

LFC Requester:

Brendon Gray

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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** X
Correction _____ **Substitute** _____

Date Prepared: January 18, 2024

Bill No: SB 80

Sponsor: Linda Lopez

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing Analysis: Victor A. Hall, AAG

Short Title: No Sale of Flavored
Tobacco Products

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year 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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Bill (“SB”) 80 would amend the Tobacco Products Act to prohibit the sale of “flavored tobacco products” or tobacco products with a “characterizing flavor. The bill would define “Characterizing flavor” as “a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product.” A “flavored tobacco product” would include “any tobacco product that contains any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of a tobacco product that imparts a characterizing flavor.”

SB 80 would amend Section 61-37-17 to compel retail sellers of tobacco products to prominently display signs or decals that read “IT IS ILLEGAL TO SELL FLAVORED TOBACCO PRODUCTS.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

SB 80 presents a significant issue of inconsistent or ambiguous terms in the two terms defined in the first section of this bill. As stated above, flavored tobacco products, those products that contain any ingredient other than tobacco that imparts a “characterizing flavor” are generally banned. However, the definition of what constitutes a “characterizing flavor” does not provide clarity as to how one would determine what constitutes a “characterizing flavor” because this definition specifically states that a “characterizing flavor” is not *solely* determined by the use of additives, flavorings, or ingredient information. This begs the question of how a product is determined to have a “characterizing flavor” if it cannot be solely determined by the presents of additives, flavorings, or ingredients that are not tobacco? These definitions appear to introduce a subjective analysis of what constitutes a “characterizing flavor,” which would likely lead to inconsistent results or enforcement difficulties driven by ambiguity.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

Enforcement of the Tobacco Products Act is granted to the department of public safety (and local law enforcement as requested by the department of public safety). Although SB 80 appears to have no interaction or relationship with the Department of Justice (formerly the Office of the Attorney General), the DOJ oversees administration of the Tobacco Master Settlement Agreement and the Tobacco Escrow Fund Act. By banning the sale of certain tobacco products, SB 80 would likely involve at least some type of oversight by the Attorney General due to the Office's regulation of tobacco products.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

SB 80 should be clarified by refining the definitions of "characterizing flavor" and "flavored tobacco product" to avoid ambiguity or confusion as to what is banned versus what is not.