

Revised per FA288 and additional data

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2024-25		FY 2025-26	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	\$482,013	\$1,358,000-\$2,293,000	\$166,130	\$226,000-\$382,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 1204 was amended by FA288 on Select File. FA288 amends AM2640 that was adopted on General File by changing the certification fee under the bill from \$250 to \$75 for each type or model of Electronic Nicotine Delivery Systems (ENDS). The Cash Fund revenue estimate has been adjusted as a result of the fee amount changing along with additional data utilized that is specific to ENDS present in the state of Nebraska and the provisions of the bill. Previous estimates by the Department of Revenue (DOR) utilized data from other states which included states that utilized the Food and Drug Administration approval process. We have provided a range for the Cash Fund revenue increase with the bottom of the range estimating 10% unique types or models per vape retail store in Nebraska and the top of the range estimating an average of about 20% unique types or models from industry data. Additionally, the expenditures have been updated to be Cash Fund expenditures after the adjustment to Cash Fund revenue.

Incorporates Provisions of LB 1204

This aspect of the amendment would add the definition of “rickhouse” to the Nebraska Liquor Control Act. Rickhouse would mean an offsite bonded warehouse which is kept and maintained for the purpose of storing spirits in barrels for aging in order to impart flavor from the barrel into the spirits.

This aspect of the amendment would also add that a holder of a manufacturer’s license to manufacture spirits and a holder of a microdistillery license could operate a rickhouse that meets the requirements for a distilled spirit plant pursuant to 26 U.S.C. 5178, as such section existed on January 1, 2024, if the manufacturer/licensee receives authorization from the Nebraska Liquor Control Commission (NLCC) and notifies the NLCC of the location of the rickhouse in a manner prescribed by the NLCC.

Incorporates Provisions of LB 981

This aspect of the amendment would make changes under the Nebraska Lottery and Raffle Act so that lotteries and raffles with gross proceeds of greater than \$15,000 would be covered under the Act. The gross proceeds of these lotteries and raffles would still be taxed at a rate of 2%.

This aspect of the amendment would also change the Nebraska Small Lottery and Raffle Act so that it applies to lotteries and raffles with gross proceeds not greater than \$15,000 under the Act. This aspect of the amendment would add that any qualifying nonprofit organization may conduct one lottery per calendar month that has gross proceeds not greater than \$15,000 and that any qualifying nonprofit organization could conduct one or more raffles in a calendar month if the total gross proceeds from such raffles do not exceed \$15,000 during the month.

Incorporates Provisions of LB 1000

This aspect of the amendment would make changes to provide anonymity for lottery prize winners of \$250,000 or more except upon written authorization of the person.

Incorporates Provisions of LB 1296 with Modifications

This aspect of the amendment would amend section 28-1418.01 to add the term “delivery sale” and definition for the term.

This aspect of the amendment would add that a wholesaler or retailer could not purchase or receive for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if the manufacturer of such products does not hold any license or certification required by the Tobacco Products Tax Act at the time such products are purchased or received.

This aspect of the amendment would add that a tobacco product manufacturer could not sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any wholesaler or retailer who, at the time of such sale or delivery, is not the recipient of a valid tobacco license under sections 28-1421 and 28-1422 for the current year to sell such products at wholesale or retail.

This aspect of the amendment would add the need to include an email address for purposes of contacting an applicant regarding local tobacco licenses. Local government clerks or finance departments who grant such a license would need to notify the Tax Commissioner and transmit all application materials received to the Tax Commissioner.

This aspect of the amendment would add to statute that a person who holds the mentioned tobacco license who sells, gives, or furnishes in any way to any consumer in the state, or who willingly allows to be taken from such licensee's place of business by any person, any controlled substance or counterfeit substance, as such terms are defined in section 28-401, shall be, in addition to the penalties provided for in the Uniform Controlled Substance Act, subject to the additional penalty of a revocation and forfeiture of such license at the discretion of the court.

This aspect of the amendment would add to statute that a person could not, by delivery sale, sell, give, or furnish to any person any ENDS. A violation would result in a Class I misdemeanor. Any common carrier that knowingly transports any ENDS in any form for the described person is also guilty of a Class I misdemeanor. The violation for this addition to statute would constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act. All ENDS in violation of this addition to statute would be subject to seizure, forfeiture, and destruction and would not be purchased or sold in the state. The cost of such seizure, forfeiture, and destruction would be borne by the person from whom the products are seized. There are exceptions detailed in the bill to when these provisions of the bill do not apply.

This aspect of the amendment would add requirements for persons holding the mentioned tobacco license regarding e-liquid containers and regarding the marketing, advertising, selling, or causing to be sold of ENDS.

This aspect of the amendment would make changes to the Tobacco Products Tax Act.

Each manufacturer of ENDS that would be sold at retail in the state, whether directly or through a distributor, wholesaler, retailers, or similar intermediary or intermediaries, would be certified. The application for certification would be made on a form and in a manner prescribed by the Tax Commissioner. The application would be accompanied by a nonrefundable fee equal to \$75 for each type or model of ENDS sold in the state. The Tax Commissioner would issue the certifications to applicants.

Any nonresident manufacturer of ENDS that has not registered to do business in the state as a foreign corporation or business entity would, as a condition precedent to being certified, appoint and continually engage without interruption the services of an agent in the state. The manufacturer would provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner.

This aspect of the amendment would add certifications to what can be revoked, canceled, suspended, and also restored under the Act. A person whose certification has previously been revoked, canceled, or suspended would pay the Tax Commissioner a fee of \$25 for the issuance of a certification after each revocation, cancellation, or suspension.

Duly authorized agents or employees of the Tax Commissioner could enter any place of business that is certified to determine compliance with the Act.

Any certified person could request a hearing after notice that the Tax Commissioner intends to revoke, cancel, or suspend the certification. The certified manufacturer could appeal the decision of the Tax Commissioner, and the appeal would be in accordance with the Administrative Procedure Act.

The certification fees under this aspect of the amendment would go into the Tobacco Products Administration Cash Fund.

The operative date for this bill is three months after adjournment.

We estimate the following revenue increases to the Tobacco Products Administration Cash Fund as a result of this bill:

- FY 24-25: \$1,358,000-\$2,293,000
- FY 25-26: \$226,000-\$382,000
- FY 26-27: \$79,000-\$134,000

The DOR estimates minimal impacts to General Fund revenues as a result of this bill. There is no basis to disagree with this revenue estimate by the DOR.

The DOR estimates operational costs in the amount of \$355,613 in the first year followed by \$51,230 each year after. This would include leasing two mid-size sedans, travel expenses, and IT costs. 2.0 FTE Revenue Agents are estimated to be needed to add to the staff at DOR to be able to cover added responsibilities to the DOR that are part of the bill. There is no basis to disagree with this estimate, except that revenue into the Cash Fund we estimate to cover the expenditures required by the bill. Expenditures are due to the provisions connecting to LB1296. These expenditures are higher than the first fiscal note for LB1296 as the expenditures in that fiscal note did not account for IT responsibilities for communication between local governments and the DOR required by the provisions of the bill. Also, the DOR does not assume any salary or benefits increases for FY25-26 and FY26-27 for the additional personnel needed pursuant to this bill's provisions. While the actual salary and health insurance increases for FY25-26 and thereafter are not yet determined, it is important to note that any additional personnel in FY24-25 will have ongoing rising costs associated with salary and health insurance increases, which are normally addressed in the biennial budget process for all bargaining and non-bargaining employees.

The Supreme Court estimates minimal fiscal impact to it as a result of this bill. There is no basis to disagree with this estimate.

The State Treasurer estimates no fiscal impact to it as a result of this bill. There is no basis to disagree with this estimate.

The NLCC estimates no fiscal impact to it as a result of this bill. There is no basis to disagree with this estimate.

The Lancaster County Clerk estimates no fiscal impact to it as a result of this bill.

The Lancaster County Sheriff's Office estimates no fiscal impact to it as a result of this bill.

The City of Lincoln estimates potential, indeterminate costs connected to penalties added under the bill relating to ENDS. In addition, the city estimates a minimal, negative revenue impact as a result of the bill.

The Nebraska Association of County Officials estimates no impact to counties as a result of the bill.