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FISCAL IMPACT REPORT

SPONSOR Taylor DATE TYPED 03/02/05 HB _____

SHORT TITLE Corporate Liquor License Notice Provisions SB 815

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	(\$60.0)	(\$60.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Regulations and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

The bill proposes to repeal Section 60-6B-6 “Corporate licensees; limited partnership licensees; reporting” Liquor Control Act and replace it with a new section: “Relating to Business Licenses; Changing the Notice Provisions for Corporate Licensees.”

The existing section requires notification of the Director of the Alcohol and Gaming Division (AGD) in the Regulations and Licensing Department (RLD) within thirty days after the occurrence of any change in a corporation, of the officers, directors or holders of more than ten percent of the voting stock or of any change, and in a limited partnership, notification of general partners or limited partners contributing ten percent or more of the total value of contributions.

The existing section also requires that any legal entity that is not a corporation or limited partnership is also required to notify the director of any change in the trustees or partners or owners of more than a ten percent interest in the entity. Any change of 10 percent interest or greater is treated as a transfer of ownership and the notification requires the filing of an application to be submitted along with a \$200 application fee.

The proposes bill provides that a licensee must notify the director within 30 days regarding any change to shareholders, partners, or members of the licensee if a direct or indirect owner of the

license unless: an officer, director, partner or member, who resigns or is terminated, was not required to be disclosed on the initial liquor license application, or if any person who is required to be disclosed resigns and is not replaced. The proposed bill does not require a new application fee for ownership changes.

Corporation changes would not constitute transfers of ownership of a liquor license under the proposed bill when:

- 1) a license elects new officers or directors that would be required to be disclosed when the licensee acquires the license from a different person;
- 2) the transfer of a liquor license to another person where all direct or indirect owners of ten percent or more of the transferee are also direct or indirect owners of ten percent or more of the licensee;
- 3) a person who owns, directly or indirectly, more than ten percent of the licensee acquires additional interest in the license;
- 4) a person acquires a direct or indirect interest in the licensee but does not acquire more than ten percent;
- 5) the transfer of an ownership interest in the licensee to a person who has been involved in the business of the licensee for more than two years;
- 6) the merger of two corporations that are publicly traded and have been previously qualified to own one or more liquor licenses in New Mexico; and
- 7) the acquisition of a publicly traded corporate licensee, or a majority of the assets that are located at one or more licensed premises.

The bill further provides that the AGD director, could, by rule, define further changes in the licensee that would not constitute a transfer of ownership;

A limited application would have to be submitted to the director if the change in licensee is not a transfer of ownership. For limited applications, hearings, notices, tax clearances and liquor wholesaler clearances would not be required to be conducted.

Significant Issues

Revenues from submission of license fees would be reduced as the \$200 fee would no longer be required.

The Director of the Alcohol and Gaming division could change the instances recognized as transfers of ownership as proposed in this bill.

FISCAL IMPLICATIONS

According to RLD, fiscal implications could be substantial. Currently, a \$200 application fee is required to be submitted for all applications; the amount collected by the department for these applications currently is approximately \$60,000 dollars (300 applications).

RLD further reports that because tax clearances from the New Mexico Taxation and Revenue Department (TRD) and wholesaler's clearances are not required if changes as discussed in the bill do not constitute a transfer of ownership, debts to TRD and wholesaler's may not be collected in instances where a limited application has been filed. Currently, any change of 10% interest or greater is treated as a transfer of ownership and as such, tax and wholesaler's clearances are required.

ADMINISTRATIVE IMPLICATIONS

The Director of the Alcohol and Gaming Division would be able to determine additional requirements by rule to define further the licensees which would not constitute transfer of ownership and the division would be responsible for determination of ownership changes notification compliance under the proposed statute.

TECHNICAL ISSUES

RLD asserts that it is unclear whether notice or application would be required if an officer, director, partner or member who is not required to be disclosed on the initial application resigns or is terminated or if any person who is required to be disclosed resigns and is not replaced.

OTHER SUBSTANTIVE ISSUES

The bill allows the AGD Director to expand the instances that would not be considered a change of ownership of a licensee. This provision creates the potential for increasing leniency regarding business notification of changes in ownership.

RLD points out that the bill provides that the transfer of an ownership interest in the licensee to a person who has been involved in the business of the licensee for more than two years does not constitute a change in ownership. The bill does not discuss what “be involved in the business of the licensee for more than two years” means. As written, this person(s) would not be required to be disclosed or fingerprinted. “Person”, under the Liquor Control Act means any person or any legal entity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The current requirements for notification section of the Business Licenses Act would remain enacted.

EM/lg