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FISCAL IMPACT REPORT

SPONSOR Lopez ORIGINAL DATE 2/16/19
 LAST UPDATED 3/14/19 HB _____

SHORT TITLE No Tobacco Product Purchases Under Age 21 SB 342/aSPAC/aHCEDC

ANALYST Chenier

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$(232.5)	\$(227.3)	Recurring	General Fund
	\$(33.8)	\$(33.8)	Recurring	Other Cigarette Tax Beneficiaries (see below)
Total	\$(232.5)	\$(227.3)	Recurring	

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 259

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Department of Public Safety (DPS)

Taxation and Revenue Department (TRD) no response received

SUMMARY

Synopsis of HCEDC Amendment

The House Commerce and Economic Development Committee Amendment to Senate Bill 342

reduces penalties for a person under 21 years-of-age who purchases a tobacco product from \$100 dollars and 48 hours of community service to \$25 dollars and 4 hours of community service. If a person sells a tobacco product to someone under 21 years-of-age, the max penalty would be reduced from being guilty of a misdemeanor and having to pay a \$1,000 fine to no misdemeanor and a \$100 fine.

However, HCEDC amendment is not consistent and the changes to Section 30-49-9 NMSA 1978, changing the signage and reducing the penalties for persons under 21 years-of-age, does not match the penalty included in the newly added section which amends Section 30-49-12 NMSA 1978. The same is true for the penalty reduction for those who sell tobacco products to persons under 21 years-of-age.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 342 clarifies that the definition of e-cigarette does not include a product regulated as a drug or device “for medical purposes” by the U.S. Food and Drug Administration.

Synopsis of Original Bill

Senate Bill 342 would amend the Tobacco Products, E-Cigarette, and Nicotine Liquid Container Act to increase the legal age to purchase tobacco products and other related products from 18 to 21 years of age. The new age restriction would not apply to active duty military members eighteen years of age or older who present military identification. The bill includes a grandfathering provision for those who are eighteen to twenty-one years of age on July 1, 2019. The bill also adds a new definition for “tobacco product” and adds new penalties for minors who purchase, and persons who sell these products to minors.

FISCAL IMPLICATIONS

DOH said 2 percent of tobacco sales made in the US are to those under the age of 21. The Institute of Medicine predicts that raising the minimum age of sale of tobacco products would result in more than a 15 percent reduction in smoking rates among youth under age 21 (<https://tobacco21.org/critical-issues/>).

Given DOH’s assumptions, the state could expect the following reductions in tobacco tax revenue under the bill.

Cigarette and Other Tobacco Product Tax Revenue Change					
	FY20	FY21	FY22	FY23	FY24
General Fund	\$ (232.5)	\$ (227.3)	\$ (222.8)	\$ (218.3)	\$ (212.3)
Other Cig Tax Beneficiaries	\$ (33.8)	\$ (33.8)	\$ (32.3)	\$ (30.8)	\$ (29.3)
TOTAL	\$ (232.5)	\$ (227.3)	\$ (222.8)	\$ (218.3)	\$ (212.3)

The estimate includes both cigarette tax revenue and tobacco products tax revenue. The “other cig tax beneficiaries” include UNM cancer center, UNM health sciences, DOH, and the Rural County Cancer Treatment Fund.

DPS said that it is unclear whether raising the age of legal purchase of tobacco products, e-

cigarettes and nicotine liquid containers will result in a significant increase in officer time.

SIGNIFICANT ISSUES

The HCEDC amendment to Section 30-49-9 NMSA 1978, changing the signage and reducing the penalties for persons under 21 years-of-age, does not match the penalty included in the newly added section which amends Section 30-49-12 NMSA 1978. The same is true for the penalty reduction for those who sell tobacco products to persons under 21 years-of-age.

DOH provided the following:

The bill would exempt 18-20-year-olds who are active-duty military members, posing an additional burden for age and armed forces verification at the point-of-sale. In addition, research shows that 38 percent of those enlisting in the military initiated tobacco use upon entering the military (likely in the 18-20 year range), while 57% of veterans aged 18-25 reported using some form of tobacco (<https://bit.ly/2FknzAD>). In the short term, tobacco use impairs military readiness by reducing physical fitness, impairing visual acuity, and contributing to hearing loss. In the long term, it causes serious health problems and contributes to numerous other health problems (<https://bit.ly/2CbneMM>).

In the U.S., 24% of all active-duty military personnel reported currently smoking cigarettes, compared with 19% of civilians (<https://bit.ly/2RLRE1M>). About 30% of military veterans reported using any form of tobacco products. About 38% of those enlisting in the military initiated tobacco use upon entering the military, while 57% of veterans aged 18-25 reported using some form of tobacco (<https://bit.ly/2FknzAD>). Tobacco use kills over 480,000 people nationally and 2,800 in New Mexico (NM) each year (<https://www.ncbi.nlm.nih.gov/pubmed/29551325>). One-third of NM high school youth use some form of tobacco ([2017 Youth Risk and Resiliency Survey](#)). The developing teenage brain is particularly vulnerable to the effects of nicotine. More than 95 percent of addicted smokers start before age 21. Early exposure to nicotine increases the risk of addiction and puts adolescents at a higher risk for depression, anxiety and substance abuse. (<https://tobacco21.org/>). Currently, six states and at least 430 localities have raised their minimum legal tobacco sales age to 21 years (<https://bit.ly/2CRK8HM>). In NM, about two-thirds of adults favor raising the legal age to purchase tobacco products from 18 to 21 years. (2018 NM Tobacco Evaluation Survey, DOH).

In 2015, the Institute of Medicine (IOM) concluded that raising the tobacco sale age to 21 could have a substantial positive impact on public health and save lives by significantly reducing the number of adolescents and young adults who start smoking; reducing smoking-caused deaths; and immediately improve the health of adolescents, young adults and young mothers who would be deterred from smoking. IOM estimates that this policy change could reduce the smoking rate by about 12 percent (<https://bit.ly/29rph98>).

Young adults, aged 18-20, are the primary source of tobacco products for underage youth (<https://tobacco21.org/tobacco-21-fact-sheet/>). Raising the tobacco sale age to 21 will reduce access and smoking among youth, especially those ages 15-17. High school youth are less likely to have individuals ages 21 years and older than 18-20 years old in their social circles. Teens often obtain tobacco products from 18-20-year-old friends or family members. The majority (59 percent) of 18- and 19-year-olds have been asked by someone

younger than 18 years to buy cigarettes for them (<https://bit.ly/29rpH98>).

In December 2018, the Surgeon General officially declared e-cigarette use among youth an "epidemic" in the United States and specifically asked officials to “take action now” by restricting young peoples’ access to e-cigarettes in retail settings. (<https://bit.ly/2BseGAB>). This bill would restrict retail access to e-cigarettes and other tobacco products by NM youth ages 18-20 years old and help curb the use of tobacco products in this age group.

Concerns related to THIS BILL:

Increasing the legal age to purchase tobacco products from 18 to 21 years of age could potentially disrupt the social availability of all nicotine products to young people. However, to be effective, tobacco sale age laws must be rigorously enforced to prevent youth access, and without strict enforcement this intervention may ultimately fail (<https://tobacco21.org/health-department-enforcement-memo/>). In 2016, nearly two-thirds (63%) of U.S. 10th grade students reported that it would be “fairly easy or very easy” to access cigarettes (<https://bit.ly/2mLnCv6>). The most recent federally-mandated retailer compliance study (Synar) found that 14.7% of NM retailers sold tobacco to underage buyers during FY2016, and as many as 35% of retail stores in some NM communities sold to minors (<https://bit.ly/2CiHkEK>).

The bill proposes to “grandfather” individuals who are 18-21 years old on 7/1/19. This could complicate age verification efforts and retailer compliance at the point-of-sale by creating an additional, temporary category of individuals who are eligible to purchase tobacco products.

The bill would make selling tobacco and nicotine products to a minor a misdemeanor, potentially requiring additional resources for enforcement or adjudication, which could lead to uncertain punishment and delay between detection and punishment. Moreover, too few retailers are fined or suffer license suspension. Because adolescents readily identify those retailers who will sell to them, an effective law must substantially reduce these levels of retailer non-compliance (<https://bit.ly/2D2Abdl>).