

# FISCAL NOTE

## LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS		See Below		See Below

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

LB 9 adds nicotine analogue to the definitions of alternative nicotine product and electronic nicotine delivery system under section 28-1418.01. The definition of nicotine analogue is added to mean a substance that has a chemical structure substantially similar to nicotine or an effect on the central nervous system that is substantially similar to, or greater than, the effect on the central nervous system of nicotine.

The bill provides that as soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from a stamping agent, wholesale dealer, or retail dealer who is subject to sections 77-2601 to 77-2622 is unpaid, the commissioner shall notify such person of the deficiency. Such notice shall be delivered by mail or personal service.

A notice of deficiency determination shall be personally served or mailed within 3 years after the later of:

- The last day of the calendar month following the period for which the amount is proposed to be determined; or
- The date the return was filed.

In the case of a person failing to make a return, filing a false or fraudulent return with the intent to evade section 77-2601 to 77-2622, or omitting from a return an amount properly includable therein which is in excess of 25% of the amount of tax stated in the return, a notice of determination shall be personally served within 6 years after the last day of the calendar month following the period for which the amount is proposed to be determined.

When, before the expiration of the time prescribed for the mailing of a notice of deficiency determination, both the Tax Commissioner and the person to be sent the notice have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

The bill also amends the Tobacco Products Tax Act.

Under the bill, nicotine analogues are added to the definition of consumable material.

The bill provides that for any violation of the Tobacco Products Tax Act or the rules and regulations adopted and promulgated under the act, the Tax Commissioner may, in addition to any other penalty or sanction:

- After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429. Notice of hearing shall be given as provided in the Administrative Procedure Act; and
- Impose an administrative penalty not to exceed \$5,000.

No person whose license has been suspended or revoked shall sell tobacco products or permit tobacco products to be sold during the period of suspension or revocation on the premises occupied by such person. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the Tobacco Products Tax Act or sections 28-1420 to 28-1429. Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

The bill provides under the Tobacco Products Tax Act that a notice of deficiency determination shall be personally served or mailed within 3 years after the later of:

- The last day of the calendar month following the period for which the amount is proposed to be determined; or
- The date the return was filed.

In the case of a person failing to make a return, filing a false or fraudulent return with the intent to evade the Tobacco Products Tax Act, or omitting from a return an amount properly includable therein which is in excess of 25% of the amount of tax stated in the return, a notice of determination shall be personally served within 6 years after the last day of the calendar month following the period for which the amount is proposed to be determined.

When, before the expiration of the time prescribed for the mailing of a notice of deficiency determination, both the Tax Commissioner and the person to be sent the notice have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

Any tobacco products that have been sold, offered for sale, or possessed for sale in this state in violation of the Tobacco Products Tax Act are declared to be contraband goods and may be seized by the Tax Commissioner, by the commissioner's agents or employees, or by any peace officer of this state, when directed by the commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated tobacco products when the commissioner has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-4008. Any tobacco products forfeited to the state shall be destroyed or used for law enforcement purposes and then destroyed. The cost of such seizure, forfeiture, and destruction shall be borne by the person from who the products are seized. The Tax Commissioner, agents and employees of the commissioner, and any peace officer of this state, when acting pursuant to this section, shall not in any way be responsible in any court for the seizure or the confiscation of any tobacco products.

The bill becomes operative on January 1, 2026.

The Department of Revenue (DOR) estimates the \$5,000 penalties in the bill would be credited to the General Fund but would have a minimal impact on General Fund revenues. The DOR estimates minimal costs as a result of the bill. The inclusion of nicotine analogues to the definition of consumable material appears to include additional products for the taxation and certification fees regarding Electronic Nicotine Delivery Systems (ENDS). Thus, this could increase General Fund revenues connected to the taxation of ENDS and increase revenues credited to the Tobacco Products Administration Cash Fund connected to ENDS certification fees.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
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LB: 9	AM:	AGENCY/POLT. SUB: Supreme Court	
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REVIEWED BY: Ryan Yang	DATE: 1/24/25	PHONE: (402) 471-4178	
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COMMENTS: No basis to disagree with the Supreme Court assessment of no fiscal impact from LB 9.			
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ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
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LB: 9	AM:	AGENCY/POLT. SUB: Attorney General	
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REVIEWED BY: Ryan Yang	DATE: 1/13/25	PHONE: (402) 471-4178	
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COMMENTS: No basis to disagree with the Attorney General assessment of no fiscal impact from LB 9.			
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ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
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LB: 9	AM:	AGENCY/POLT. SUB: Department of Revenue	
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REVIEWED BY: Ryan Yang	DATE: 2/20/2025	PHONE: (402) 471-4178	
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COMMENTS: The Department of Revenue assessment of minimal fiscal impact from LB 9 appears reasonable.			
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ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 9	AM:	AGENCY/POLT. SUB: Nebraska State Patrol
REVIEWED BY: Ryan Yang	DATE: 1/13/25	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Nebraska State Patrol assessment of no fiscal impact from LB 9.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 9	AM:	AGENCY/POLT. SUB: Lancaster County Department of Corrections
REVIEWED BY: Ryan Yang	DATE: 1/13/25	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Lancaster County Department of Corrections assessment of no fiscal impact from LB 9.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 9	AM:	AGENCY/POLT. SUB: Lancaster County Sheriff's Office
REVIEWED BY: Ryan Yang	DATE: 1/13/25	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Lancaster County Sheriff's Office assessment of no fiscal impact from LB 9.		

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2025

LB<sup>(1)</sup> 9

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Attorney General

Prepared by: <sup>(3)</sup> Daniel Muelleman Date Prepared: <sup>(4)</sup> 1-10-25 Phone: <sup>(5)</sup> 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2025-26</u>		<u>FY 2026-27</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Explanation of Estimate:

No Fiscal Impact

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2025-26</u>	<u>2026-27</u>
	<u>25-26</u>	<u>26-27</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

### State Agency Estimate

State Agency Name: Department of Revenue				Date Due LFO:		
Approved by: James R. Kamm		Date Prepared: 02/19/2025		Phone: 471-5896		
	<b><u>FY 2025-2026</u></b>		<b><u>FY 2026-2027</u></b>		<b><u>FY 2027-2028</u></b>	
	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>
General Funds		Minimal		Minimal		Minimal
Cash Funds						
Federal Funds						
Other Funds						
Total Funds		Minimal		Minimal		Minimal

LB 9 amends the definition of alternative nicotine products and electronic nicotine delivery system (ENDS) to include nicotine analogues. Nicotine analogue means any substance that has a chemical structure substantially like nicotine; or an effect on the central nervous system that is substantially like, or greater than, the effect on the central nervous system of nicotine.

A notice of deficiency for cigarette tax must be sent within three years of the later for the following:

- The last day of the calendar month following the period for which the amount is proposed to be determined; or
- The date the return was filed.

The time to issue a notice of deficiency is extended to six years after the last day of the calendar month following the period if there is no return filed, there is a false or fraudulent return, or omitting 25% excess of the amount of tax stated return. Prior to the expiration of the time, the Tax Commissioner and the taxpayer may enter into a statute of limitations agreements to extend the time to assess.

The definition of consumable material is expanded to include nicotine analogues.

LB 9 allows for the Tax Commissioner to suspend or revoke the local tobacco license for any violation of the Tobacco Products Tax Act. An administrative penalty up to \$5,000 may be imposed for any violation. No person whose license has been suspended, or revoked can sell tobacco products. An aggrieved person may appeal the decision in accordance with the Administrative Procedures Act.

A notice of deficiency for the Tobacco Products Tax Act must be sent within three years of the later for the following:

- The last day of the calendar month following the period for which the amount is proposed to be determined; or
- The date the return was filed.

Major Objects of Expenditure							
Class Code	Classification Title	25-26 FTE	26-27 FTE	27-28 FTE	25-26 Expenditures	26-27 Expenditures	27-28 Expenditures
Benefits.....							
Operating Costs.....							
Travel.....							
Capital Outlay.....							
Capital Improvements.....							
<b>Total.....</b>							

The time to issue a notice of deficiency is extended to six years after the last day of the calendar month following the period if there is no return filed, there is a false or fraudulent return, or omitting 25% excess of the amount of tax stated return. Prior to the expiration of the time, the Tax Commissioner and the taxpayer may enter into a statute of limitations agreements to extend the time to assess.

Tobacco products in violation of the Tobacco Products Tax Act are contraband and can be seized by the Tax Commissioner. The cost of seizure, forfeiture, and destruction is on the person from whom the products were seized.

Given that penalties of up to \$5,000 imposed under this bill are expected to be directed to the General Fund, it is projected that LB 9 will have a minimal effect on General Fund revenues.

It is estimated that there will be minimal costs to the DOR to implement the bill.

The operative date for this bill is January 1, 2026.

State Agency OR Political Subdivision Name: <sup>(2)</sup> Nebraska State Patrol

Prepared by: <sup>(3)</sup> Carol Aversman

Date Prepared: <sup>(4)</sup> 01/15/2025

Phone: <sup>(5)</sup> 402-471-4545

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION				
	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Explanation of Estimate:

NO FISCAL IMPACT

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE				
Personal Services:				
POSITION TITLE	NUMBER OF POSITIONS		2025-26	2026-27
	25-26	26-27	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

LB<sup>(1)</sup> 9

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Lancaster County Department of Corrections

Prepared by: <sup>(3)</sup> Lt. Joe Anderson

Date Prepared: <sup>(4)</sup> 1-13-25

Phone: <sup>(5)</sup> (402) 441-1919

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Explanation of Estimate:

No Fiscal Impact

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE				
Personal Services:				
POSITION TITLE	NUMBER OF POSITIONS		2025-26	2026-27
	25-26	26-27	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				



State Agency OR Political Subdivision Name: <sup>(2)</sup> Lancaster County Sheriff's Office

Prepared by: <sup>(3)</sup> Chief Deputy Ben Houchin Date Prepared: <sup>(4)</sup> January 15, 2025 Phone: <sup>(5)</sup> 402-441-6500

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	0	0	0	0

Explanation of Estimate:

LB 9 will not have a fiscal impact on the Lancaster County Sheriff's Office.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE				
Personal Services:				
POSITION TITLE	NUMBER OF POSITIONS		2025-26	2026-27
	25-26	26-27	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

State Agency OR Political Subdivision Name: <sup>(2)</sup> 05 Supreme Court

Prepared by: <sup>(3)</sup> Eric Asboe

Date Prepared: <sup>(4)</sup> 1/23/25

Phone: <sup>(5)</sup> 402-326-9215

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Explanation of Estimate:

No fiscal impact.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:				
POSITION TITLE	NUMBER OF POSITIONS		2025-26	2026-27
	25-26	26-27	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				