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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/09

SPONSOR Park **LAST UPDATED** _____ **HB** 818

SHORT TITLE Liquor Retailer Liability Insurance Minimum **SB** _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below		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)
 Department of Public Safety (DPS)
 Public Regulation Commission (PRC)
 Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 818 amends Section 60-6A-2 NMSA 1978, within the Liquor Control Act, to prohibit the issuance or renewal of a retailer’s license unless the applicant for a license or renewal carries a minimum of \$1,000,000 in liability insurance. Additionally, if evidence shows that a licensee does not carry the requisite million in liability insurance, the Regulation and Licensing Department is required to suspend the person’s retailer’s license.

HB 818 defines liability insurance as insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provision of medical, hospital, surgical or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries of or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

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 appeals to the district court. 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

RLD notes the bill limits the requirement to carry liability insurance to Retailer's licenses. In the Liquor Control Act, a Retailer license is a very specific license type of which there are only 71 statewide. If it is the intent to require that all persons who sell alcohol for off-premise consumption be required to carry this insurance, then Dispenser's licenses, Canopy licenses, and Lottery licenses should be included, as these license types are also used for that purpose.

HB 818 exempts those establishments, such as bars and restaurants, selling alcohol for on-premise consumption from carrying the required liability insurance.

The AGO provided the following:

This bill will require the holder of a retailer's license to carry the minimum amount of liability insurance stated in its provisions. A retailer is defined in NMSA Section 60-3A-3U as a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises. See also NMSA Section 60-7A-11 for a description of offenses by retailer's license holders.

However, holders of dispenser's licenses issued under that act may also sell alcoholic beverages in unbroken packages for consumption off the licensed premises, but those licensees are not subject to the requirements of this bill. See NMSA Section 60-3A-3H defining dispenser as a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises.

The Superintendent of Insurance notes statutes requiring that insurance be purchased by a certain type of individual or business such as owners of automobiles are often enacted when there appears to be a material risk that the sued party will be unable to pay damages awarded against them, thereby creating the social hazard that injured parties will not be fully reimbursed. It needs to be determined whether New Mexico's retailers fall into this category.

ADMINISTRATIVE IMPLICATIONS

The Alcohol and Gaming Division will need to require proof of insurance at renewal time. Review of this documentation will require additional time during the renewal process.

TECHNICAL ISSUES

The PRC notes that the bill does not state whether the \$1,000,000 of coverage is applicable per incident or per the entire 12-month policy period. This type of insurance is commonly sold with coverage limits of \$1,000,000 per incident and \$3,000,000 per 12-month policy period.

OTHER SUBSTANTIVE ISSUES

The AOC provided the following:

Section 60-6C-1 NMSA 1978 governs grounds for suspension or revocation of a liquor license, including when a licensee has violated a provision of the Liquor Control Act or any regulation or order promulgated pursuant to the Act. HB 818 amends Section 60-6A-2 NMSA 1978 to require suspension of a license when a licensee is not carrying requisite liability insurance. Pursuant to Section 60-6C-1, a licensee shall be entitled to the hearing procedures in Chapter 60, Article 6C before the suspension goes into effect.

Section 60-6C-6 NMSA 1978 provides that a licensee aggrieved or adversely affected by an order of suspension has the right to appeal to the district court pursuant to Section 39-3-1.1 NMSA 1978.

ALTERNATIVES

RLD suggests the following amendments:

- If it is the intent to require liability insurance for all establishments selling alcohol for off-premise consumption, move the new language to a separate section under Article 6B License Provisions.
- If it is the intent to require liability insurance for all licensed premises, the bill should amend Section 60-6B-5 Expiration and Renewal of Licenses and the language should be amended to include all establishments holding a liquor license.

DW/mc