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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/09

SPONSOR Rehm, W. LAST UPDATED \_\_\_\_\_ HB 813

SHORT TITLE Liquor Control Act Changes SB \_\_\_\_\_

ANALYST C. Sanchez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurr ing or Non- Rec	Fund Affected
<b>Total</b>		Indeterminat e	Indeterminate	Indeterminate	Recurri ng	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)  
 Regulation and Licensing Department (RLD)  
 Department of Corrections (DOC)

### SUMMARY

#### Synopsis of Bill

House Bill 813 amends several sections of state law relating to alcoholic beverage control and enforcement of the Liquor Control Act.

The bill amends NMSA Section 3-13-2 of the Municipal Code (NMSA Chapter 3, Articles 1-65) to allow a police officer of a municipality to issue citations for violations of the Liquor

Control Act.(Chapter 60, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B, 8A and Article 6E). The bill also amends NMSA Section 4-41-2 relating to the duties of the County Sheriff to allow the sheriff to issue citations for violations of that act. The bill also amends NMSA Section 29-1-1 relating to the investigation of criminal violations to require that every sheriff, deputy sheriff, and peace officer investigate violations of the Liquor Control Act.

The bill also amends NMSA Section 60-6E-7 of the Liquor Control Act to reduce the time for which alcoholic beverage server permits are valid from five years to three years.

The bill also amends NMSA Section 60-7B-1 relating to selling or giving alcoholic beverages to minors and possession of alcoholic beverages by minors to provide that it is not a violation of the Liquor Control Act when a parent, legal guardian, or adult spouse of a minor serves alcoholic beverages to that minor on real property which is not under the control of that parent, legal guardian, or adult spouse; or on licensed premises that derive more than sixty percent of annual gross receipts from the sale of food for consumption on the premises; or at traditional ceremonies or at celebrations associated with traditional ceremonies.

The bill also amends the penalty provisions in that section to distinguish servers from other persons serving, selling, giving, and delivering etc. alcoholic beverages to minors. A person other than a server would be guilty of a fourth degree felony for violating those prohibitions. A server would be guilty of a misdemeanor for violating those prohibitions for the first three offenses, and a fourth degree felony for a fourth or subsequent violation. A server would also be guilty of a fourth degree felony if they intentionally or willfully violate those prohibitions. The bill amends that section to define “server”.

The bill also enacts a new section in the Liquor Control Act to provide that a licensee or a licensee's agent or employee shall not sell, serve or provide alcoholic beverages to a person who has a New Mexico driver's license or an identification card that is printed in a vertical format; and that it is an affirmative defense to a prosecution brought pursuant to that section that, before selling any alcoholic beverages, the accused in good faith demanded and was shown documentary evidence of age and identity containing a picture and issued by a federal, state, county or municipal government.

The bill amends NMSA Section 66-5-5 of the Motor Vehicle Code (NMSA Chapter 66 Articles 1-8 except section 66-7-102.1) to provide that the Motor Vehicle Division of the Taxation and Revenue Department shall issue a driver's license in vertical format to a person who has four or more convictions for driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, and who has received permission from the district court to have their license restored, until ten years from the date of the last conviction.

The bill also amends NMSA Section 66-5-47 of the Motor Vehicle Code to require that driver's licenses issued to persons under the age of twenty-one years be printed in vertical format; and that licenses issued to persons who have been convicted four or more times for driving while under the influence of intoxicating liquor or drugs also be printed in vertical format until ten years from the date of the last conviction.

The bill also amends NMSA Section 66-5-405 of the Motor Vehicle Code to require that an identification card issued to a person under the age of twenty-one years be printed in vertical

format with a printed legend indicating the person is under the age of twenty-one; and that an identification card issued to a person who has been convicted four or more times of driving under the influence of intoxicating liquor or drugs be printed in vertical format, but without the printed legend, until ten years from the date of the last conviction.

## **FISCAL IMPLICATIONS**

Revenue maybe generated from local law enforcement officers issuing citations and from the establishment of minimum penalties for sales to minors, sales to intoxicated persons and public nuisance. The amount of fines cannot be determined as the number and nature of citations issued will vary.

According to the Bernalillo county Metropolitan Court, by creating a new misdemeanor crime for “servers” who violate Subsection A of Section 60-7B-1 of the Liquor Control Act, the bill could result in an increase in the number of defendants that proceed to trial. The extent of the increased caseload – if any – and its potential fiscal impact are inestimable at this time.

According to the DOC, the bill essentially creates several new felonies for violations of the Act. The additional minimal to moderate number of new felony convictions resulting from this bill would increase the Department’s costs by leading to minimal increases to the inmate population and probation/parole caseloads. The bill seems very unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department’s inmate population or probation/parole caseloads. However, it is always difficult to accurately predict or estimate the ultimate effect of any new crime bill. As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department’s increased costs associated with these new crimes.

## **SIGNIFICANT ISSUES**

According to the AGO, HB 813 makes several changes to New Mexico law with regard to enforcement of the Liquor Control Act by all peace officers; service of alcoholic beverages to minors, and the format of driver’s licenses and identification cards issued to persons under the age of twenty-one and persons who have been convicted four or more times of driving while under the influence of alcoholic beverages or drugs.

The AGO determines that this bill would allow any municipal police officer or county sheriff to issue citations for violations of the Liquor Control Act; and would also require every peace officer to investigate violations of that act. Current law authorizes city and county law enforcement agencies to issue citations under that act. NMSA Section 60-4B-4.1A. Current law also requires every peace officer to investigate “all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware”. Those criminal laws already include violations of the Liquor Control Act. NMSA Section 60-7A-25.

According to the AGO, current law allows the parent, legal guardian, or adult spouse of a minor to serve alcoholic beverages to that minor only on real property, other than licensed premises, that is “under the control of the parent, legal guardian, or adult spouse”; or when alcoholic beverages are used in the practice of religious beliefs. NMSA Section 60-7B-1B (1) (2). Current law exempts those activities from the general prohibition against selling, giving, delivering, etc. alcoholic beverages to minors. NMSA Section 60-7B-1. The term “minor” is defined in NMSA

Section 60-3A-3P of the Liquor Control Act to mean a person less than twenty-one years of age. This bill amends NMSA Section 60-7B-1 to also allow a parent, legal guardian, or adult spouse of a minor to serve alcoholic beverages to that minor on *any* real property, other than a licensed premises, whether within the control of that parent, guardian or spouse or not; and on licensed premises that derive more than sixty percent of their annual gross receipts from the sale of food for consumption on the premises; and at traditional ceremonies or celebrations associated with traditional ceremonies, regardless of location. The bill does not allow any person other than a parent, legal guardian, or adult spouse of a minor to serve that minor. If this bill is enacted, the parent, legal guardian, or adult spouse of the minor will have to order alcoholic beverages for themselves at licensed premises deriving more than sixty percent of their annual gross receipts from the sale of food (e.g. restaurants), and then physically provide those beverages to the minor. This could cause enforcement problems for the Special Investigations Division, and other peace officers, who would have to determine who actually physically provided those beverages to the minor.

The bill expands the locations at which a parent, legal guardian, or adult spouse of a minor may serve alcohol to that minor from “real property under the control of the parent, legal guardian, or adult spouse of the minor” to any real property, other than a licensed premises (except for those described above). This could also cause enforcement problems for law enforcement who would have to determine, whether a minor was in fact served alcohol by their parent, legal guardian, or adult spouse in public or private locations which are not under the control of those persons.

The bill allows a parent, guardian, or adult spouse of a minor to serve alcohol to that minor at “traditional ceremonies”, or “celebrations associated with traditional ceremonies”, without limiting their locations. Presumably those ceremonies or celebrations could take place at locations which include *all* premises licensed to serve alcoholic beverages. This also greatly expands the authority of a parent, guardian, or adult spouse of a minor to serve alcohol to that minor.

The bill would prohibit a licensee or their agent or employee from selling, serving, or providing alcoholic beverages to any person who has a driver’s license or identification card printed in vertical format. Aside from preventing those persons from selling, serving, or providing alcohol to minors, this bill will also prevent them from serving adults over the age of twenty-one who have been convicted four or more times of driving while under the influence of intoxicating liquor or drugs and have been issued a license or identification card printed in vertical format. Under this bill, those persons may not purchase alcoholic beverages from any retailer, dispenser, winegrower, small brewer, etc whether they intend to drive after consuming that alcohol or not.

## **PERFORMANCE IMPLICATIONS**

According to RLD, it has historically been difficult for licensees and law enforcement to determine who is actually the parent, adult spouse or legal guardian of a minor. Unless the person is required to show a birth certificate, marriage certificate or guardianship papers from a court of law, it is nearly impossible for a licensee to know if the minor can legally be allowed to consume alcohol under HB 813.

## **ADMINISTRATIVE IMPLICATIONS**

According to DPS, agents with the Special Investigations Division would be obligated to provide

training to all law enforcement agencies and/or certified officers enforcing the Liquor Control Act. There are more than 5,000 police officers in New Mexico and 19 SID Agents.

**CONFLICT,**

SCORC substitute for SB 512.

**TECHNICAL ISSUES**

According to the AGO, NMSA Section 66-5-5D provides for court approved drivers licenses which may be issued to a person who have been convicted four or more times of driving a motor vehicle while “under the influence of intoxicating liquor or *narcotic* drug”. The bill amends that section to require that those licenses be printed in vertical format. However, the amendments to NMSA Section 66-5-47 which add a new subsection C which also require that format, refer to “a person convicted four or more times for driving while under the influence of intoxicating liquor or drugs”, without the requirement that the conviction be for driving under the influence of intoxicating liquor or “narcotic” drugs.

The bill amends NMSA Section 60-7B-1 to include a new subsection I which defines “server”. That term is already defined in NMSA Section 60-6E-3F. The two definitions are slightly different.

**ALTERNATIVES**

Separate the major issues in this legislation into separate and specific bills.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mc

