

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____ **Date** 1-11-17
Correction _____ **Substitute** _____ **Bill No:** HB38

Sponsor: Rod Montoya **Agency Code:** 264
Short Title: Deceptive Labeling of Synthetic Drugs **Person Writing:** Gail MacQuesten
Phone: 466-0532 **Email:** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB38 enacts a new section of the Unfair Practices Act to prohibit the selling of a product for which a specific intended use is provided by the product's label, packaging or instructions, and which specific intended use is not the production of an altered mental state, when the person selling the product knows or reasonably should know that the product is primarily used to produce an altered mental state. "Altered mental state" is defined as a person's experience of a depressant, stimulant, hallucinogenic or narcotic effect." The sale of such products would constitute a violation of the Unfair Practices Act for every individually packaged product sold.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB38 defines a new violation of the Unfair Practices Act. The Attorney General is responsible for enforcement of the Unfair Practices Act, but may "in appropriate cases delegate this authority to the district attorneys of the state..." See NMSA 1978, Section 57-12-15. If cases involving this new violation are kept by the Attorney General, the Attorney General's Office will incur increased expenses investigating and litigating the cases. If the cases are delegated to the district attorneys, the district attorneys will incur the increased expenses.

SIGNIFICANT ISSUES

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 for human consumption," they are intended to be introduced into the human body to produce altered mental states.

PERFORMANCE IMPLICATIONS

The Unfair Practices Act is a civil statute, providing private remedies and civil penalties. The office enforcing this provision (either the Attorney General's Office or a district attorney's office) will incur expenses in investigating and pursuing the cases. 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.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Unfair Practices Act will not prohibit the sale of synthetic drugs intended to produce an altered mental state under labels, packages and instructions purporting some other use.

AMENDMENTS

None proposed.