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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/09

SPONSOR Egolf LAST UPDATED \_\_\_\_\_ HB 226

SHORT TITLE Liquor Control Act Changes SB \_\_\_\_\_

ANALYST Lucero

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.01*	\$0.01*	\$-0.02*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)  
 (\* Indeterminable but estimated to be moderate)

Relates to HB172 - No Alcohol Sales to Persons on Probation

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department  
 Administrative Office of the Courts  
 Regulation and Licensing Department  
 New Mexico Corrections Department  
 Taxation and Revenue Department

### SUMMARY

#### Synopsis of Bill

House Bill 226 adds two new sections to the Liquor Control Act. The first specifies that a retailer shall not sell alcoholic beverages to anyone without first examining an identification card ID (issued by federal, state, county, or municipal government) containing a picture of the bearer and documenting the bearer's age. The second specifies (1) that a retailer shall not sell alcoholic beverages to anyone with an ignition interlock license or identification card that indicates the bearer is prohibited from purchasing alcohol; (2) a first or second violation by a retailer is a misdemeanor, while a third or subsequent is a fourth degree felony; and (3) it is an "affirmative defense" that the retailer demanded and was shown a valid identification card containing the bearer's picture and documenting the bearer's age.

Section 66-5-405 NMSA 1978, regarding the contents of a New Mexico identification card, is amended so that anyone whose driver's license has been revoked for driving under the influ-

ence shall or for a violation of the Implied Consent Act shall have a printed legend indicating that the person is prohibited from purchasing alcoholic beverages.

A new section is added to the Ignition Interlock Licensing Act indicating that an ignition interlock license shall be clearly marked to distinguish it from other driver's licenses, and it shall have a printed legend indicating that the person is prohibited from purchasing alcoholic beverages.

Section 66-5-502 is amended to remove language requiring that an ignition interlock license be clearly marked to distinguish it from other driver's licenses, as that language is now part of the new section added by this bill to the Ignition Interlock Licensing Act.

### **FISCAL IMPLICATIONS**

The Public Defender Department notes that this bill may result in new crimes and may increase caseloads and the need for additional FTE.

According to the Administrative Office of the Courts (AOC) there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would 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.

The bill could result in the issuance of citations to licensees for violations of the new sections. Fines and penalties could be assessed. The amount of potential revenue is unknown as there is no way to gauge the number of citations issued or the amount of fines that could be imposed.

Staff time for both Alcohol and Gaming and the Department of Public Safety (DPS) would be impacted in the issuance and adjudication of citations written for violations of the new sections.

New Mexico Corrections Department (NMCD) reports:

Additional felony convictions and misdemeanor convictions (offenders convicted of and having to serve two or more misdemeanors consecutively can be sentenced to a NMCD prison) resulting from this bill would 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. 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 the creation of these new crimes.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

There may be some minimal increases in the NMCD revenue (caused by a minimal amount of revenue generated by the probation/parolee supervision fees paid by those offenders placed on probation or parole for these crimes). However, the minimal increases will be more than offset by one or more offenders sentenced to prison for these new crimes.

### **SIGNIFICANT ISSUES**

The bill will require that retailers and servers ask for identification from each and every person regardless of age prior to selling alcoholic beverages. The Liquor Control Act defines a retailer as a person offering for sale alcoholic beverages in unbroken packages for consumption off the licensed premises. The bill does not address the on-premise consumption of alcohol. The bill appears to allow persons with ignition interlock licenses or identification cards prohibiting them from purchasing alcohol to enter a bar or restaurant and consume alcohol.

AOC reports that as new penalties are enacted, in addition to those already in place regarding liquor sales, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. These additional costs are not capable of quantification.

Also, there is no criminal penalty in the bill for the person with the restricted license who attempts to improperly purchase alcohol or does improperly purchase alcohol.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance based budgeting. This bill may impact the courts' performance based budgeting measures, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

This bill would negatively impact NMCD's ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions.

### **ADMINISTRATIVE IMPLICATIONS**

According to the Taxation and Revenue Department (TRD) the bill presents significant card redesign and production challenges. A substantial administrative impact in the time and expense would be required, particularly due to the limited space on the ignition interlock license.

Staff time for both Alcohol and Gaming and the Department of Public Safety would be impacted in the issuance and adjudication of citations written for violations of the new sections.

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

If the bill were to substantially increase the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Sections of this bill are similar to House Bill 172.

### **TECHNICAL ISSUES**

The bill (in various places) prohibits holders of ignition interlock licenses from “purchasing” alcoholic beverages, but the bill does not address “consumption” of alcoholic beverages. It may be advisable to clarify this issue, particularly for by-the-drink sales in restaurant and bar settings.

Presumably the intent of the bill is to prohibit the sale of alcoholic beverages to persons whose license is revoked during the period of that license revocation. However, if a person obtains a (non-driver) identification card, it may be unclear what period of time might apply to the phrase “whose license is revoked” if the person does not obtain a regular driver’s license after the revocation period.

All persons holding an ignition interlock license would be prohibited from purchasing alcoholic beverages. A more simple and cost-effective approach might be to direct in the Liquor Control Act that retailers are prohibited from selling to persons holding an ignition interlock license. However, the bill’s (non-driver) identification card provision might still be necessary.

The bill does not address the issue of unequal treatment of persons holding current ignition interlock licenses as opposed to newly issued ignition interlock-alcohol prohibited licenses. Presumably this does not present any legal problems.

### **OTHER SUBSTANTIVE ISSUES**

HB226 requires a retailer to check the identification card of every person trying to purchase alcohol, not just those who, based on appearance, are suspected of being under twenty-one years of age. This will involve retraining all retailers, their employees and agents, in order to ensure that everyone’s ID was being checked whenever a liquor purchase was involved.

The Motor Vehicle Department (MVD) indicates that there is insufficient space on driver’s licenses and ignition interlock licenses to accommodate additional notifications, such as the requirement in HB 226 for a printed legend indicating the person cannot purchase alcoholic beverages. The cards would require a complete redesign to accommodate such additional language, incurring vendor costs to MVD for the redesign.