

LFC Requester:	Gary Chabot
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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:

Date February 18 , 2015

Prepared: _____

Bill No: HB 148s

Original **Amendment**
Correction **Substitute**

Sponsor: Rep. Jeff Steinborn
Rep. Peter Wirth

Agency Code: Attorney General's Office

Short Title: No Smoking in Cars with
Minors

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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 Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Health Committee Substitute for House Bill 148 is an act that seeks to make it a penalty assessment misdemeanor for an individual to smoke in a motor vehicle while a minor is present.

FISCAL IMPLICATIONS

Note: N/A

SIGNIFICANT ISSUES: House Bill 148 was referred to the Health Committee, where a Fiscal Impact Report was conducted. The Fiscal Impact Report recommended amending perceived ambiguities in the definitions of “electronic smoking device” and “smoking.” A substitute bill was submitted by the House Health Committee implementing these new definitions and including a residual catch-all definition for “smoking.”

The definitions contained in the House Health Committee Substitute for House Bill 148 may be unconstitutionally ambiguous. As an initial note, the definition of “electronic smoking device” contains the term “smoking,” while the definition for “smoking” contains the term “electronic smoking device.” The use of the terms to define each other makes the actual definition difficult to ascertain.

Furthermore, the definitions may be unconstitutionally overbroad. As defined in subsection (B), “electronic smoking device means any product containing or delivering nicotine *or any other substance* intended for human consumption that can be used by a person for smoking through inhalation of vapor or aerosol.” Smoking is then defined as “using an electronic smoking device that creates an aerosol or vapor in any manner or form.” While this definition is a likely attempt to encompass all electronic smoking devices, it may have the unintended consequence of including asthma inhalers, medical oxygen or other aerosol or vapor therapies.

Additionally, the definition of “motor vehicle” is different than the definition for the rest of the Motor Vehicle Code contained in section 66-1-4.11. This contradiction, although minimal, may further add to the ambiguity of the Bill.

PERFORMANCE IMPLICATIONS

Note: N/A

ADMINISTRATIVE IMPLICATIONS

Note: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Note: N/A

TECHNICAL ISSUES

Note: N/A

OTHER SUBSTANTIVE ISSUES

Note: N/A

ALTERNATIVES

Note: N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

Note: N/A