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FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 2/27/03 HB _____

SHORT TITLE: Smoking Cessation Programs for Certain Minors SB 707

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		Indeterminate	Recurring	Non-Smoking Prevention and Cessation Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to: SB133; HB144; SB 743

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

SB702 amends NMSA 1978, 30-49 governing Criminal Penalties for Tobacco Products,

strengthens the requirement for sale to person without identification and creates a smoking cessation program for minors. A funding source for the program is created.

Significant Issues

SB702 amends the Tobacco Products Act as follows:

- NMSA 30-49-5 Refusal to Sell Tobacco Products to a Person Unable to Produce an Identity Card - requires the sale's person selling tobacco products to not sell tobacco to person who appear to be less than 27 years of age.
- NMSA 1978, 30-49-12B Penalties- requires that a minor who attempts to procure or possess tobacco products be required to attend and participate a Smoking Cessation Program administered by the Department of Health.
- New Material: A non-reverting Smoking Cessation for Minors Fund is created with interest earned applied to the Fund.
- All balances in the Smoking Cessation Prevention Fund for Minors are appropriated to the Department of Health to provide smoking cessation for minors programs Statewide.
- A fee of \$100 shall be applied to minors who attend the Smoking Cessation for Minors Program.
- Payments from the Smoking Cessation for Minors Program Fund shall be made with vouchers issued by the Department of Health upon warrants issued by the Department of Finance and Administration.

DOH says that age verification is an important component of youth tobacco control and the ease of purchasing of tobacco. The recommendation of an amendment which requires stricter age verification procedures, resulting in the refusal of tobacco products sales, may deter some minors from attempting to purchase tobacco products. Making tobacco products less accessible to youth under the age of eighteen contributes significantly to reducing or delaying the onset of first use and 30 day use of tobacco.

DOH expresses concern that neither the current Tobacco Products Act nor the proposed amendments in SB 707 identify the agency that would be responsible for enforcement of violations. Violations to Subsection A (knowingly selling tobacco to a minor) carry a misdemeanor penalty. This implies that enforcement is the responsibility of local law enforcement. SB 707 eliminates the penalties imposed on minors who procure, attempt to procure or are in possession of tobacco. Minors who are in violation of Subsection B of Section 30-49-12 NMSA 1978 shall pay a fee of \$100 to the DOH to be deposited in the newly created "smoking prevention and cessation for minors fund." However, there is no indication of the relevant enforcement agency for Subsection B (regarding minors who violate provisions). Given the large number of youth relative to the number of retailers in any given community, enforcement of SB 707 would be difficult at best, and may require considerable resources for the designated enforcement agency.

In spite of the fees that would be collected, it would be very difficult for DOH to ensure the availability of smoking cessation classes throughout the state in reasonable proximity to many rural youth. The issue of how participation in such a program shall be mandated, enforced or evaluated for effectiveness is not addressed. It is unclear how the collection of a fee on vouchers issued by the Department would actually occur.

FISCAL IMPLICATIONS

SB 707 proposes to create a dedicated fund in the state treasury that would be administered by DOH. The fund would be utilized to provide smoking cessation classes based upon the \$100 class fee imposed on a person required to attend and participate in a smoking cessation program. The collection of such fees can be used for programming from year to year because the money from the fund does not revert.

ADMINISTRATIVE IMPLICATIONS

This program could not be implemented without additional administrative capacity. Since DOH would be responsible for the administration of the interest earned on the money in the “smoking prevention and cessation for minors fund” and the fees from the violation of this proposed bill along with the implementation of prevention and cessation programs statewide, a minimum of two (2.0) additional FTEs would be required.

CONFLICT, RELATIONSHIP

Relates to:

- SB133 Tobacco Settlement Fund Appropriations, which appropriates funds for a state-wide tobacco education program.
- HB144 Tobacco Settlement Funds Appropriation, which is a duplicate of SB133.
- SB2 General Appropriations Act appropriated \$6 million dollars to the Department of Health for smoking cessation and prevention.
- SB743 Smoking Prevention and Cessation Insurance, which require insurers to offer coverage for smoking cessation and prevention if the insurer offers maternity benefits,

Conflicts with:

- Conflicts with HB540 Minor in Possession of Tobacco, which identified terms of sale for tobacco products and penalties for possession or attempts to possess tobacco products.

TECHNICAL ISSUES

On page 3, Section 3, Subsection B, lines 1-4, the fine not to exceed one hundred dollars or 48 hours community service has been deleted and replaced with the required smoking cessation program administered by the Department of Health. DOH suggests that the existing fine and community service remain a part of the bill, with the addition of the program. The elimination of the fine and community service, and only requiring a smoking cessation program, removes some of the impact on youth.

OTHER SUBSTANTIVE ISSUES

The Behavioral Health Services Division (BHSD) has collected data through the administration of pre- and post-evaluation tools for all prevention programming served by its New Mexico prevention programming contractors and the outcome data indicates that youth between the ages of twelve and seventeen possess a thirty day use of tobacco at a rate 3.6% higher than the national average. The imposition of attendance in a smoking cessation program may result in reduced use, which would affect a long-term impact on health issues faced in New Mexico.

In different states, there are many variations of “youth possession” laws in terms of the offence itself, the penalty imposed, and the agency responsible for enforcement. Offences addressed by such laws may include youth purchase, attempt to purchase, possession, and/or use of tobacco products. The most common provision is the prohibition of the purchase of tobacco by youth - with 33 states having such a law on their books, including New Mexico.

HPC provides the following information:

The Campaign for Tobacco-Free Kids, utilizing data from the US Centers for Disease Control and Prevention-2001 and 2002 data, notes the following statistics for New Mexico:

- 36.2% (41,000) of NM High School students smoke cigarettes. 5,200 kids (under 18) in New Mexico become new daily smokers each year.
- 2,100 New Mexico adults will die each year from their own smoking. 44,000 kids under 18 and currently alive in New Mexico will ultimately die prematurely from smoking.
- 90% of all smoking adults began smoking in adolescence.
- National and annual health care costs associated with smoking are more than \$75 billion, of which \$23.5 billion is paid out to Medicaid (Centers for Disease Control). New Mexico spends about \$38 million (before federal match) per year for tobacco related Medicaid costs (American Cancer Society/American Heart Association).
- According to the Campaign for Tobacco-Free Kids, for every dollar spent to reduce tobacco use, \$3 is saved in future health care costs.
- A Canadian study notes that among teens who tried to quit smoking using a government funded program Quit for Life, over 21% reported that they stopping smoking after six months and another 12% after 12 months.

BD/sb/lis