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FISCAL IMPACT REPORT

SPONSOR Giannini ORIGINAL DATE 01/22/10
LAST UPDATED _____ HB 23
SHORT TITLE No Sale Of Products Appearing As Tobacco SB _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$10.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Department of Health (DOH)

Taxation and Revenue Department (TRD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 23 creates a new act that prohibits the sale of goods appearing to be tobacco products. The bill also provides a penalty of up to \$100 hundred for violations of the act.

The bill defines the term “goods” broadly; and “tobacco product” and includes in the definition cigarettes, cigarillos, cigars, hookahs, snuff, smoking tobacco and smokeless tobacco.

FISCAL IMPLICATIONS

Violators of the provisions within the act would be fined in an amount not to exceed one hundred dollars. This amount may not be sufficient to cover the costs to investigate and pursue violations of the act.

AOC reports that any judicial impact would be determined by whether violators incur a civil or a criminal penalty.

SIGNIFICANT ISSUES

TRD notes that the probable intent of the bill is to prohibit items designed to look like tobacco products, but do not contain tobacco. Items such as candy cigarettes; chewing gum packaged in containers similar to chewing tobacco or snuff containers; and components of smokeless nicotine delivery systems that appear similar to cigarettes.

DOH notes that the probable intent of the bill is consistent with the Tobacco Master Settlement Agreement which allows for “limitations on non-tobacco products which are designed to look like tobacco products”. States may pass legislation prohibiting the sale and supply of non-tobacco goods that look like tobacco.

PERFORMANCE IMPLICATIONS

As written, a penalty of up to \$100 dollars would be imposed on anyone selling a “tobacco product,” including tobacco products that can be sold legally.

ADMINISTRATIVE IMPLICATIONS

There is no regulatory authority identified to investigate violations of the act, or assess and collect fines.

TECHNICAL ISSUES

Please see suggested amendment below that may or may not help clarify the probable intent of the bill.

OTHER SUBSTANTIVE ISSUES

DOH further notes that the tobacco industry routinely designs tobacco products to resemble candy or other youth-friendly goods. For example, Camel Orbs look like Tic Tacs, and Camel Strips look like Listerine Strips (breath mints). In addition, some candy and other youth-friendly products are manufactured or packaged to resemble tobacco products. Some examples include candy cigarettes and “Big League Chew,” which is bubble gum packaged like leaf chewing tobacco, mints and perfume bottles shaped as cigars, etc.

In 2008, R.J. Reynolds began test-marketing new dissolvable smokeless tobacco products called Camel Sticks, Strips and Orbs that look like gum and candy and come in “fresh” and “mellow” flavors. These new products appeal to youth because they are easy to conceal, carry the names of youth-popular cigarette brands and come in candy-like forms and flavors. In addition, more traditional smokeless tobacco products continue to be marketed in a wide variety of kid-friendly candy and fruit flavors.

The smoking rate among high school youth in NM has declined from 30.2% in 2003 to 24.2% in 2007.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The sale of youth-friendly goods appearing to be tobacco products would not be prohibited in NM.

AMENDMENTS

Pg 1, Section 1, paragraph A, line 18, insert the word “non-tobacco” between “any” and “goods”.

AHO/svb