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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/18

SPONSOR McSorley LAST UPDATED _____ HB _____

SHORT TITLE No E-Cigarette Products to Minors SB 60

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Uncertain*	Uncertain*	Uncertain*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases) *See "Fiscal Impact", below

Duplicates 2017 Senate Bill 319

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

Regulation and Licensing Department (RLD)

Department of Health (response to 2017 SB 319, not to 2018 SB 60; DOH)

SUMMARY

Synopsis of Bill

Senate Bill 60 would amend the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act (Section 30-49-2 NMSA 1978) to prohibit sales of these products to persons under 21 years of age, as compared with the current 18 years. There would be two exceptions:

1. Military personnel more than 18 years of age
2. Those who had had their eighteenth birthday prior to July 1, 2017.

Tobacco products subject to this new age limit are re-defined to include all forms of tobacco and nicotine products including e-cigarettes (itself defined in the bill) and more traditional forms of smoked or chewed or inhaled tobacco products.

Persons under 21 years of age purchasing a tobacco product, an e-cigarette or a container of liquid nicotine may be made subject to a fine or community service; the person selling the product to someone under 21 years of age would be guilty of a misdemeanor and could be fined up to \$1 thousand.

FISCAL IMPLICATIONS

There is no appropriation in the bill.

AOC reports that “There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.”

More importantly, there would probably be a reduction in cigarette tax collections if the bill is enacted, balanced or exceeded by a decrease in health care expenditures resulting from decreased initiation of smoking at a young age.

SIGNIFICANT ISSUES

The long-term consequences of smoking cigarettes are by now well known, including not only lung cancer and emphysema and chronic bronchitis, but also coronary artery disease, and many forms of cancer other than in the lungs. It has been estimated that the United States’ health care expenditures are increased by up to \$170 billion per year by tobacco use, and that there are 480,000 premature deaths caused by tobacco products each year, making tobacco use the leading cause of premature death in the country despite a marked decrease in smoking over the past two decades.

Some 95 percent of all adult smokers began smoking before the age of 21, at an age before many people believe they have achieved full capability of examining the long-term effects of their actions. Eighty percent of adult smokers had their first cigarette before the age of 18, at a time when almost all states make purchase of tobacco products illegal. These underage smokers may purchase using false identification or through unscrupulous retailers, may get their cigarettes and other tobacco products from a family member, but a large proportion, estimated in a recent study at 63 percent, had someone older than them purchase their tobacco products for them.

Given these facts, the following reasons are given for making the minimum age for tobacco purpose 21 rather than 18:

- Many potential 18-21 year old smokers would be deterred by the prohibition on purchase.
- Younger adolescents (under 18) who would smoke and purchase their cigarettes through older social contacts would be less likely to have contacts among those over 21 years of age than among those over 18, and so would have less opportunity to pay someone else to buy their tobacco products.
- Since many of tobacco’s ill-effects are due both to intensity and duration of exposure, delaying the onset of smoking by three years would diminish the long-term effects.
- Establishing a minimum age of 21 would comport with the age limit of 21 for alcohol purchase, allowing the same identification card to be used for both.

Restriction of tobacco products to those over 21 years of age has been supported by a study from the Institutes of Medicine (now the National Academy of Medicine; <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>), by the Campaign for Tobacco-Free Kids (http://www.tobaccofreekids.org/what_we_do/state_local/sales_21), and by a statement from the

American Academy of Pediatrics

(<http://pediatrics.aappublications.org/content/pediatrics/early/2015/10/21/peds.2015-3109.full.pdf>), which states:

The minimum age to purchase tobacco should be increased to 21 years. Laws and regulations prohibiting the sale of tobacco to minors should be vigorously enforced. Legislation to increase the minimum age of purchase can be implemented at the state and local government levels. Funding for enforcement activities can be provided from federal, state, or local revenues. Middle and high school students often obtain their first tobacco products from older children. Because the vast majority of people who become tobacco dependent do so before 21 years of age, increasing the minimum age of purchase from 18 to 21 years and enforcing this regulation will protect a larger proportion of the population from becoming tobacco dependent. Enforcement activities that disrupt the commercial distribution of tobacco to minors are consistently associated with reductions in youth smoking rates.

New Mexico and US data on tobacco product use among youth are given in the following table, which comes from data obtained by New Mexico’s Youth Risk and Resiliency Study. YRRS summarizes data obtained from self-reporting of a large sample of high school students throughout New Mexico, and then compares it with data obtained in similar studies done across the country. The report shows the rapid ascent in use of e-cigarettes, which are now almost two-and-one-half times more commonly used by New Mexico teens than traditional cigarettes.

	New Mexico teens		U.S. teens
Current cigarette use	11.4%		10.8%
Current e-cigarette use	24.0%		24.1%

Hawaii, New Jersey, Oregon, Maine and California have already raised the minimum age of purchase of tobacco products to 21, as have at least 285 localities (including New York, Chicago, Boston, San Antonio and Kansas City [both MO and KS]).

The New Mexico Tobacco Use Prevention and Control Program of the Department of Health (<http://nmtupac.com/prevention/>) notes the importance of avoiding sales of tobacco products to minors, both for their current health but especially for their future health.

DUPLICATION of 2017 Senate Bill 319.

TECHNICAL ISSUES

DOH noted (with respect to the identical bill in 2017): “The definition of “e-cigarette” in SB319 does not include “aerosol”, which is relevant because the substance emitted [from an e-cigarette] is technically an aerosol, not a vapor.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Tobacco products, including the newly defined e-cigarettes, would remain legally available to all persons over 18 years of age, rather than 21 as in the bill.

LAC/al/jle