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FISCAL IMPACT REPORT

SPONSOR Beam DATE TYPED 1/27/04 HB 83

SHORT TITLE Tobacco Delivery Sales Act SB _____

ANALYST Neel

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	100.0			Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		(See Narrative)	Recurring	General Fund
			Recurring	NM Finance Authority
			Recurring	Recreation Fund
			Recurring	Cigarette Fund
			Recurring	UNM Cancer Center
			Recurring	UNM
			Recurring	GSD
			Recurring	Credit Enhancement Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to:

- HB 59, Increase Tobacco Products Tax
- HB 86, Tobacco Stamp Procedure Changes
- HB 220, Tobacco Settlement Revenue Appropriation
- SB 192, Smart Moves Smoking Cessation Program Funding
- HM 1, Promote Cigarette Taxation Parity

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Humans Services Department (HSD)

No Responses Received From:

Taxation and Revenue Department (TRD)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 83 enacts the Tobacco Delivery Sales Act regarding definitions, general provisions, age verification, shipping requirements, maximum delivery amounts, registration of sellers, reporting and confidentiality requirements, collection of taxes, penalties, enforcement and appropriation. HB 83 would regulate tobacco sales ordered in writing, by telephone, and through the Internet, and delivered by seller via U.S. mail or other delivery services to individual consumers in New Mexico. A major emphasis of HB 83 is that sellers would not be allowed to sell or deliver tobacco products to minors in New Mexico.

Significant Issues

There is a growing trend in cigarette sales via the Internet to avoid state excise taxes and enforcement of verification of age. Internet sales are a route increasingly chosen by underage consumers.

The Health Policy Commission proved the following statistics on under-age smoking:

New Mexico and National Smoking Statistics

- 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. Kids (under 18) in New Mexico who become new daily smokers each year are 5,200.

- National youth smoking rates have declined somewhat since 1997, but remain at historically high levels. According to the National Youth Tobacco Survey, 28.4% of all U.S. high school kids smoke.
- In New Mexico, 23.6% (293,000) of adults are smokers, which compare 23.3% of United States adults.
- 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.
- The American Journal of Public Health notes that minors were sold cigarettes by vending machines in bars 77% of the time, in private clubs 80% of the time, in restaurants 88% of the time and in gas stations 99% of the time.
- According to the World Health Organization, 42% of young people who smoke as few as three cigarettes go on to become regular smokers.
- Studies have found that about three-fourths of under-age smokers in the US consider themselves addicted. About two-thirds of adolescent smokers in another study indicated that they wanted to quit smoking, and 70% said that they would not have started if they could choose again.
- On average, smokers who begin smoking in adolescence and continue to smoke regularly have a 50% chance of dying from tobacco. Half of these will die in middle age, before age seventy, losing around 22 years of normal life expectancy. Therefore, a lifelong smoker is as likely to die as a direct result of tobacco use as from all other potential causes of death combined.

The following was excerpted from the November/December 2003 edition of *State Government News*:

As part of Phase I of the MSA, tobacco manufacturers that signed on the agreement are required to make annual payments to state governments in perpetuity. It was originally estimated that over the first 25 years of the agreement, the cumulative total of those payments would be approximately \$200 billion.

The base amounts are subject annually to three adjustments: inflation accounting for the change in the value of a dollar each year; volume, ensuring that payments to the states are based on the total number of cigarettes sold by the participating manufacturers; and market share, to take account of gains in the market share by companies that haven't signed the MSA....

The size of the volume reduction has grown by 14 percent in 2000 to more than 23 percent in 2003. ... By 2018 more than half of each annual payment will be lost to volume adjustments. Two trends are responsible for this volume decline. First, cigarette consumption is down. Fewer people are smoking, and those who continue to smoke are smoking less. The United States' overall cigarette consumption continues to drop at an annual rate of roughly 1.5 percent... The second trend, however, is less positive. Smoking statistics are down, but not as much as sales figures would indicate. The decline in the volume of cigarettes sold is several percentage points greater than the decline in consumption. This suggests that an

increasing number of cigarettes are being sold through illegitimate un-monitored channels. These sales artificially inflate the reductions applied to MSA payments, undermining the MSA's health goals and cutting the size of states settlement payments.

FISCAL IMPLICATIONS

HB 83 appropriates \$100.0 to TRD to implement provisions of the act. Any unexpended or unencumbered balance remaining at the end of FY05 will revert to the general fund.

HB 83 encourages increased compliance with the Cigarette Tax Act. However, precise mechanisms to collect such taxes may be suspect and therefore the fiscal impact may be indeterminate.

OTHER SUBSTANTIVE ISSUES

Senate Bill 804 (Chapter 341) increases the cigarette tax from the current 21 cents per pack to 91 cents per pack and authorizes the New Mexico Finance Authority (NMFA) to issue revenue bonds with a term of up to 15 years for no more than \$60 million for the University of New Mexico Health Science Center (UNMHSC) and the Cancer Research and Treatment Center. The bill also authorizes the issuance of revenue bonds for Department of Health facilities. Cigarette tax distributions to current beneficiaries are amended to hold them harmless; however, new distributions are made to NMFA (for the benefit UNMHSC and Department of Health facilities) and a credit enhancement account as a contingency if cigarette tax revenues decline and impact the state's ability to service the authorized bonds. After the distributions, the remaining revenue is distributed to the general fund; the FY04 gain to the general fund is estimated at approximately \$31 million.

Costs of tobacco use

- Annual health care costs in New Mexico directly caused by smoking are \$360 million and the portion covered by State Medicaid was \$144 million. Residents' state & federal tax burden from smoking-caused government expenditures was \$507 per household. (Source: US Centers for Disease Control and Prevention-2001 and 2002 data).
- Total economic losses due to tobacco related illnesses in 2002 are estimated to be \$157 billion (American Cancer Society). Tobacco and second hand smoke result in over 2,100 deaths a year in New Mexico and 400,000 deaths in the U.S.
- Smoking costs the United States \$150 billion each year in health costs and lost productivity, 50% more than previously estimated, according to a study published by the Centers for Disease Control and Prevention. The study put the economic costs of smoking at \$3,393 per smoker per year.

Smoking prevention and cessation efforts

- In 2003, New Mexico ranked 28th in State funding for tobacco prevention. This amount was 36.5% of the total funding recommended by the Centers for Disease Control.

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- According to the Campaign for Tobacco-Free Kids, for every dollar spent to reduce tobacco use, \$3 is saved in future health care costs.
- Analysis of 57 studies showed that when counseling was added to nicotine replacement therapies, results were better than those of using nicotine replacement alone.
- 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.

Tobacco-Free Kids Statistics (www.tobaccofreekids.org)

- Average state cigarette tax as 1/8/04 – 73.5 cents.
- Tobacco state average as 1/8/04 – 12.4 cents.
- Non-tobacco state average as 1/8/04 – 82.6 cents.
- Studies show that higher cigarette taxes are an effective ways to reduce smoking among both youth and adults. A 10 percent increase in the price of cigarettes will reduce youth smoking by about seven percent and overall cigarette consumption by three to five percent.

POSSIBLE QUESTIONS

Is the \$100 thousand appropriation adequate to fully cover the mandates included in HB 83?

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