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FISCAL IMPACT REPORT

| | | | | | |
|--------------|--|-------------|----------|----------|--------|
| SPONSOR: | Aragon | DATE TYPED: | 02/02/00 | HB | |
| SHORT TITLE: | Minimum Markup on Package Liquor Sales | | | SB | 299 |
| | | | | ANALYST: | Valdes |

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|----------|-------------------------|------------------|
| FY00 | FY01 | FY00 | FY01 | | |
| | | | \$ 100.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

This bill would enact a new section of the Liquor Control Act which would require a minimum markup of 20% above wholesale price in the sale of "unbroken package" alcoholic beverages in the calendar month preceding the month of sale pursuant to the price published in the publication *Beverage Analyst*.

Retailers and wholesalers would be required to retain purchase and sales records of all alcoholic beverages sold in unbroken packages for two years following the sale of the item. Information identifying the contents, brand, lot, purchase and sale prices of the item is required to be clearly set forth in the records.

FISCAL IMPLICATIONS

This bill would significantly impact the budget and resources of the Alcohol and Gaming Division of the Regulation and Licensing Department.

ADMINISTRATIVE IMPLICATIONS

According to RLD, the requirement that Alcohol and Gaming Division audit the records of businesses affected by the bill would require additional FTE's to accomplish the auditing requirement of the bill. Neither the frequency of audits or the type of license to be audited is specified. To audit the 1,200+ licenses which permit the sale of "unbroken package" alcoholic beverages will require an audit at least once every three years. This will require 2 FTE positions to perform the necessary audits, record keeping, enforcement actions and data management. The cost estimate for these additional responsibilities is \$100.0 per year.

TECHNICAL ISSUES

According to RLD, Subsection A, of Section 1 states that "*no licensee*" shall sell alcoholic beverages in unbroken packages at retail for less than twenty percent above the wholesale price paid by the licensee for the alcoholic beverage. Since "unbroken package" is not defined, it is unclear what would constitute an unbroken package. Subsection B, however, only requires "*a retailer*" to retain purchase and sales records of all alcoholic beverages sold in unbroken packages. Currently there are approximately 78 licensed retailers in the state. There are other types of licensees that sell alcoholic beverages in unbroken packages. It is unclear whether the intent of the bill is to require all licensees that have the ability to sell alcoholic beverages in unbroken packages to retain the records required in the bill.

OTHER SUBSTANTIVE ISSUES

RLD provided the following issues:

Although the bill contains a provision that the department may audit the records of a retailer or wholesaler upon twenty-four hours notice during any work day, the bill does not contain penalty provisions for those licensees that do not comply with the requirements set forth in the bill.

Previous attempts at mandating pricing have been declared unconstitutional, therefore, the minimum mark-up provisions of the bill may be unconstitutional pursuant to previous federal court decisions (Brown-Forman Corp. v. N.M. Department of ABC.)

MFV/njw