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FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/15/11
LAST UPDATED _____ HB _____
SHORT TITLE Prohibit Tobacco Possession for Minors SB 296
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See Fiscal Impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 296 amends the Tobacco Products Act and prohibits the possession of tobacco by persons under eighteen years of age.

FISCAL IMPLICATIONS

The minor in possession will be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service. It is uncertain if the imposed fines will cover the cost for enforcement. This new offense will mostly likely impact the resources of law enforcement and the courts depending upon how aggressively enforced. The initial expense will certainly include educating the public, including minors, about the new law and its penalties.

DOH has reported in similar legislation that annual health care costs in New Mexico directly caused by smoking covered by the state Medicaid program are \$184 million.

SIGNIFICANT ISSUES

Current law prohibits a minor from procuring or attempting to procure tobacco products. SB 296 will also make it illegal for minors to *possess* tobacco products.

DOH notes that strategies recognized as best practices by the Centers for Disease Control and Prevention in preventing children from tobacco use include increasing the price of cigarettes and other tobacco products, directing laws at retailers, restricting marketing by tobacco companies, counter-advertising, and mass media campaigns designed to prevent and reduce tobacco use among youth.

PERFORMANCE IMPLICATIONS

DOH further notes that laws that penalize children for possession of tobacco products that are *not strictly enforced* may breed disrespect for the law by young people, thereby having a negative effect.

ADMINISTRATIVE IMPLICATIONS

Current law provides that the Alcohol and Gaming Division of the Regulation and Licensing Department and law enforcement authorities in each county and municipality are to ensure compliance with the provisions of the Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB296 relates to

- HB 79 provides for an additional distribution from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund through FY13.
- SB 81 clarifies the definition of tobacco products, increases the state tobacco products excise tax from 25% to 57% of product value, and imposes a minimum excise tax on all tobacco products sold.
- SB 212 amends sections of the Dee Johnson Clean Indoor Air Act to prohibit smoking in motor vehicles in which a minor is present.
- SB 264 provides for cigarette excise tax to be paid by a cigarette vendor on tribal land on sales of cigarettes to non-tribal members, limits tax credit stamps on sales to tribal members, eliminates requirement for tribes to impose a tribal cigarette tax, and counts tribal member sales as “units sold” for tobacco escrow payments.
- SM 7 directs DOH to study the feasibility of holding tobacco manufacturers accountable for sale of tobacco to minors.

TECHNICAL ISSUES

Section 30-49-3 NMSA 1978 only provides for a definition of *minor* and does not provide for a definition of *procure* as used in the existing Tobacco Products Act. The bill may benefit from including definitions (from Black’s Law Dictionary) for the terms *procure* and *possess*.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Possession of tobacco by a minor will not be prohibited by the Tobacco Products Act.

AHO/bym