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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/09

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE Malt Beverage as Spirituous Liquor SB 665

ANALYST Francis

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------|-----------|-------------------------|---------------------------------|
| FY09 | FY10 | FY11 | | |
| | \$3,267.7 | \$3,267.7 | Recurring | Local government programs |
| | (\$354.7) | (\$354.7) | Recurring | General Fund |
| | (\$251.7) | (\$251.7) | Recurring | Local DWI Grant Fund |

(Parenthesis () Indicate Revenue Decreases)

Conflicts with HB 36
 Relates to HB 57
 Duplicates HB78

SOURCES OF INFORMATION

LFC Files
 National Consumer League (www.nclnet.net)
 International Institute of Alcohol Awareness (www.iiiaonline.org)
 Taxation and Revenue Department (TRD)

Responses Received From

Department of Health (DOH)
 New Mexico Public Defender
 Children Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 665 adds a new definition to the Liquor Excise Tax Act [Sec. 7-17 NMSA 1978] and the Liquor Control Act [Sec. 60-3A NMSA 1978] for “flavored malt beverage” and includes it as spirituous liquor for the purpose of applying the liquor excise tax. The bill requires that taxpayers identify it separately on the tax return for the liquor excise tax and the revenues generated from the tax will go to the Department of Health (DOH) Office of Substance Abuse Prevention to distribute to counties to fund underage drinking prevention programs.

Under the provisions of the bill, the Liquor Control Board (LCB) will regulate the product and report quarterly on all approved products that are considered flavored malt beverages. Under penalty of perjury, a fourth degree felony in New Mexico, manufacturers that distribute in New Mexico must report all flavored malt beverages. LCB may require a copy of the manufacturer's reporting on processing methods and formula that the manufacturer submitted to the US Alcohol and Tobacco Tax and Trade Bureau. The manufacture can appeal the decision and if successful, LCB will list the item as "beer" rather than flavored malt beverage.

FISCAL IMPLICATIONS

There will be a fiscal impact from the increased tax revenue generated from taxing flavored malt beverages (FMB) as spirits since the tax rate is significantly higher. The impact will be positive for local governments and negative for the state general fund and other beneficiaries of the liquor excise tax since FMB are currently taxed as beer and the revenue flows. The tax increase on FMB is significant, increasing from about four cents on a twelve ounce beverage to sixty cents.

Assuming that FMB represent 3 percent of beer sales (excluding microbrewery products), the fiscal impact is a positive \$3.3 million in the first year to local government programs, a \$251 thousand decrease to the Local DWI grant fund and a general fund decrease of \$355 thousand. The impact assumes that the significantly higher price of FMB decreases the consumption by 63 percent annually in the first year.

TRD:

The estimated price elasticity of -1.2 used in the revenue estimate was based on estimates found in The Cost of Alcopops to Youth and California prepared by the Marin Institute (July 2007). That study used actual price increases and subsequent consumption changes for these particular beverages in several European countries to calculate a price elasticity range of from -1.24 to -1.60.

"Flavored malt beverages" are sometimes referred to as "alcopops" and are thought to appeal mostly to young and under-age drinkers.

SIGNIFICANT ISSUES

According to the federal Alcohol and Tobacco Tax and Trade Bureau (TTB): Flavored malt beverages are brewery products that differ from traditional malt beverages such as beer, ale, lager, porter, stout, or malt liquor in several respects. Flavored malt beverages exhibit little or no traditional beer or malt beverage character. Their flavor is derived primarily from added flavors rather than from malt and other materials used in fermentation. At the same time, flavored malt beverages are marketed in traditional beer-type bottles and cans and distributed to the alcohol beverage market through beer and malt beverage wholesalers, and their alcohol content is similar to other malt beverages in the 4-6% alcohol by volume range.

Although flavored malt beverages are produced at breweries, their method of production differs significantly from the production of other malt beverages and beer. In producing flavored malt beverages, brewers brew a fermented base of beer from malt and other brewing materials. Brewers then treat this base using a variety of processes in order to remove malt beverage character from the base. For example, they remove the color, bitterness, and taste generally associated with beer, ale, porter, stout, and other malt beverages. This leaves a base product to which brewers add various flavors, which typically contain distilled spirits, to achieve the desired taste profile and alcohol level.

While the alcohol content of flavored malt beverages is similar to that of most traditional malt beverages, the alcohol in many of them is derived primarily from the distilled spirits component of the added flavors rather than from fermentation.” (70 Fed. Reg. 194 et seq. (January 3, 2005).)

DOH reports that “the consumption of flavored malt beverages containing stimulants is believed to contribute to underage drinking and associated alcohol-related consequences. Underage drinking is a public health issue in New Mexico. Forty-three percent of New Mexico high school students report being a current drinker. Almost 2/3 (65.7%) of these current drinkers are binge drinkers, consuming five or more drinks in one episode. New Mexico has the highest rate in the nation for youth drinking alcohol before the age of 13 among the 39 states participating in the survey (NM Youth Risk and Resiliency Survey 2007). “

FMB are not generally more alcoholic than conventionally brewed malt beverages ranging in alcohol percentage from 4 percent to 6 percent while conventional spirituous liquor has a much higher alcohol content. This has led groups like the National Consumer League to comment on the federal rule regulating FMB that policy should be based on alcoholic content. Advocates for increasing the tax on FMB say that the flavoring is targeting specific demographic groups that may not have a preference for traditional beer products.

According to the International Institute of Alcohol Awareness:

The widespread consumption of [flavored alcoholic beverages (FAB)] among underage youth, particularly girls, has raised concerns in the public health community.

- Approximately one-third of teenaged girls ages 12 to 18 and one-fifth of teenage boys have tried FABs.
- Underage girls consume FABs more than any other type of alcoholic beverage, while women 21 and older rank FABs as their least consumed alcoholic beverage.
- 34 percent of teenagers incorrectly believe that Alco pops have less alcohol than beer or similar drinks.
- About one-third of high school seniors report regular consumption of FABs.

ADMINISTRATIVE IMPLICATIONS

CYFD reports that funds distributed by DOH will support the development of alcohol prevention and early intervention services in underserved areas, which will benefit CYFD clients.

DOH reports that they may require additional staff to identify and track programs receiving funding from the new distribution.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 57 expands the local liquor excise tax option. HB 36 bans FMB.

TECHNICAL ISSUES

Section 5 requires LCB to maintain a list of approved flavored malt beverages and also a list of all alcoholic beverages determined to be beer. This may be a significant undertaking for LCB.

ALTERNATIVES

A new tax on FMB specifically could be levied at or near the spirituous liquor rate that would distinguish FMB from the higher alcohol content spirituous liquors.

An additional distribution could be made to the general fund and local DWI fund to hold those funds harmless.

NF/svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc