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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 03/04/15
 LAST UPDATED 03/13/15 HB 148/HJCS/aSPAC

SHORT TITLE No Smoking in Cars with Minors SB _____

ANALYST Dunbar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
	NA		

(Parenthesis () Indicate Expenditure Decreases)

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	*Minimal			*Minimal	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

* Refer to Fiscal Implications.

Relates to: SB65, SB360, SB433, HB42, HB213, HB213HJC, HB148HCS

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
 Children Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Attorney General (AG)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to CS/HB/148HJCS inserts language that

indicates that it is unlawful for a person to smoke in any motor vehicle when a child is present in the vehicle. A child is defined as an individual who is thirteen years of age or younger. CS/HB/148HJCS used the term “minor” instead of child and defined minor as an individual who is under eighteen years of age.

Additionally, the amendment inserts language pertaining to “smoking with a child present in vehicle” into Section 2 of the “Penalty Assessment Misdemeanors Definitions” used in the Motor Vehicle Code. CS/HB/148HJCS created a new section to the Motor Vehicle Code instead of including the language in the existing “Penalty Assessment section. Also included in this section is language that offers the opportunity for smokers to quit through a cessation course, in lieu of paying a fine for a first conviction. This language was included in CS/HB/148HJCS. The penalty assessment remains at a \$100 dollar fine.

Synopsis of Original Bill

House Judiciary Committee substitute for House Bill 148 enacts sections of the motor vehicle code to prohibit smoking in a vehicle with a minor present, and enact penalties for violations. CS/HB/148HJCS provides definitions for “electronic smoking device” and “smoking”. It also provides a fine of \$100 for each violation, with the provision that the fine may be waived upon a first violation if the person completes an approved smoking cessation course.

FISCAL IMPLICATIONS

Implementation of this bill will have minimal impact for the Taxation and Revenue Department’s (TRD) Information Technology Division (ITD) and Financial Distributions Bureau (FDB). Listed below are the required changes:

- Develop a new state native conviction for smoking in a vehicle with a minor present.
- Estimated Tapestry Development Hours: 100
- Estimated Tapestry Testing Hours: 40
- Total 140 hours @ \$50/hour = \$7,000

SIGNIFICANT ISSUES

The intent of CS/HB/148HJC is to protect minors from exposure to secondhand smoke (SHS) in vehicles in New Mexico (NM). SHS is associated with poor health status in children. The US Surgeon General concluded there is no risk-free level of SHS.

<http://publichealthlawcenter.org/sites/default/files/resources/phlc-guide-kidscarssmoke-policyoptions-2011.pdf>

Unlike the previous two versions of this bill, CS/HB/148HJC offers the opportunity for smokers to quit through a cessation course, in lieu of paying a fine for a first conviction. Research shows that the best way for people to quit smoking is through evidence-based smoking cessation technologies and programs. Smokers who take part in cessation programs are more likely to successfully quit smoking—defined as abstinence for six months or more—than those who attempt quitting on their own.

http://sites.nationalacademies.org/Tobacco/SmokingCessation/Tobacco_051286

AOC points out that the new penalties in this substitute bill indicate that “upon a second or

subsequent conviction, shall be fined one hundred dollars (\$100) per offense”. The fact that a second or subsequent conviction carries the same fine as a first offense would not likely serve as a deterrent to stop this behavior. In addition, AOC explains that it is unclear whether an individual subject to a second or subsequent conviction would be allowed to have the fine waived if the person completes a smoking cessation course, as is clearly stated in the legislation for first time offenders. This ambiguity between first and subsequent offences could be significant for judges handling these types of cases.

The U.S. Public Health Service’s recently updated clinical practice guideline found that quitline counseling can more than double a smoker’s chances of quitting and quitline counseling combined with medication (such as nicotine replacement therapy) can more than triple the chances of quitting. Quitlines are a cost-effective and efficient way to reach a large number of smokers. Studies indicate that for every smoker who quits in response to tobacco control measures, such as through a quitline, their total healthcare costs over the next five years would drop, on average, by approximately \$2,400.

<http://www.tobaccofreekids.org/research/factsheets/pdf/0326.pdf>

The New Mexico Department of Health provides help to residents of New Mexico who want to quit using tobacco at **1-800-QUIT NOW** (1-800-784-8669) and **1-855-DEJELO YA** (1-855-335-3569). These comprehensive cessation services provide free nicotine patches, gum, or lozenges, as appropriate, to registered participants, along with a free quit plan and free sessions with a trained coach. Web-based services are available at QuitNowNM.com and DejeloYaNM.com and also offer free comprehensive services with additional online support tools. All services offer text message support. The services are available 24 hours a day. TTY is available for the deaf and hearing impaired at 1-877-777-6534. New Mexico Tobacco Cessation services has a 33 percent quit rate of no-tobacco use in the last 30 days at 7-month follow-up.

CS/HB/148HJCS states that a court shall waive a fine of one hundred dollars (\$100) upon a first conviction if the person completes a smoking cessation course “either in person or through a web site”. According to DOH, the language disallows important cessation course delivery venues, such as telephone-based services, Text Telephone (TTY) and Telecommunication Device for the Deaf (TDD). Access for cessation courses would be increased by not restricting the completion of a smoking cessation course to “either in person or through a website”, as stated in the bill.

CS/HB/148HJCS maintains the protections for children that were previously included in HB148HCS by providing a definition of an electronic smoking device that is explicit about what is covered yet broad enough to anticipate future product innovations. This eliminates ambiguity if new products or components are released that are similar to those already in existence but would not fall under a narrow definition.

On the other hand the AG explains that the definitions in the House Health Committee Substitute Bill were ambiguous and overbroad. The terms “smoking” and “electronic smoking device” were used to define each other, making actual definitions difficult to ascertain. Furthermore, the inclusion of the term “any other substance” in the definition for “electronic smoking device,” may cause the unintended inclusion of asthma inhalers, medical oxygen or other aerosol or vapor therapies.

The AG goes on to explain that CS/HB/148HJC does not address the ambiguities and overbreadth regarding the definitions of “smoking” and “electronic smoking device”.

Governmental regulation of the private domain of a vehicle is not new or uncommon. It is justified by the government's legitimate interest in protecting the public health and safety of its citizens. They are much like the laws requiring seat belts, infant and booster seats, and prohibiting consumption of alcoholic beverages in moving vehicles. In the four US states that have enacted smoke-free vehicle laws, enforcement has not been problematic (<http://publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/vehicles>).

Only 43 percent of NM smokers who still have children living at home have a smoke-free car rule (2012 Behavioral Risk Factor Surveillance System). About two-thirds (68%) of NM adults favor prohibiting smoking of tobacco products in cars when children are present (2014 NM Tobacco Evaluation Survey). A survey released in July 2013 found that 82 percent of US adults favor prohibiting smoking in vehicles when children under 13 are present (<http://mottnpch.org/reports-surveys/broad-public-support-banning-smoking-vehicles-kids-present>).

PERFORMANCE IMPLICATIONS

CS/HB/148HJCS relates to the 2014-2016 NM State Health Improvement Plan and the FY2012 NM Department of Health Strategic Plan, Result 1: Improved health outcomes for the people of New Mexico, Objective: Reduce tobacco use, Program Performance Measure: Percent of QUIT NOW enrollees who successfully quit using tobacco at 7-month follow-up.

ADMINISTRATIVE IMPLICATIONS

Tax and Revenue Department reports that the new Tapestry system will be in production beginning May 25, 2015. Since the effective date of this bill is July 1, 2015, there is a possibility that the changes cannot be implemented into production by the effective date. Configuration and report changes to Tapestry for the added \$250 penalty assessment would also require FDB testing. An estimated 4 hours will be necessary for FDB to complete testing

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CS/HB/148HJC relates to:

- SB 65, which would amend the title of the “Tobacco Products Tax Act” to “Tobacco and Nicotine Products Tax Act” and would impose a tax and labeling requirements on nicotine products.
- SB 360, which would add a definition of “tobacco products,” restrict vending machine sales to age controlled location where minors are not permitted, restricts free samples, provides explicit non-preemption, and imposes penalties.
- SB 433, which proposes to change the title of the “Tobacco Products Act” to the “Tobacco Products and E-Cigarette Act,” and proposes to prohibit the sales of e-cigarettes to minors in New Mexico, require child-resistant packaging of some nicotine liquids, and mandate the public education department to revise its tobacco, alcohol and drug free school districts policy to include e-cigarettes.

- HB 42, which would amend the title of the “Tobacco Products Act” to “Tobacco Products and E-Cigarettes Act,” to add a definition for “e-cigarette,” and to prohibit the sales of e-cigarettes to minors.
- HB 213, which proposes to require the use of child-resistant packaging for nicotine liquid, providing penalties, including a civil action in district court by the attorney general, a permanent or temporary injunction, a restraining order, or any other appropriate order including a civil penalty not to exceed one thousand dollars.
- HB 213JC1, which would make a distinction between a nicotine liquid container and a cartridge in order to exempt pre-filled and sealed cartridges from child-resistant packaging requirements.
- HB 148HCS, which would enact sections of the motor vehicle code to prohibit smoking in a vehicle with a minor present, enact penalties for violations, provide definitions for “electronic smoking device” and “smoking” and provide a fine of \$250 for each violation.

TECHNICAL ISSUES

DOH mentions that as written, HB148HJCS does not include smoking with a minor present in a vehicle as an established penalty assessment with other offenses listed in the Motor Vehicle Code, Section 66-8-116 NMSA 1978.

BD/bb/je