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FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 2/15/05 HB _____
 SHORT TITLE Increase Age For Tobacco Use From 18 To 21 SB 612
 ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative	Recurring	

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)

Department of Health (DOH)

Administrative Office of the Courts (AOC)

New Mexico Economic Development Department (NMEDD)

SUMMARY

Synopsis of Bill

Senate Bill 612 amends the Tobacco Products Act increasing the age from 18 to 21 and increasing the penalty from \$1 hundred to \$1 thousand. SB 612 adds possession in addition to attempting to purchase as cause for violation. Under current law, tobacco sellers “may” refuse to sell tobacco to persons who cannot prove age. This permissive language is replaced with “shall” not sell. Persons selling tobacco shall request an identify card of those appearing to be less than thirty years of age.

Significant Issues

2000 census data reports between 75,000 and 90,000 tobacco users between 18 and 21. The rate of youth smoking is higher in New Mexico than in the nation. In New Mexico, 30% of high school students are current smokers (have smoked within 30 days), while 22% of high school students nationally are current smokers.

According to the CDC, the tobacco industry has advocated for penalizing youth, rather than retailers for purchasing or possessing tobacco in an attempt to divert the responsibility for illegal sales from the retailer to children. CDC recommends a strategy that ensures retailers are held ac-

countable and penalized for illegal sales to minors as the first step in reducing youth access to tobacco products. It is estimated that one out of every four underage smokers in New Mexico purchases their own cigarettes from a store.

The Surgeon General recommends instituting 19 years of age as the minimum age for legal tobacco sales, which would help keep tobacco out of high school.

Youth possession laws have not been endorsed by the U.S. Surgeon General, the CDC, and the World Health Organization.

PERFORMANCE IMPLICATIONS

DPS has concerns proposed legislation requires additional administrative resources to process citations, and takes law enforcement officers away from other enforcement duties.

The AOC notes SB 612 could increase the number of misdemeanor cases filed against tobacco users and tobacco sellers in magistrate and metropolitan courts.

The EDD notes SB 612 will assist retail establishments in controlling the sale of tobacco.

FISCAL IMPLICATIONS

The DOH reports the U.S. DHHS issued regulations under the Synar Amendment requiring states to pass and enforce laws prohibiting the sale of tobacco to individuals less than 18 years of age. Compliance with the Synar Amendment is a condition of funding for states receiving the Substance Abuse Prevention and Treatment (SAPT) block grant. Forty (40) percent of the block grant funding can be withheld for not complying with the Synar Amendment. \$8,772,443.00 was awarded for FY06. 40% (\$3,508,977.00) of this funding is tied to compliance with the Synar Amendment of the Alcohol, Drug Abuse and Mental Health Reorganization Act, which specifies the age of a minor, related to tobacco products, as 18 years of age. Raising the age of a minor from 18 to 21 years of age goes further than the age limits for minors as defined in the Synar Amendment.

In 1997, at the inception of the Synar Amendment, New Mexico's "sales to youth" violation rate was 23%. In FY05 the rate was down to 6.4%, bringing it under the 20% specified by the Synar Amendment. Increasing the age of a minor from 18 to 21 years of age could inflate the number of sales violations because of the expanded pool of minors potentially buying tobacco products, which could result in a portion of the SAPT block grant being withheld by SAMHSA.

Early age smokers have an increased risk of smoking-related illnesses that impact New Mexico's health delivery systems.

ADMINISTRATIVE IMPLICATIONS

There will be a minimal administrative impact on staff and resources for statewide update, distribution, and documentation of statutory changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 612 relates to:

- HB 81, SB 50 repeals the cigarette tax increase
- HB 290, redistributes Master Settlement Agreement payments into the Tobacco Settlement Program Fund
- HB 319, raises the tax on non-cigarette tobacco products
- HB 354/SB 515, prohibits smoking in workplaces and public places
- HB 453, appropriates \$3 million to the DOH/TUPAC program
- HB 650, appropriates \$8 million to DOH/TUPAC and \$500,000 for SMART MOVES, and make other appropriations
- SB 56, changes the requirements of cigarette tax stamps
- SB 389, prohibits smoking in jails and schools

TECHNICAL ISSUES

The identity card requirement could be more defined.

It is unclear what the fines are for businesses selling tobacco products to minors.

OTHER SUBSTANTIVE ISSUES

The DOH notes the CDC recommends implementing evidence based strategies, they include:

- High tobacco taxes – New Mexico’s 91 cents per pack excise tax currently ranks 20th in the nation.
- Mandatory smoke-free workplaces and public places. Strong clean indoor air laws have a stronger deterrent effect on youth smoking rates than youth possession laws.
- Restrictions on tobacco product promotion – Tobacco advertising images are still widely displayed. New Mexico has no restrictions on tobacco promotions.
- A mass media counter-advertising campaign – Evaluations of the Massachusetts and Florida’s anti-smoking television ads concluded that ads were effective in preventing youth from using tobacco.
- Curriculum-based anti-tobacco education – New Mexico implements evidenced-based tobacco education curricula in New Mexico schools.
- A strongly enforced prohibition on tobacco supply to minors.

ALTERNATIVES

Amendment to institute 19 years of age as the minimum age for legal tobacco sales, which may help keep tobacco out of high schools.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The minimum age for legal tobacco sales will remain at eighteen years of age and minors would be subject to penalties for purchasing or attempting to purchase tobacco products, but not for possession.

QUESTIONS

Are the fines high enough to prevent retailers from selling to minors?

AHO/yr