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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/17
 LAST UPDATED 2/22/17 HB 38/aHHHC

SPONSOR Montoya

SHORT TITLE Deceptive Labeling of Synthetic Drugs SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Regulation and Licensing Department (RLD)

Response Not Received From

Department of Health (DOH)

SUMMARY

Synopsis of the House Health and Human Services Committee Amendment to House Bill 38

The amendment makes clarifying changes to the language of the bill, with little change in its effects. The long title of the bill and the first sentence of Section A are altered to clarify that the products being considered contain synthetic drugs. In line with the concern expressed by RLD noted below, the word “dispense,” which was thought by RLD to cause possible consequences for pharmacists, was removed.

Synopsis of Bill

House Bill 38 establishes a new section of the Unfair Practices Act (NMSA 1978 Section 57-12). The new section would establish as an additional unfair practice the sale of a natural or synthetic substance (including a drug) that the seller knew or should have known would have as a primary use the production of an altered mental state, when that substance’s specified use (on its label, packaging, or instructions) was otherwise.

The Administrative Office of the District Attorneys comments that the “apparent intent of HB38 is to prohibit the sale of synthetic drugs that are often sold as ‘incense’ or ‘bath salts.’ Although the products may be labeled as ‘not fit for human consumption,’ they are intended to be introduced into the human body to produce altered mental states..”

FISCAL IMPLICATIONS

RLD indicates no fiscal impact to that agency; the Administrative Office of the District Attorneys states that the Attorney General’s Office or district attorney’s offices would incur minimal expenses in investigating and pursuing these cases.

SIGNIFICANT ISSUES

According to an article published in the journal *Pharmacy and Therapeutics* in 2012,

The abuse of synthetic stimulant drugs known as “bath salts” has become a major public health threat across the U.S. Unlike traditional cosmetic bath salts, which are made to be added to bath water, toxic bath salt products have no legitimate use for bathing and are produced specifically for recreational drug abusers as legal substitutes for cocaine, ecstasy (MDMA), and amphetamines. Case reports and clinical studies have shown that the use of these designer drugs can cause severe psychiatric symptoms and possibly death. Individuals abusing bath salts have ranged in age from teenagers to adults in their forties.

And the National Institute on Drug Abuse in a statement revised in 2015, wrote

Synthetic cannabinoids refer to a growing number of man-made mind-altering chemicals that are either sprayed on dried-shredded plant material so they can be smoked (herbal incense) or sold as liquids to be vaporized and inhaled in e-cigarettes and other devices (liquid incense). These chemicals are called *cannabinoids* because they are related to chemicals found in the marijuana plant... People who have used synthetic cannabinoids and have been taken to emergency rooms have shown severe effects including: rapid heart rate, vomiting, violent behavior [and] suicidal thoughts. Synthetic cannabinoids can also raise blood pressure and cause reduced blood supply to the heart, as well as kidney damage and seizures. Use of these drugs is associated with a rising number of deaths.

The bill appears to be broadly applicative to additional and as-yet unavailable products synthesized to create a mind altering effect, disguised as innocuous substances with common uses, just as the mind-altering “bath salts” and “incense” products are.

PERFORMANCE IMPLICATIONS

According to the Administrative Office of the District Attorneys, “Issues to be litigated will include whether the person selling the product knew or reasonably should have known that the product is primarily used contrary to the specific intended use, and whether the “primary” use of the product is to produce an altered mental state through introduction into the human body.”

TECHNICAL ISSUES

RLD notes that inclusion of the word “dispense” in the bill’s definition of the word “sell” might have unintended consequences for pharmacists.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There would be no Unfair Practices Act consequences for selling substances used to produce an altered mental state when that use was contrary to the labeled use.

LAC/sb/al/jle