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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/09

SPONSOR Hall LAST UPDATED _____ HB 825

SHORT TITLE Alcohol ID & Age Info Access SB _____

ANALYST Wilson

REVENUE (dollars in thousands)

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

(Parenthesis () Indicate Revenue Decreases)

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)

Corrections Department (CD)

Department of Public Safety (DPS)

Public Defender Department (PDD)

Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 825 amends section 60-7B-2 NMSA 1978 to specify that a person's name and date of birth must be included on any picture identification used as evidence of age and identity. It also adds a requirement that if the document used to document age and identify does not contain electronically readable information, than the identity of the person must be supported by a second document that contains the person's name and a picture of the person issued by a federal, state, county or municipal government.

HB 825 amends section 60-7B-5 NMSA 1978 by specifying that someone licensed to serve alcoholic beverages shall not sell or serve to a person who does not present documentary evidence of age and identify. As part of the process of verifying age and identity, the service must also access any electronically readable information on the documentary evidence. It also makes it a fourth degree felony for anyone to retain or market such electronically readable information.

HB 825 amends section 60-7B-6 NMSA 1978, changing its heading to “Demanding and seeing documentary evidence of age and identity and accessing electronically readable information before furnishing alcoholic beverages.” The amended language specifies that in any criminal prosecution or proceedings for the suspension or revocation of a license, proof that documentary evidence of age and identity was required and any electronically readable information was accessed shall be a defense to the prosecution or proceedings.

HB 825 amends section 60-7B-13 NMSA 1978 , specifying that the key to a hotel wet bar compartment containing alcoholic beverages shall only be provided to the guest after the guest has produced documentary evidence of age and identity and any electronically readable information on that documentary evidence has been accessed. Such documentary evidence and access of electronically readable information will also be required by the hotel employee providing alcoholic beverages as part of a room service request. It also makes it a fourth degree felony for anyone to retain or market such electronically readable information.

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

CD states the additional felony convictions resulting from this bill will increase their costs by leading to minimal to moderate increases to the inmate population and probation or parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the CD’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 cover any of the CD’s increased costs associated with the creation of this new crime.

There may be some minimal increases in the CD’s revenue caused by a minimal amount of revenue generated by the probation or /parolee supervision fees paid by offenders convicted of this new crime and then placed on probation or parole. However, the minimal increases will be more than offset by one or more offenders sentenced to prison for this new crime.

SIGNIFICANT ISSUES

The AGO provided the following:

This bill will require a liquor licensee, and their employees or agents, to request identification from any person seeking to purchase or consume alcoholic beverages, and

to access any electronically readable information on a document establishing the age and identity of a person before selling or serving alcoholic beverages to that person. The bill will prohibit the sale or service of alcoholic beverages to any person who cannot produce a document with electronically readable information or cannot produce a second document with certain information providing their age and identity.

Current law prohibits a licensee from selling or serving alcohol to any person who is unable to produce an identity card as evidence that they are twenty-one years of age or older. NMSA Section 60-7B-5. This bill will require the production of a document stating age and identity with “electronically readable information”, or if a customer does not possess such a document, a second document containing certain information, before the sale or service of alcoholic beverages to any person. This will effectively require a licensee to request age and identification documentation from every person requesting the sale or service of alcoholic beverages, and to access electronically readable information on those documents, no matter how old the person may appear to be.

The bill does not define “electronically readable information”. Presumably this refers to digital information contained on the magnetic stripe of a driver’s license or other identification card, which may be run through a device which can read that information. The device will be connected to a computer database which will provide the liquor licensee with information verifying the age and identity of the person seeking to purchase or consume alcoholic beverages. The New Mexico Motor Vehicle Division of the Taxation and Revenue Department has implemented an enhanced driver’s license program, issuing licenses containing that digital information. See NMSA Section 66-5-44C authorizing the collection of additional fees for that program. However, it is uncertain whether liquor licensees will have access to that database.

House Bill 813 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

The AOC states that this bill does not clarify the nature of the “electronically readable information” it refers to, nor how such information is to be accessed by the person responsible for using that data to verify age and identity. Without a definition of the content of such electronic information, the format it should be in, and the type of equipment necessary to read that information, the mandates of HB 825 related to such electronically readable information may be difficult to implement.

DPS provided the following:

- 60-7B-2 will be amended to require identification to be electronically readable infers that all businesses licensed to sell or serve alcoholic beverages already have devices to electronically read identification. An electronic age verification device does not relieve the alcohol server or provider with the responsibility of verifying that the person presenting the identification is in fact the person presenting the identification.
- 60-7B-5(A) will be amended to include “electronically readable” information. Again, an electronic age verification device does not relieve the alcohol server or provider of their responsibility to personally verify the presenter identification.

- 60-7B-5(B) makes it a felony to retain or market information obtained through the use of an electronic age verification system/device. Identity theft is rampant and the recording of identification information is always suspect.

RLD states that this bill will require that all licensees invest in and utilize electronic devices that will read the magnetic strip on an identification card before furnishing alcoholic beverages. At the Governor's request, a task force was previously convened that looked into the matter of requiring electronic readers. The task force concluded that such devices were not always reliable and that they could be overridden by employees.

HB 825 requires that if electronically readable information is not available, that a second form of identification containing the name, date of birth and picture of the person, issued by a governmental entity, be produced. This second form of identification will likely take the form of a military ID or passport. RLD claims that most individuals will not have a second form of identification that meets these standards.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and in the amount of time necessary to dispose of cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The AGO notes this bill does not amend NMSA Section 66-5-17 of the Motor Vehicle Code which provides "in any criminal prosecution, civil action or administrative proceeding charging violation of a statute, ordinance or regulation concerning the sale, consumption or possession of alcoholic beverages involving minors, proof that the person charged, in good faith, demanded and was shown a valid driver's license shall be valid defense to such prosecution, civil action or administrative proceeding." That section does not require that the licensee access electronically readable information on that driver's license in order to take advantage of the defense provided.

DW/mt