states this could have implications on the number of race days run per season. Section 60-2E-27 NMSA 1978 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 SRC 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.

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), HB99 would strengthen the Dee Johnson Clean Indoor Air Act to further protect New Mexicans from the harms of secondhand smoke and e-cigarette aerosols. HB99 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 HB99 could positively impact DOH's ability to reach performance targets. DOH states that HB99 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, and
- Performance Measure 8: Percent of adults who smoke.

ADMINISTRATIVE IMPLICATIONS

GCB anticipates this bill will cause an increase in customer complaints, and 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.

TECHNICAL ISSUES

SRC stated HB99 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. SRC 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, SRC pointed out.