

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08

SPONSOR Vigil LAST UPDATED _____ HB 359

SHORT TITLE Prohibit Alcohol Sales At Gas Stations SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 359

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Bernalillo County Metro Court (BCMC)
 Department of Public Safety (DPS)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 359 will amend the Liquor Control Act to insert new material related to the definition of licensed premises. "Licensed premises" will now be defined to exclude the sale of alcohol at gas stations, or establishments that sell gasoline for public consumption. Specifically, HB 359 provides that licensed premises shall exclude locations where motor fuel or liquefied petroleum

gases or compressed natural gases are sold for the generation of power in an internal combustion engine.

HB 359 further provides that licensees who currently hold licenses that are located at gas stations or establishments that sell gasoline for public consumption may renew the license in an inactive status, without penalty of cancellation, until July 1, 2010. During the grace period from July 1, 2008 to July 1, 2010, the licensee may seek to transfer, assign, sell or lease the license to a premise that qualifies as a licensed premise. If the license has not been transferred, sold, leased or assigned by the end of the grace period, the Director of the Alcohol and Gaming Division may extend the inactive period for good cause shown

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The proposed change will prohibit the package sale of alcohol beverage at convenience stores where gasoline/fuel for motorized vehicles is sold thereby reducing the immediate availability of alcoholic beverages to the motoring public.

DPS notes this bill has significant implications for the Special Investigations Division (SID):

- Agents will be able to concentrate scarce resources on establishments (Bars), special dispenser permits, concerts and public celebrations where alcohol is sold, served and consumed by the drink.
- It will reduce the availability of alcohol to minors by eliminating “Beer Runs” (Minors grabbing and running from a convenience store with beer).
- A convenience store clerk will not have to assess the sobriety or age of customers thereby eliminating illegal alcohol sales to minors or intoxicated persons.
- SID will not be investigating complaints from neighborhood associations whose quality of life is impacted by intoxicated persons who have purchased and consumed alcohol in their neighborhood.

RLD has provided the following:

- Licenses currently held at gas stations or locations where gas is sold will be required to pay a \$200 fee to transfer the license or a \$250 fee to lease the license. When a license is placed into voluntary temporary suspension, the licensee is required to pay a \$20 fee.

- Licenses currently operated at gas stations or establishments that sell gas for use in motor vehicles must place the license into inactive status effective July 1, 2008.
- The licensee has two years, until July 1, 2010, to sell, transfer, assign, or lease the inactive license.
- At the end of the two year grace period, the Director has the discretion of canceling the license or extending the inactive period.
- The licensee will be responsible for paying license transfer fees.
- Holders of inactive licenses will be permitted to sell their stock of alcoholic beverages, in whole or in part, during the inactive period pursuant to Section 60-6B-9 NMSA 1978.

The AGO provided the following:

The Liquor Control Act generally requires that alcoholic beverages be sold at a “licensed premises”. See NMSA Sections 60-7A-1, 60-7A-4.1, 60-7A-22, 60-6A-2(B) (1978). The bill does not directly prohibit the sale of alcoholic beverages at or near fueling stations. However, by exempting fueling stations from the definition of “licensed premises”, this bill impliedly prohibits the sale of alcoholic beverages at those locations.

The bill provides that the term “licensed premises” does not include “premises” or a “location” where fuel is sold. It does not define the term “location”. It is conceivable that those terms will be subject to interpretation and construction, depending upon the boundaries of each “licensed premises” on file with the Director. If, for example, licensed premises only includes a store, restaurant, bar, club etc. adjacent to the actual fueling facilities, but does not include the actual facilities themselves, a literal interpretation of this bill could allow the continued sale of alcoholic beverages at those licensed premises.

This bill will mostly apply to holders of “retailers” licenses who are authorized to sell packaged alcoholic beverages for consumption off-premises. See NMSA Section 60-7A-11 regulating sales by retailers. However, it could apply to restaurant or other licensees who are allowed to serve alcoholic beverages by the drink if their licensed premises (restaurant, bar, club, etc.) is considered to fall within the exemption enacted by this bill.

State law could be changed to directly and specifically prohibit the sale, consumption, etc. of alcoholic beverages at or within a certain distance of fueling stations, and to provide that such sale is a violation of the Liquor Control Act. See, for example, NMSA Section 60-6B-10 (1978) regulating the sale of alcoholic beverages near a church or school.

ADMINISTRATIVE IMPLICATIONS

The staff of the Alcohol and Gaming Division of RLD will be required to provide close scrutiny on licenses currently held at locations that sell gasoline.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to HB 356, No Liquor Licenses Near Interstate Highways

POSSIBLE QUESTIONS

Could this bill be construed to be a “taking” of property?

DW/nt