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FISCAL IMPACT REPORT

SPONSOR: Rodella DATE TYPED: 03/09/01 HB 704
 SHORT TITLE: Minor in Possession of Tobacco Products SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
Indeterminate			Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Department of Public Safety (DPS)
 Attorney General's Office (AG)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The Minor in Possession of Tobacco Products bill legislation adds a new section to the Tobacco Products Act (Sections 30-49-1 to 30-49-12 NMSA 1978). The proposed measure make possession of tobacco products by a minor a misdemeanor and establish penalties of:

- 1) first violation -- up to \$1,000 fine and 30 hours of service in a tobacco cessation and prevention program;
- 2) second violation -- up to \$1,000 fine, 40 hours of service with a tobacco cessation and prevention program and 90 day suspension of driver's license. If the driver is too young to possess a driver's license, the 90 days is to be added to the date the minor would become eligible to obtain a driver's license; and
- 3) third and subsequent violations -- \$1,000 fine, 60 hours of community service and driver's license suspension for two years or until the offender reaches 21 years of age, whichever is greater.

Significant Issues

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Significant issues are whether there is a sufficient nexus between the crime and the penalty of losing one's driving privileges. Additionally, there may be an enforcement problem due to the lack of a mechanism to notify the MVD of convictions.

FISCAL IMPLICATIONS

TRD reports that the fiscal impact due to the fines will probably be very small; it depends on enforcement, court actions, and similar factors. There is really no way to know how minors would react to the new sanctions against possessing tobacco products. Current statutes make it a \$1,000 fine for them to purchase tobacco products; whether additional sanctions against possessing the products would impact their use is uncertain.

The criminalization of a minor in possession of tobacco products will require enforcement personnel from the New Mexico Department of Public Safety to enforce. It is unknown exactly what fiscal impact this will have on the agency, but based on current statistics showing widespread tobacco use among minors, DPS anticipates that it will be significant. The Administrative Office of the District Attorneys also anticipates the need for greater resources to effectively prosecute the crime.

The Public Defender Department does not regularly represent juveniles charged with possession of tobacco, however, the penalties are likely to create a new class of client if contempt sanctions follow failure to pay or comply. In such case, the fiscal impact could be significant.

It will cost the judicial system \$400 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 or amendments to existing laws have the potential to increase caseloads and/or judge-time spent on cases in the courts, thus requiring additional resources to handle the increase.

TECHNICAL ISSUES

TRD reports that in order to be enforceable, the proposed measure should reference an appropriate portion of the Motor Vehicle Code, for example 66-5-5 NMSA 1978 (Persons not to be licensed).

OTHER SUBSTANTIVE ISSUES

1. No mechanism is established by which MVD is even notified of a conviction of a violation of these new crimes. TRD reports that it is therefore unlikely that the driver's license sanctions would be implemented.
2. A penalty for minors in possession already exists in the current Tobacco Products Act, which includes a potential fine and/or community service, similar to what this bill proposes.
3. The Attorney General reports that adding a penalty that involves suspending a minor's driver's license for possession of tobacco may create an excessive burden on the minor and the minor's family. It would potentially hinder a minor in high school from maintaining employment. The bill proposes suspending a license for up to two years or until a minor is 21, upon a third violation. There does not appear to be the requisite nexus between possession of tobacco and the maintenance of a driver's license to support the delineated penalty. There appears to be no supporting evidence that tobacco possession by minors impairs their ability to drive or creates a danger to the driving public.
4. The Public Defender Department notes that the sanction of license suspension is more significant than first time DWI suspensions. Additionally, it may only serve to create 'follow up'

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crimes, such as Driving on Suspended License, and further prevents the youth from obtaining the gainful employment necessary to comply with the Judges' order.

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