

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	\$325,283		\$166,120	
CASH FUNDS		See Below		See Below
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$325,283	See Below	\$166,120	See Below

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

LB 1296 would amend section 28-1418.01 to add the term “delivery sale” and definition for the term.

The bill 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.

The bill would add to statute that a person who holds the mentioned tobacco license who sells, gives, or furnishes in any way to any person, 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.

The bill would add to statute that a person holding the mentioned tobacco license would not, by delivery sale: sell, give, or furnish to any person any electronic nicotine delivery system (ENDS). A violation would result in a Class I Misdemeanor. This violation would also apply to common carriers. 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 who the products are seized. There are exceptions detailed in the bill to when these provisions of the bill do not apply.

The bill also would make additions to the Tobacco Products Tax Act.

As a result of the bill, under the Act, by April 1, 2025 and each year after, each manufacturer of ENDS that are sold in the state would execute and deliver a certification in a form prescribed by the Tax Commissioner that the manufacturer agrees to comply with the Act with accompanying requirements for the certification as well as a payment of \$500 for each ENDS the first time a manufacturer submits a certification for the ENDS and a \$500 annual payment after for each ENDS. Payments would go to the Tax Commissioner and would be remitted to the State Treasurer for credit to the Department of Revenue (DOR) Enforcement Fund to administer the Act.

Any manufacturer required to submit a certification form would need to notify the Tax Commissioner and Attorney General within 30 days after any:

- Material changes to the certification form; or
- Any other order or action by the Food and Drug Administration or any court that affects the ability of an ENDS to be introduced or delivered into interstate commerce for commercial distribution in the U.S.

Under the bill, beginning October 1, 2025, the Tax Commissioner would maintain and make publicly available on the DOR’s website a directory that lists all ENDS manufacturers and ENDS for which up to date and accurate certification forms conforming to the requirements of the Act have been submitted. The Commissioner would need to update the directory as necessary to ensure accuracy. The bill provides a process for removal from the directory. Beginning October 1, 2025 or on the date the Tax Commissioner first makes the directory available for public inspection on the DOR’s website, whichever is later, there is a prohibition to sales regarding ENDS of what is not listed in the directory. If there is a violation, civil penalties of an undetermined value and suspension of licenses would occur. A Class III Misdemeanor would result for any manufacturer that falsely represents any of the information on the certification form. Fees and penalties collected under these provisions would go to the Tax Commissioner and would be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund to help administer and enforce provisions of this Act.

Section 15 of the Act details additional remedies or penalties that could apply under the Uniform Deceptive Trade Practices Act.

In order to enforce the changes under this bill to the Act, the Tax Commissioner and Attorney General could examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where ENDS are placed, stored, sold, or offered for sale, as well as the stock of ENDS on the premises. Each retailer and wholesaler that sells or distributes ENDS in the state would be subject to at least two unannounced compliance checks annually for the purposes of enforcing the changes to the Act under this bill. Unannounced follow-up compliance checks of all noncompliant retailers and wholesales would be conducted within 30 days after any violation. The Tax Commissioner would publish the results of all compliance checks at least annually and would make the results available to the public on request.

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 included in the directory appoint an agent in Nebraska to act as agent for the service of process. Any manufacturer whose ENDS are sold in this state and who have not appointed an agent would be deemed to have appointed the Secretary of State as its agent.

On or before August 31, 2025 and annually after, the Tax Commissioner would need to electronically submit a report to the Legislature regarding the status of the directory created, manufacturers and ENDS included in the directory, revenue and expenditures related to administration of changes to the Act under this bill, and enforcement activities undertaken in the prior fiscal year.

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

The DOR estimates a positive but minimal impact on the Tobacco Products Administration Cash Fund and the Revenue Enforcement Fund as a result of this bill due to some fees collected and penalties that could be collected. We estimate the additional revenue to the Revenue Enforcement Fund as a result of the payment of \$500 for each ENDS the first time a manufacturer submits a certification for the ENDS and a \$500 annual payment after for each ENDS would result in a larger than minimal increase to this Cash Fund due to the number of ENDS requiring payment. The penalties that could increase the funds to the Tobacco Products Administration Cash Fund are indeterminate.

The DOR estimates expenditures to cover the regulatory and operational requirements under this bill. Operation costs estimated to be needed by the DOR are in the amount of \$198,883 in the first year followed by \$51,220 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. However, 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 Attorney General and Lancaster County Clerk estimate no fiscal impact to them as a result of this bill. There is no basis to disagree with these estimates.

The Secretary of State notes that as the default agent there are no specific filing or other duties for the agency. With no duties this would be no fiscal impact but could result in a fiscal impact for the agency with any necessary responsibilities for the agency as agent.

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 Lancaster County Sheriff's Office estimates an indeterminate amount of costs to enforce the provisions of the bill.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Nebraska Supreme Court (005)
REVIEWED BY: Joe Wilcox	DATE: 01/30/2024	PHONE: (402) 471-4178
COMMENTS: No disagreement with the Nebraska Supreme Court estimate of Minimal Fiscal Impact to the Agency from LB 1296, with No additional resources required.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Nebraska Secretary of State (009)
REVIEWED BY: Joe Wilcox	DATE: 02/01/2024	PHONE: (402) 471-4178
COMMENTS: No disagreement with the Nebraska Secretary of State estimate of No Fiscal Impact to the Agency from LB 1296.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Nebraska Attorney General (011)
REVIEWED BY: Joe Wilcox	DATE: 01/24/2024	PHONE: (402) 471-4178
COMMENTS: No disagreement with the Nebraska Attorney General estimate of No Fiscal Impact to the Agency from LB 1296.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Nebraska Department of Revenue (016)
REVIEWED BY: Joe Wilcox	DATE: 02/01/2024	PHONE: (402) 471-4178
COMMENTS: No disagreement with the Nebraska Department of Revenue estimate of potential Fiscal Impact to the Agency from LB 1296.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Lancaster County Sheriff's Office
REVIEWED BY: Joe Wilcox	DATE: 01/18/2024	PHONE: (402) 471-4178
COMMENTS: No reason to disagree with the Lancaster County Sheriff's Office estimate of indeterminate Fiscal Impact to the County Sheriff from LB 1296.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1296	AM:	AGENCY/POLT. SUB: Lancaster County Clerk
REVIEWED BY: Joe Wilcox	DATE: 01/24/2024	PHONE: (402) 471-4178
COMMENTS: No reason to disagree with the Lancaster County Clerk's estimate of No Fiscal Impact to the Clerk's Office from LB 1296.		

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1296

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Attorney General

Prepared by: ⁽³⁾ Bebe Strnad Date Prepared: ⁽⁴⁾ 1/22/2024 Phone: ⁽⁵⁾ 402-471-2687

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</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>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1296

FISCAL NOTE

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

Prepared by: ⁽³⁾ Sheriff Terry Wagner Date Prepared: ⁽⁴⁾ 1/18/2024 Phone: ⁽⁵⁾ 402 441 6500

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

Explanation of Estimate: There are too many variables and unknowns to estimate the costs of enforcing the provisions of this bill.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

- The ENDS was marketed in the United States as of August 8, 2016, and the manufacturer submitted a premarket tobacco product application to the FDA on or before September 9, 2020, and the application remain under review, or a final decision has not taken effect.

The application will provide proof of marketing authorization or evidence of a premarket tobacco product application remains pending. A payment of \$500 is required for ENDS product listed on the application. All revenue is remitted to DOR's Revenue Enforcement Fund for use to administer the Tobacco Products Tax Act.

Sec. 10. The manufacturer will notify DOR and Attorney General Office (AGO) within 30 days after any:

- Material changes to the certification including issuance or denial of a marketing authorization from the FDA; or
- Any order or action from the FDA or court that affects the ability of the ENDS to be sold in the United States.

Sec. 11. October 1, 2025, DOR will list on its website a directory of manufacturers and ENDS which meets the requirements. Before any manufacturer or ENDS is removed from the directory, DOR will provide 30 days of the intended action and list the notice in the directory. The manufacturer will have 30 days to come into compliance or secure temporary injunction against removal in the district court of Lancaster County. If after 30 days the manufacturer remains noncompliant and the injunction has not been obtained, the manufacturer or ENDS is removed.

If DOR determines a manufacturer or ENDS is not to be included in the directory, the manufacturer may request a contested case under the Administrative Procedure Act (APA). DOR will notify the manufacturer in writing of the determination not to include it in the directory. A request for hearing must be made within 30 days of the determination and provide evidence supporting the manufacturer's compliance. A hearing will be held within 60 days of the request. At the hearing the tax commissioner will determine whether the manufacturer or ENDS should be listed in the directory. A final decision will be issued within 30 days of the hearing. The hearing decisions may be appealed in accordance with the APA.

No later than 21 days, after removal each retailer, distributor, and wholesaler will return the ENDS to the manufacturer for disposal. After the 21-day period, any ENDS is subject for seizure. The cost of seizure and destruction is borne by the person from whom the product was seized.

Beginning October 1, 2025, or on the date DOR first the makes directory available, whichever is later:

- A person will not sell ENDS in this state if ENDS is not included in the directory.
- ENDS manufacturer will not sell either directly or indirectly through a distributor or wholesaler, retailer, or similar intermediary in this state ENDS not included in the directory.

Sec.12. a retailer, distributor or wholesaler who sells ENDS that are not included in the directory is subject to civil penalty of XXX dollar per day for each system offered for sale until the system is removed from the market or until the ENDS is properly listed in the directory.

For a second violation within a 12-month, the license is suspended for at least 14 days.

For a third violation within a 12-month period, the license will be suspended for at least 60 days. For a fourth violation or further violation within a 12-month period, the license will be suspended at least one year.

Sec. 13. An ENDS manufacturer whose products are not listed on the directory and state sold in this state through an intermediary is subject to a civil penalty of XXX for each system offered for sale until the system is removed from the market or until the ENDS is properly listed in the directory. In addition, any manufacturer who falsely represent information on the certification is guilty of a Class III misdemeanor.

Sec. 14. All fees and penalties are remitted to the Tobacco Products Administration Cash Fund. Any violation of Sec. 9 to 19 is a violation of the Uniform Deceptive Trade Practices Act in addition to the penalties in Sec. 12 and 13.

DOR and AGO may inspect locations where ENDS are sold. Each retailer and wholesaler are subject to at least two unannounced inspections per year and noncompliant retailers and wholesaler are subject to follow-up inspection within 30 days. DOR will annually publish the results.

A nonresident manufacturer not registered to do business in Nebraska must appoint an agent in Nebraska authorized to accept service. The manufacturer will provide notice to DOR 30 days prior to termination of an agent and provide proof of no less than 5 days prior to termination a new agent has been appointed. Any manufacturer who has not appoint an agent will be considered to have appointed the Secretary of State as an agent.

Sec. 19. By August 31, 2025, and each year after, DOR is required to a submit an electronic report to the Legislature regarding the directory along with revenue and expenditures related to administering of Sec. 9 to19 and enforcement activities in the prior fiscal year.

It is estimated that LB 1296 will have a minimum positive impact on the Tobacco Products Administration Cash Fund and DOR's Revenue Enforcement Fund because the fees, penalties, and application fee collected in this bill.

Implementing LB 1296 is projected to incur ongoing operational costs of \$198,883 in the first year, followed by \$51,220 annually thereafter. This includes staffing 2.0 FTE Revenue Agents, leasing two mid-size sedans from the Transportation Service Bureau (TSB), travel expenses, and covering initial software development and maintenance fees. Additionally, approximately 500 hours of internal IT project management will be required, utilizing an in-house Business Systems Analyst.

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

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1296

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Secretary of State

Prepared by: ⁽³⁾ Joan Arnold Date Prepared: ⁽⁴⁾ 1-18-2024 Phone: ⁽⁵⁾ 402-471-2384

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</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:

LB 1296 designates the Secretary of State to be the default agent for service of process for an electronic nicotine delivery systems manufacturer who fails to appoint an agent as required. As the bill does not require any specific filing or other duties of the Secretary of State as the default agent, we estimate no fiscal impact.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1296

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Lancaster County Clerk

Prepared by: ⁽³⁾ Matt Hansen, County Clerk Date Prepared: ⁽⁴⁾ 1/23/2024 Phone: ⁽⁵⁾ (402) 441-7484

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</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>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1296

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ 05 Supreme Court

Prepared by: ⁽³⁾ Eric Asboe Date Prepared: ⁽⁴⁾ 1/30/2024 Phone: ⁽⁵⁾ 402-326-9215

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</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:

Minimal fiscal impact to provide judicial education. Any potential impact on judicial workload cannot be determined at this time. No additional resources required.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____