

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** 02/12/09  
**LAST UPDATED** 3/04/09     **HB** \_\_\_\_\_

**SPONSOR**    SCORC

**SHORT TITLE**    Liquor Law Enforcement, Licenses & Violations     **SB** 512/SCORCS/aSJC

**ANALYST** Sanchez, C

### 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 | Recurring or Non-Rec | Fund Affected |
|--------------|---------------|---------------|---------------|-------------------|----------------------|---------------|
| <b>Total</b> | Indeterminate | Indeterminate | Indeterminate | Indeterminate     | Recurring            | General Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Department of Corrections (DOC)  
 Department of Public Safety (DPS)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of SJC Amendment

The SJC amendment changes the last sentence of Section 60-4B-4.1.A of the NMSA 1978 (Liquor Control Act) to read: “If the department of public safety or a local law enforcement fails to report violations of the Liquor Control Act within six months the alcohol and gaming division of the regulation and licensing department shall dismiss the citation.”

The amendment also requires, in regards to a liquor license transfer, that if a public hearing is not held within the prescribed time, “ the director [of AGD] shall hold a hearing in the local

option district to solicit community input concerning the application prior to approving or disapproving”.

All other changes made by the amendment are technical and aimed at clarifying the SCORC Substitute for SB 512.

### Synopsis of Original Bill

The Senate Corporations and Transportation Committee substitute for SB 512, gives authority to local law enforcement agencies to enforce Liquor Control Act violations while retaining primary enforcement within the Department of Public Safety. The substitute also adds definitions, creates a new type of liquor license, clarifies license applications and transfers, enhances suspension and revocation, expands the definition of “server”, and clarifies when minors can be in licensed premises.

The effective date of the Act is July 1, 2009.

### **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.

Revenue could also be generated from application fees and licensure fees for the proposed Limited Dispenser license. The amount of revenue generated would depend upon the number of licenses of this type requested and cannot be determined at this time.

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**

- SB-512 authorizes all NM certified law enforcement with administrative authority to issue citations for violations of the NM Liquor Control Act and provides them with the option of enforcement or not, “Municipal and county law enforcement agencies may enforce the Liquor Control Act...”

- The bill would be instrumental in rectifying public safety issues in bars that have demonstrated a propensity to violate the LCA while clearly articulating those elements that constitute a public nuisance.
- The bill provides greater investigative authority during lawful enforcement and/or compliance operations by prohibiting patrons, licensees and or their employees from intentionally impeding the administration of the LCA.
- Bars would be allowed to remain open for business an extra hour (3:00 AM) and it would be incumbent upon enforcement officers to determine the actual content of the patron's beverage container. This bill merely allows an establishment to remain open an additional hour and extends the time intoxicated drivers are on the roads.

The bill would repeal the penalty for “servers” selling/serving/providing alcohol to a minor from a fourth degree felony to a misdemeanor for the first and second violation unless the investigating officer can determine the sale/service was “intentionally and willfully” committed. This bill effectively minimizes the penalty for providing alcohol to minors at convenience stores, gas stations, restaurants and retail stores licensed to sell liquor. Servers who have been trained to scrutinize the sale and service of alcohol are given a pass while adults who have not had the benefit of training are punished to the fullest extent of the law without a first or second pass.

### **OTHER SUBSTANTIVE ISSUES**

According to RLD, SB 512 allows citations to be written by local law enforcement agencies as well as the Department of Public Safety. Regulations would need to be drafted to require some uniformity in reporting requirements and standardization of forms. Some training by DPS agents would also be beneficial. The bill also eliminates the contention by defense attorneys that if the Alcohol and Gaming Division did not receive a copy of the citation within 30 days, the citation should be dismissed.

According to RLD, creation of a new Limited Dispenser License would be limited to, and would allow economic development in, lesser populated areas where availability of liquor licenses is limited. The license would be non-transferable, remaining the property of the State, and would not increase the quota of licenses in New Mexico.

SB 512 redefines “public nuisance” to clarify what types of activities would be violations of the Liquor Control Act and which could result in revocation of the liquor license. The current language is vague and administrative citations issued for public nuisance are difficult to prosecute. The changes could allow easier prosecution for establishments that cause serious problems in the neighborhoods where they are located.

According to RLD, allowing licensed establishments to remain open for one hour after the normal 2:00 am closing time would allow patrons time to begin to sober up. Licensees who choose to remain open for the extra hour would only be permitted to serve non-alcoholic beverages and must serve food to patrons. The extra hour would also ease the number of patrons leaving establishments at one time. Law enforcement has complained about the mass exodus of patrons leaving bars at 2:00 am and about the traffic problems this causes. The extra time may ease this problem.

The bill removes the fourth degree felony for a first offense of a sale to a minor or to an intoxicated person for servers on a licensed premise. This change targets those individuals who

willfully break the law and provides some respite to those servers who make a genuine mistake in the reading of an ID card or who sell to persons who may not be showing visible signs of intoxication at the time of the sale.

**ALTERNATIVES**

The legislature could separate the major issues in this legislation into separate and specific bills.

Status Quo

CS/mt:mc