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FISCAL IMPACT REPORT

SPONSOR	<u>HJC</u>	ORIGINAL DATE	<u>03/13/09</u>	HB	<u>105/HJCS</u>
		LAST UPDATED	<u></u>	SB	<u></u>
SHORT TITLE	<u>Allow Concealed Guns in Certain Businesses</u>			SB	<u></u>
		ANALYST	<u>Weber</u>		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Attorney General (AOG)
Public Defender Department (PDD)
New Mexico Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 105 amends Section 30-7-3 NMSA 1978, unlawful carrying of a firearm in licensed liquor establishments, to allow a person to carry a concealed handgun, when in possession of a valid concealed handgun license for that gun, on the premises of a licensed establishment according to the following limitations:

- b) a restaurant licensed to sell only beer and wine that derives no less than sixty percent of its annual gross receipts from the sale of food for consumption on the premises, unless the restaurant has a sign posted, in a conspicuous location at each public entrance, prohibiting the carrying of firearms, or the person is verbally instructed by the owner or manager that the carrying of a firearm is not permitted in the restaurant.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact would be proportional to the enforcement of this law, and commenced prosecutions. However, the change is less restrictive than current law and may result in fewer enforcement actions.

SIGNIFICANT ISSUES

The PDD office offers the following information.

A lieutenant with the Torrance County Sheriff Department confirmed statistics that many handguns are stolen from automobiles while their owners are elsewhere (personal comment from K. Erich Martell-“this has also been this reviewer’s long experience as a prosecutor and criminal defense lawyer”). As recent news has shown us, guns are frequently stolen even from unattended police vehicles.

Presently, New Mexico law requires licensed handgun carriers to remove their guns whenever entering a restaurant that happens to serve alcohol – leaving their guns in their unattended vehicles. See NMSA 1978, § 30-7-3. Accordingly, enactment of this bill into law would make it less likely for handguns to be left unattended in vehicles for criminals to steal and use, and would therefore reduce the number of stolen guns on the street and bring a concomitant reduction in gun crime.

Most other states have a provision similar to this bill in place, permitting licensees to carry into restaurants that happen to serve alcohol but that are primarily places of food service. The proposed statute would be stricter than other states’ provisions: for example, Nevada and Indiana allow licensed carry regardless of whether alcohol is served in an establishment; Texas requires only that 51% of revenue be derived from non-alcoholic sales. See Ind. Code § 35-47-2-1, et seq.; Nev. Rev. Stat. § 202.3653; Texas Penal Code § 30.06.

Handgun licensees are required to be citizens at least 21 years of age who are psychologically sound, who are not addicted to drugs or alcohol, and have taken a sixteen-hour training that includes extensive safety and legal education, a demonstration of proficiency. See NMSA 1978, §§ 29-19-1, et seq. Licenses are not issued without a successful background check on criminal and psychological issues and the filing of fingerprints and information with the DPS. Id. Licenses require recertification every two years. Id.

This bill would not allow handgun carry into bars: such would remain felonious conduct under New Mexico law. See NMSA 1978, § 30-7-3.

The AODA notes the following.

Persons who carry a concealed handgun into a licensed liquor establishment will raise the potential that that handgun may be used in the establishment. This is regardless of whether that person has a concealed carry license or not. If the handgun is used, it will require law enforcement intervention and likely prosecution.

For some establishments it would be a simple matter to determine whether it derives more than 60% of its annual gross receipts from the same of food for consumption on the premises (e.g., Chili’s, Applebee’s). However, for smaller licensed establishments (mom and pop restaurants) it would be difficult for police officers and concealed carry license holders to know the percentage.

TECHNICAL ISSUES

How will an individual be aware in advance of entry if the establishment is legal for concealed carry or not?

OTHER SUBSTANTIVE ISSUES

It seems that the intent of the 30-7-3 NMSA 1978 as written is to separate firearms from alcohol consumption in public places. If the statute errs it on the side of caution to ensure that if a person's judgment is impaired by alcohol consumption a firearm will not be close by. The concealed carry statute recognizes the potential danger of a firearm and alcohol by denying a permit to those addicted to alcohol or controlled substances or those convicted of the misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license.

The next section in the statutes, 30-7-4 NMSA 1978, Negligent Use of a Deadly Weapon notes:

30-7-4. Negligent use of a deadly weapon. (1993)

Statute text

A. Negligent use of a deadly weapon consists of:

- (1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
- (2) carrying a firearm while under the influence of an intoxicant or narcotic;
- (3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
- (4) discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor.

The concealed carry statute (29-19-1 thru 29-19-14), while denying a permit to someone convicted of the misdemeanor offense of driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license (29-19-4 NMSA 1978), does not mention the misdemeanor offense of carrying a firearm while under the influence of an intoxicant. Likewise, there is not provision for license revocation for conviction of negligent use of a deadly weapon under 30-7-4.

POSSIBLE QUESTIONS

As a corollary, should the statute be changed to also allow concealed carry with permit allowed on school or preschool premises which is now denied?

MW/svb