

HOUSE BILL 268

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

Art De La Cruz

AN ACT

RELATING TO THE TOBACCO PRODUCTS ACT; PROVIDING DEFINITIONS FOR "SNUFF" AND "TIMELY FILED PREMARKET TOBACCO PRODUCT APPLICATION"; PROVIDING ENFORCEMENT AUTHORITY TO THE STATE DEPARTMENT OF JUSTICE IN CERTAIN CIRCUMSTANCES; REQUIRING MANUFACTURERS OF ELECTRONIC NICOTINE DELIVERY SYSTEMS AND NICOTINE LIQUIDS TO REGISTER THEIR PRODUCTS WITH THE STATE; ESTABLISHING A DIRECTORY OF ELECTRONIC NICOTINE DELIVERY SYSTEMS AND NICOTINE LIQUIDS THAT MAY BE SOLD IN THE STATE; REQUIRING A SURETY BOND IN CERTAIN CIRCUMSTANCES; REQUIRING REPORTS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-37-2 NMSA 1978 (being Laws 2020, Chapter 46, Section 2) is amended to read:

"61-37-2. DEFINITIONS.--As used in the Tobacco Products .229950.1

underscoring material = new  
~~[bracketed material] = delete~~

1 Act:

2 A. "child-resistant packaging" means packaging or a  
3 container that is designed or constructed to be significantly  
4 difficult for children under five years of age to open or  
5 obtain a toxic or harmful amount of the substance contained  
6 therein within a reasonable time and not difficult for a normal  
7 adult to use properly, but does not mean packaging or a  
8 container that all such children cannot open or obtain a toxic  
9 or harmful amount within a reasonable time;

10 B. "contraband tobacco products" means any tobacco  
11 products possessed, sold, bartered or given in violation of the  
12 Tobacco Products Act;

13 C. "delivery sale" means a sale of tobacco products  
14 to a consumer in New Mexico in which:

15 (1) the consumer submits an order for the sale  
16 by telephone, over the internet or through the mail or another  
17 delivery system; and

18 (2) the tobacco product is shipped through a  
19 delivery service;

20 D. "delivery service" means a person, including the  
21 United States postal service, that is engaged in the delivery  
22 of letters, packages or containers;

23 E. "director" means the director of the alcoholic  
24 beverage control division of the regulation and licensing  
25 department;

1 F. "distribute" means to purchase and store a  
2 product and to offer the product for resale to retailers or  
3 consumers;

4 G. "distributor" means a person that distributes  
5 tobacco products in New Mexico, but does not include:

6 (1) a retailer;

7 (2) a manufacturer; or

8 (3) a common or contract carrier;

9 H. "division" means the alcoholic beverage control  
10 division of the regulation and licensing department;

11 I. "e-cigarette":

12 (1) means any electronic oral device, whether  
13 composed of a heating element and battery or an electronic  
14 circuit, that provides a vapor of nicotine or any other  
15 substances the use or inhalation of which simulates smoking;  
16 and

17 (2) includes any such device, or any part  
18 thereof, whether manufactured, distributed, marketed or sold as  
19 an e-cigarette, e-cigar, e-pipe or any other product, name or  
20 descriptor; but

21 (3) does not include any product regulated as  
22 a drug or device by the United States food and drug  
23 administration under the Federal Food, Drug, and Cosmetic Act,  
24 21 U.S.C. Section 301 et seq.;

25 J. "electronic nicotine delivery system" means an

.229950.1

1 electronic device, including e-cigarettes, whether composed of  
2 a heating element and battery or an electronic circuit, that  
3 provides a vapor or aerosol of nicotine, the use or inhalation  
4 of which simulates smoking;

5 K. "knowingly attractive to minors" means packaging  
6 or labeling that contains:

7 (1) a cartoon-like character that mimics  
8 characters primarily aimed at entertaining minors;

9 (2) an imitation or mimicry of trademarks or  
10 trade dress of products that are or have been primarily  
11 marketed toward minors; or

12 (3) a symbol or celebrity image that is  
13 primarily used to market products to minors;

14 L. "licensee" means a holder of a license issued by  
15 the division pursuant to the Tobacco Products Act;

16 M. "manufacturer" means a person that manufactures,  
17 fabricates, assembles, processes or labels tobacco products or  
18 imports from outside the United States, directly or indirectly,  
19 a tobacco product for sale or distribution in the United  
20 States;

21 N. "minor" means an individual who is younger than  
22 twenty-one years of age;

23 O. "nicotine liquid" means a liquid or other  
24 substance containing nicotine where the liquid or substance is  
25 sold, marketed or intended for use in an electronic nicotine

underscored material = new  
[bracketed material] = delete

1 delivery system;

2 P. "person" means an individual, corporation, firm,  
3 partnership, copartnership, association or other legal entity;

4 Q. "retailer" means a person, whether located  
5 within or outside of New Mexico, that sells tobacco products at  
6 retail to a consumer in New Mexico; provided that the sale is  
7 not for resale;

8 R. "self-service display" means a display to which  
9 the public has access without the assistance of a retailer or  
10 the retailer's employee; [~~and~~]

11 S. "snuff" means any finely cut, ground or powdered  
12 tobacco that is not intended to be smoked but does not include  
13 finely cut, ground or powdered tobacco that is intended to be  
14 placed in the nasal cavity;

15 T. "timely filed premarket tobacco product  
16 application" means an application pursuant to 21 U.S.C. § 387j  
17 for an electronic nicotine delivery system or nicotine liquid  
18 containing nicotine derived from tobacco marketed in the United  
19 States as of August 8, 2016 that was submitted to the United  
20 States food and drug administration on or before September 9,  
21 2020 and accepted for filing; and

22 [~~S.~~] U. "tobacco product" means a product made or  
23 derived from tobacco or nicotine that is intended for human  
24 consumption, whether smoked, chewed, absorbed, dissolved,  
25 inhaled, snorted, sniffed or ingested by any other means,

.229950.1

underscored material = new  
[bracketed material] = delete

1 including cigars, cigarettes, chewing tobacco, pipe tobacco,  
2 snuff, e-cigarettes or electronic nicotine delivery systems."

3 SECTION 2. Section 61-37-21 NMSA 1978 (being Laws 2020,  
4 Chapter 46, Section 21) is amended to read:

5 "61-37-21. AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY AND  
6 STATE DEPARTMENT OF JUSTICE.--

7 A. The department of public safety has authority  
8 over all investigations and enforcement activities required  
9 under the Tobacco Products Act, except for those provisions  
10 relating to the issuance, denial, suspension or revocation and  
11 administrative sanctions of licenses unless its assistance is  
12 requested by the director.

13 B. Following the issuance of a citation pursuant to  
14 the provisions of the Tobacco Products Act, the department of  
15 public safety or the law enforcement agency of a municipality  
16 or county shall report alleged violations of that act to the  
17 division and, if the violations pertain to Section 3 of this  
18 2025 act, to the state department of justice.

19 C. The director may request the investigators from  
20 the department of public safety to investigate licensees or  
21 activities that the director has reasonable cause to believe  
22 are in violation of the Tobacco Products Act.

23 D. The state department of justice has concurrent  
24 authority over all investigations and enforcement activities  
25 related to Section 3 of this 2025 act. The state department of

.229950.1

underscoring material = new  
~~[bracketed material] = delete~~

1 justice may request the division to take appropriate actions  
2 with respect to imposing fines or suspending or revoking  
3 licenses as provided under Section 3 of this 2025 act."

4 SECTION 3. A new section of the Tobacco Products Act is  
5 enacted to read:

6 "[NEW MATERIAL] DISTRIBUTION--ELECTRONIC NICOTINE DELIVERY  
7 SYSTEM AND NICOTINE LIQUID PRODUCT REGISTRATION AND DIRECTORY--  
8 REQUIRING A SURETY BOND--REPORTS--PENALTIES.--

9 A. By August 1, 2025 and annually thereafter, every  
10 manufacturer of an electronic nicotine delivery system or  
11 nicotine liquid that is sold for retail sale in this state or  
12 to a consumer in this state, whether directly or through a  
13 distributor, retailer or similar intermediary or  
14 intermediaries, shall execute and deliver to the division a  
15 certification, under penalty of perjury on a form and in a  
16 manner prescribed by the division. The certification shall  
17 state that the manufacturer is compliant with this section and  
18 that for each electronic nicotine delivery system and nicotine  
19 liquid sold for retail sale in the state or to a consumer in  
20 this state:

21 (1) the manufacturer has received a marketing  
22 granted order for the electronic nicotine delivery system or  
23 nicotine liquid from the United States food and drug  
24 administration pursuant to 21 U.S.C. § 387j; or

25 (2) the manufacturer submitted a timely filed

.229950.1

1 premarket tobacco product application for the electronic  
2 nicotine delivery system or nicotine liquid to the United  
3 States food and drug administration pursuant to 21 U.S.C. §  
4 387j, and the application either remains under review by the  
5 United States food and drug administration or has received a  
6 denial order that has been and remains stayed by the United  
7 States food and drug administration or a court order rescinded  
8 by the United States food and drug administration or vacated by  
9 a court.

10 B. The certification form shall separately list  
11 each brand name, product name, category and flavor of each  
12 electronic nicotine delivery system and nicotine liquid that is  
13 sold in the state.

14 C. Each annual certification form shall be  
15 accompanied by:

16 (1) a copy of:

17 (a) the marketing granted order issued  
18 by the United States food and drug administration pursuant to  
19 21 U.S.C. § 387j;

20 (b) the acceptance letter issued by the  
21 United States food and drug administration pursuant to 21  
22 U.S.C. § 387j for a timely filed premarket tobacco product  
23 application; or

24 (c) a document issued by the United  
25 States food and drug administration or by a court confirming



underscoring material = new  
~~[bracketed material] = delete~~

1 that the premarket tobacco product application has received a  
2 denial order that has been and remains stayed by the United  
3 States food and drug administration or court order, rescinded  
4 by the United States food and drug administration or vacated by  
5 a court; and

6 (2) a payment of two hundred fifty dollars  
7 (\$250) for each electronic nicotine delivery system and  
8 nicotine liquid each time a manufacturer submits an annual  
9 certification form for that electronic nicotine delivery system  
10 and nicotine liquid.

11 D. The information submitted by the manufacturer to  
12 the division pursuant to this section shall be considered  
13 confidential commercial or financial information and shall not  
14 be public records subject to inspection pursuant to Section  
15 14-2-1 NMSA 1978. The manufacturer may redact certain  
16 confidential commercial or financial information.

17 E. A manufacturer required to submit a  
18 certification form pursuant to this section shall notify the  
19 division within thirty days of any material change to the  
20 certification form, including the issuance or denial of a  
21 marketing authorization or other order by the United States  
22 food and drug administration pursuant to 21 U.S.C. § 387j, or  
23 any other order or action by the United States food and drug  
24 administration or any court that affects the ability of the  
25 electronic nicotine delivery system or nicotine liquid to be

.229950.1

underscored material = new  
~~[bracketed material] = delete~~

1 introduced or delivered into interstate commerce for commercial  
2 distribution in the United States.

3 F. On or before October 1, 2025, the division shall  
4 maintain and make publicly available on the division's official  
5 website a directory that lists all electronic nicotine delivery  
6 systems, nicotine liquid manufacturers and nicotine liquids,  
7 including brand names, product names, categories and flavors,  
8 for which certification forms have been submitted and approved  
9 by the division. The division shall update the directory  
10 monthly to ensure accuracy and shall establish a process to  
11 provide licensed retailers, distributors and other relevant  
12 parties notice of the initial publication of the directory and  
13 changes made to the directory in the prior month.

14 G. A manufacturer or a manufacturer's electronic  
15 nicotine delivery systems or nicotine liquids shall not be  
16 included or retained in the directory if the division  
17 determines that any of the following apply:

18 (1) the manufacturer failed to provide a  
19 complete and accurate certification as required by this  
20 section;

21 (2) the manufacturer submitted a certification  
22 that does not comply with the requirements of this section;

23 (3) the manufacturer failed to include with  
24 the certification the payment required by this section;

25 (4) the manufacturer sold products in this

underscored material = new  
~~[bracketed material]~~ = delete

1 state required to be certified under this section during a  
2 period when either the manufacturer or the product had not been  
3 certified and listed in the directory; or

4 (5) the information provided by the  
5 manufacturer in the certification is determined by the division  
6 to contain false information or material misrepresentations or  
7 omissions.

8 H. The division shall provide manufacturers notice  
9 and an opportunity to cure deficiencies before removing  
10 manufacturers or products from the directory. The division may  
11 not remove the manufacturer or the manufacturer's products from  
12 the directory until at least thirty days after the manufacturer  
13 has been given notice of an intended action setting forth the  
14 reasons therefor. Notice shall be sufficient and deemed  
15 immediately received by a manufacturer if the notice is sent  
16 either electronically or by facsimile to an electronic mail  
17 address or facsimile number provided by the manufacturer in the  
18 most recent certification filed under this section.

19 I. The manufacturer of the electronic nicotine  
20 delivery system or nicotine liquid shall have fifteen days from  
21 the date of service of the notice of the division's intended  
22 action to cure the deficiencies or otherwise establish that the  
23 manufacturer of the electronic nicotine delivery system or  
24 nicotine liquid or the manufacturer's products should be  
25 included in the directory.

.229950.1

1 J. Retailers shall have thirty days following the  
2 removal of a manufacturer or the manufacturer's products from  
3 the directory to sell such products that were in the retailer's  
4 inventory as of the date of removal.

5 K. After thirty days following removal from the  
6 directory, the electronic nicotine delivery systems or nicotine  
7 liquids of a manufacturer identified in the notice of removal  
8 and intended for sale in this state are subject to seizure from  
9 distributors and retailers, forfeiture and destruction and may  
10 not be purchased or sold for retail sale in this state or to a  
11 consumer in this state. The cost of such seizure, forfeiture  
12 and destruction shall be borne by the person from whom the  
13 products are confiscated.

14 L. A determination by the division to not include  
15 or to remove from the directory a manufacturer or a  
16 manufacturer's product may be appealed to the district court  
17 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

18 M. Except as otherwise provided in this section,  
19 beginning August 1, 2025 or on the date that the division first  
20 makes the directory available for public inspection on the  
21 division's official website, whichever is later, electronic  
22 nicotine delivery systems and nicotine liquids not included in  
23 the directory may not be sold for retail sale in this state or  
24 to a consumer in this state either directly or through a  
25 distributor, retailer or similar intermediary.

.229950.1

underscoring material = new  
~~[bracketed material] = delete~~

1           N. Each retailer shall have sixty days from the  
2 date that the division first makes the directory available for  
3 inspection on the division's official website to sell products  
4 that were in the inventory and not included in the directory or  
5 remove those products from inventory, and each distributor  
6 shall have sixty days from the date that the division first  
7 makes the directory available for inspection on the division's  
8 official website to remove those products intended for sale in  
9 the state from the inventory.

10           O. After sixty calendar days following publication  
11 of the directory, electronic nicotine delivery systems and  
12 nicotine liquids not listed in the directory and intended for  
13 sale in this state are subject to seizure from distributors and  
14 retailers, forfeiture and destruction and may not be purchased  
15 or sold for retail sale in this state or to a consumer in this  
16 state, except as provided in this section. The cost of such  
17 seizure, forfeiture and destruction shall be borne by the  
18 person from whom the products are confiscated.

19           P. A retailer or distributor that sells or offers  
20 for sale an electronic nicotine delivery system or nicotine  
21 liquid for retail sale in this state or to a consumer in this  
22 state that is not included in the directory shall:

23                   (1) for a first offense, be subject to a civil  
24 penalty of five hundred dollars (\$500) for each individual  
25 electronic nicotine delivery system and nicotine liquid offered

.229950.1

1 for sale in violation of this section;

2 (2) for a second violation within three years  
3 of the first violation, be subject to a civil penalty that  
4 shall be no less than seven hundred fifty dollars (\$750) but no  
5 more than one thousand dollars (\$1,000) per product, and the  
6 retailer's or distributor's license shall be suspended for  
7 thirty days;

8 (3) for a third violation within three years  
9 of the first violation, be subject to a civil penalty that  
10 shall be no less than one thousand dollars (\$1,000) but no more  
11 than one thousand five hundred dollars (\$1,500) per product,  
12 and the retailer's or distributor's license shall be suspended  
13 for ninety days; and

14 (4) for a fourth or subsequent violation  
15 within three years of the first violation, be subject to a  
16 civil penalty that shall be no less than one thousand five  
17 hundred dollars (\$1,500) but no more than two thousand five  
18 hundred dollars (\$2,500) per product, and the retailer's or  
19 distributor's license shall be permanently revoked.

20 Q. A manufacturer whose electronic nicotine  
21 delivery systems or nicotine liquids are not listed in the  
22 directory and that causes the products that are not listed to  
23 be sold for retail sale in this state or to a consumer in this  
24 state, whether directly or through a distributor, retailer or  
25 similar intermediary, is subject to a civil penalty of ten

.229950.1

1 thousand dollars (\$10,000) for each individual electronic  
2 nicotine delivery system and nicotine liquid offered for sale  
3 in violation of this section. A manufacturer that falsely  
4 represents any information required by a certification form is  
5 guilty of a misdemeanor for each false representation and shall  
6 be sentenced subject to the provisions of Section 31-19-1 NMSA  
7 1978.

8 R. In an action to enforce the provisions of this  
9 section, the state shall be entitled to recover costs,  
10 including the costs of investigation, expert witness fees and  
11 reasonable attorney fees.

12 S. A second or subsequent violation of this section  
13 constitutes an unfair or deceptive trade practice pursuant to  
14 the Unfair Practices Act.

15 T. A manufacturer not registered to do business in  
16 the state shall, as a condition precedent to having the  
17 manufacturer's name or the manufacturer's electronic nicotine  
18 delivery systems or nicotine liquids listed and retained in the  
19 directory, appoint and continually engage without interruption  
20 a registered agent in this state for service of process on whom  
21 all process and any action or proceeding arising out of the  
22 enforcement of this section may be served. The manufacturer  
23 shall provide to the division the name, address and telephone  
24 number of the agent for service of process and shall provide  
25 any other information relating to the agent as may be requested

.229950.1

underscoring material = new  
~~[bracketed material] = delete~~

1 by the division.

2 U. A manufacturer located outside of the United  
3 States shall, as a condition precedent to having the  
4 manufacturer's products listed or retained in the directory,  
5 cause each of the manufacturer's importers of any of the  
6 products to be sold in New Mexico to appoint, and continually  
7 engage without interruption, the services of an agent in the  
8 state in accordance with the provisions of this section. All  
9 obligations of a manufacturer imposed by this section with  
10 respect to appointment of the manufacturer's agent shall also  
11 apply to the importers with respect to appointment of the  
12 agents.

13 V. A manufacturer shall provide written notice to  
14 the division thirty calendar days prior to the termination of  
15 the authority of an agent appointed pursuant to Subsections T  
16 and U of this section. No less than five calendar days prior  
17 to the termination of an existing agent appointment, a  
18 manufacturer shall provide to the division the name, address  
19 and telephone number of the newly appointed agent for service  
20 of process and shall provide any other information relating to  
21 the new appointment as may be requested by the division. In  
22 the event an agent terminates an agency appointment, the  
23 manufacturer shall notify the division of the termination  
24 within five calendar days and shall include proof to the  
25 satisfaction of the division of the appointment of a new agent.

.229950.1



underscoring material = new  
~~[bracketed material]~~ = delete

1           W. A manufacturer whose products are sold in this  
2 state without appointing or designating an agent as required by  
3 this section shall be deemed to have appointed the secretary of  
4 state as agent and may be proceeded against in the courts of  
5 this state by service of process upon the secretary of state;  
6 provided that the appointment of the secretary of state as  
7 agent shall not satisfy any other requirement of this section.

8           X. A manufacturer not registered to do business in  
9 the state shall, as a condition precedent to having the  
10 manufacturer's name or the manufacturer's electronic nicotine  
11 delivery systems or nicotine liquids listed and retained in the  
12 directory, submit to the division a surety bond payable to the  
13 state in the amount of twenty-five thousand dollars (\$25,000).  
14 The bond shall be posted by a corporate surety located within  
15 the United States. The bond shall be conditioned on the  
16 performance by the manufacturer of all requirements and  
17 obligations imposed by this section. A surety on a  
18 manufacturer's bond shall be liable up to the amount of the  
19 bond, and the state may execute on such surety bond for the  
20 payment of fines and penalties imposed on the manufacturer  
21 under this section and for the costs of seizure and destruction  
22 of products sold in violation of this section. If the state  
23 executes on the surety bond, the state may require the  
24 manufacturer to provide an additional bond as a condition  
25 precedent for retaining the manufacturer or the manufacturer's

.229950.1

underscored material = new  
~~[bracketed material] = delete~~

1 products in the directory. A surety on a bond furnished by a  
2 manufacturer as provided in this section shall be released and  
3 discharged from liability to the state accruing on the bond  
4 after expiration of sixty days from the date upon which such  
5 surety shall have lodged with the division a written request to  
6 be released and discharged. This provision shall not operate  
7 to relieve, release or discharge the surety from liability  
8 already accrued or that shall accrue before the expiration of  
9 the sixty-day period. The division shall, upon receiving any  
10 such request, notify the manufacturer that furnished the bond.  
11 Unless the manufacturer, on or before the expiration of the  
12 sixty-day period, files with the division a new bond with the  
13 surety approved by and acceptable to the division, the division  
14 shall remove the manufacturer and the manufacturer's electronic  
15 nicotine delivery systems and nicotine liquids from the  
16 directory.

17 Y. Each retailer and distributor that sells or  
18 distributes electronic nicotine delivery systems or nicotine  
19 liquids in this state shall be subject to at least two  
20 unannounced compliance checks annually by the division for  
21 purposes of enforcing this section. Unannounced follow-up  
22 compliance checks of all noncompliant retailers and  
23 distributors shall be conducted within thirty days after any  
24 violation of this section. The division shall publish the  
25 results of all compliance checks at least annually and shall

.229950.1

underscoring material = new  
~~[bracketed material] = delete~~

1 make the results available to the public on request.

2 Z. The division shall adopt rules for the  
3 implementation and enforcement of this section.

4 AA. All fees and penalties collected by the  
5 division pursuant to this section shall be deposited in the  
6 tobacco products administration fund and used for  
7 administration and enforcement of this section.

8 BB. Beginning January 31, 2026 and annually  
9 thereafter, the division shall provide a report to the  
10 legislature regarding the status of the directory,  
11 manufacturers and products included in the directory, revenue  
12 and expenditures related to administration of this section and  
13 enforcement activities undertaken pursuant to this section."

14 SECTION 4. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2025.