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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/2007  
LAST UPDATED 3/17/2007

SPONSOR SCORC HB \_\_\_\_\_

SHORT TITLE Control Access to Spray Paints & Markers SB CS/853/aSFL#11/aHBIC

ANALYST McOlash/Baca

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of HBIC Amendments

House Business and Industry amendments to Senate Corporations and Transportation Committee substitute for SB 853 amend the bill's title and all references to permanent markers and markers, and, on page 1, place the word "or" before "aerosol."

Senate Corporation and transportation Committee

#### Synopsis of SFL Amendment

The first amendment proposed by the Senate Floor adds "*Acid Etching Cream*" to aerosol paint cans or permanent markers, as an additional item to have controlled access.

#### Synopsis of Original Bill

The Senate Corporations and Transportation Committee Substitute for Senate Bill 853 controls access to aerosol paint cans or permanent markers by placement in the line of sight of a cashier or work station in a manner that makes them accessible to patron only with employee assistance.

Access can also be controlled by displaying these products in an area electronically protected or viewed by surveillance equipment monitored during business hours.

Permanent markers for controlled access are defined as those “with a writing surface of three-eighths inch or greater. . . .”

The bill makes no mention of any restrictions on sale or penalties for either selling or purchasing these items.

### **SIGNIFICANT ISSUES**

In the mid-1980s and early 1990s the idea of mandatory “lockup” of spray paints and marker pens went through a period of popularity in the United States. Chicago went one-step further – in 1992 banning outright the retail sale of wide-tipped marker pens and spray paints.

However, some of the US cities with the worst graffiti problems and the largest spent on remediation – cities like Los Angeles and New York – have such ‘lock up’ legislation in place. Not surprisingly, the enthusiasm for the ‘lock up solution’ soon faded as it became apparent that such measures were not the “quick fix” that some hoped they might be.

Many communities have put in place, either voluntarily or through local law, Responsible Retailing programs. Under them, retailers either display the products in line of sight of a workstation, either directly or through the use of surveillance equipment, or remove the products from customer access. They also post signs warning of the penalties for graffiti vandalism and provide anti shop theft training materials to their employees.

Since the mid-1990s, dozens of towns, counties and US cities have adopted the Responsible Retailing model as part of a comprehensive anti-graffiti program. Among them are San Diego, California; Pueblo, Colorado; Miami-Dade County, Florida; Albuquerque and Santa Fe, New Mexico; and Milwaukee, Wisconsin.

The Albuquerque ordinance is as follows:

#### **"Section 12-4-15 SALE AND DISPLAY OF AEROSOL SPRAY PAINT"**

(A) No person other than a parent, guardian or other adult person acting in their place shall sell or otherwise provide aerosol spray paint to any person under 18 years of age and no person under the age of 18 years shall buy or attempt to buy any aerosol spray paint. A New Mexico driver's license, an identification card issued to a member of the Armed Forces, or an identity card issued pursuant to Section 60-10-17 NMSA 1978 shall be prima facie proof of age.

(B) Every person who owns, manages or operates a place of business selling aerosol spray paint shall store or cause such spray paint to be stored either:

1. in the line of sight of one or more work stations that are normally continuously occupied during business hours, or
2. in an area viewable by the public but not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such spray paint.

(C) Any person who owns, manages or operates a place of business wherein aerosol spray paint

is sold shall conspicuously post:

1. at or near the aerosol spray paint display, in clear public view, a sign stating: 'GRAFFITI IS A CRIME. THE DEFACING OF PUBLIC OR PRIVATE PROPERTY IS PUNISHABLE BY A FINE OR IMPROSONMENT',
2. at or near the aerosol spray paint display, in clear public view, a sign stating: 'NO SPRAY PAINT SOLD TO MINORS. SELLING SPRAY PAINT TO OR PURCHASE OF SPRAY PAINT BY PERSON UNDER 18 YEARS OF AGE IS AGAINST THE LAW. VIOLATORS CAN BE FINED UP TO \$500 OR IMPROSONED FOR UP TO 90 DAYS', and
3. at each cash register or other point of customer payment, in clear view of the person accepting customer payment, a sign stating: 'NO SPRAY PAINT SOLD TO MINORS. THE LAW FORBIDS SELLING SPRAY PAINT TO PERSONS UNDER 18 YEARS OF AGE. WHEN IN DOUBT, ASK FOR PROOF OF AGE. ACCEPT ONLY IDENTIFICATION ISSUED BY THE FEDERAL, STATE OR LOCAL GOVERNMENT.'

Albuquerque, for one example, has adopted a responsible retailer's ordinance that is more comprehensive than SH 853. It asks for and requires more responsibility of the retailers while also putting restrictions and penalties for the purchasers

Given the wide variety of shops which sell wide tipped markers – from newsagents hobby and toy outlets to craft supplies stores, hardware stores, specialty paint retailers, auto accessory outlets, variety stores, supermarkets and service stations – it may be much more difficult to apply and enforce regulations on controlling access to felt-tip permanent markers.

### **ALTERNATIVES**

Enactment of statewide laws similar to the Albuquerque or Santa Fe ordinances could be more effective.

Other effective solutions to graffiti and other forms of vandalism may be based on approaches that address other issues ranging from art and youth initiatives, and tackling issues of cultural identity to innovative approaches to law enforcement and town planning.

BM/mt