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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/09
 LAST UPDATED 2/25/09 HB 36

SPONSOR Begaye

SHORT TITLE Prohibit Certain Alcoholic Beverage Sales SB _____

ANALYST C. Sanchez

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------|------|-------------------------|-------------------------|
| FY09 | FY10 | FY11 | | |
| | (\$355.0) | | Recurring | General Fund |
| | (\$251.0) | | Recurring | Local DWI Grant Fund |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Corrections (DOC)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Tax and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

According to TRD, House Bill 36 would disallow the sale of any “flavored malt energy beverage” in the state. A “flavored malt *energy* beverage” is defined as any flavored malt beverage containing caffeine, carnitine, eleutherococcus senticosus, guarana, Ilex paraguariensis, Panax ginseng, Panax quinquefolius or taurine.

This bill also amends the Liquor Control Act to define “flavored malt beverage” as an alcoholic beverage that is fermented in a manner similar to beer, from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol, and: (1) that contains at least one-half of one percent alcohol by volume; (2) that is treated by processing, filtration or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 C.F.R. Section 25.55; (3) to which is added flavor or other ingredients containing alcohol, except for a hop extract; (4) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to

27 C.F.R. Section 25.55; and (5) that is not exempt pursuant to Subdivision (f) of 27 C.F.R. Section 25.55.

FISCAL IMPLICATIONS

Assuming that flavored malt beverages (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.

According to the Alcohol and Gaming Division, implementation of HB 36 could possibly have a negative implication for excise taxes. The amount of the impact is unknown as there is no breakdown of the amount of this type of product sold.

HB 36 might require additional funds be appropriated for the Department of Public Safety to conduct compliance checks.

According to the Department of Corrections, additional misdemeanor convictions resulting from this HB 36 could increase the Department's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems 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 predict or estimate the ultimate effect of any new crime bill with any certainty, even those involving only a misdemeanor. As usual, there is no appropriation in the bill to the Department to cover all or any of the Department's increased costs associated with the creation of this new misdemeanor crime.

SIGNIFICANT ISSUES

According to the Department of Health, 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 two thirds (65.7%) of these current drinkers define themselves as 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 (NM Youth Risk and Resiliency Survey 2007). Binge drinking is strongly associated with other risky behaviors. A national study found that youth who binge drink are five times as likely as nondrinkers to have been pregnant or have gotten someone pregnant; four times as likely to have attempted suicide; and eleven times as likely to have ridden in a car with a drinking driver. In addition, students who binge drink report poor academic performance (Miller et al., *Binge drinking and associated health risk behaviors among high school students. Pediatrics*, 2007;119:76-85). A state survey found that high school binge drinkers in New Mexico were more likely to drive while drinking, ride in a car with a driver who had been drinking, smoke cigarettes, use illegal drugs, be involved in physical fights, and be sexually active while less likely to get good grades (NM Youth Risk and Resiliency Survey 2007).

A study examining the relationship between alcoholic energy drink use, high-risk drinking behavior, and alcohol-related consequences among college students found similar results. An additional study found that consumption of alcoholic energy drinks was associated with binge drinking, heavy episodic drinking, and twice as many episodes of weekly drunkenness. These students were more than twice as likely to take advantage of another person sexually, to ride in a car with an impaired driver, to be physically hurt or injured, and to require medical attention

(O'Brien, et al. Caffeinated cocktails: energy drink consumption, high-risk drinking, and alcohol-related consequences among college students. *Academic Emergency Medicine*, 2008;15: 453-460).

Teenagers and young adults consume a higher amount of non-alcoholic energy drinks compared to older adults. A study on teen purchasing behavior found 31% of 12-17 year olds and 34% of 18-24 year olds report regular consumption of energy drinks, compared to 22% of 25-35 year olds (Mintel International Group, Ltd. Mintel Report. Chicago, IL: Mintel. March 2007). Energy drinks containing alcohol use similar marketing strategies, artwork, and containers as energy drinks that appeal to youth, which are misleading to consumers and can result in purchase of the wrong product (Simon & Mosher. Alcohol, energy drinks, and youth: a dangerous mix, Marin Institute 2007).

The direct costs to New Mexico of underage drinking were estimated in 2005 to be \$243 million (as a result of youth violence, traffic accidents, high-risk sex, property crime, and other problems) study by Miller, Levy, Spice, and Taylor found that underage drinkers consumed more than 20% of alcohol sold in New Mexico; totaling more than \$200 million in sales (Miller et al. Societal costs of underage drinking. *Journal of Studies on Alcohol*, 2006;76(4); 519-528).

ADMINISTRATIVE IMPLICATIONS

Special Agents with the Department of Public Safety would need to conduct compliance checks of wholesalers and retailers to ensure that products of this type are not being sold.

If the manufacturer changes formulations, labels would need to be closely monitored to ensure compliance. AGD personnel would need to be assigned to scrutinize the labels being registered by non-resident manufacturers to ensure that the products being sold in this state comply with New Mexico law.

OTHER SUBSTANTIVE ISSUES

HB 36 does not address how current stocks of these beverages currently warehoused in New Mexico would be disposed of.

“Flavored malt beverages” are sometimes referred to as “alcopops” and are thought to appeal mostly to young and under-age drinkers. The stimulative effects associated with “flavored malt energy beverages” are suggested to mask the depressive effects of the alcohol in the beverage, which could be particularly problematic in young, inexperienced drinkers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

No new sections would be added to the Liquor Control Act that would amend the Liquor Control Act to prohibit the import, manufacture, distribution or sale of flavored malt beverages containing stimulants.