

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Larranaga DATE TYPED: 2/13/01 HB 380
 SHORT TITLE: Exception to Open Container Law SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 246

SOURCES OF INFORMATION

Attorney General's Office (AGO)
 Taxation and Revenue Department (TRD)
 Department of Public Safety (DPS)
 Traffic Safety Bureau, Highway and Transportation Department (HTD)
 23 U.S.C § 154

SUMMARY

Synopsis of Bill

The Exception to Open Container bill deletes from the open container law the exception for a person who has an open container of alcohol pursuant to his or her employment by someone licensed by the Liquor Control Act. In addition, it also corrects a grammatical error, which allows having an open container when the bed of a pick-up truck is occupied by passengers.

Significant Issues

The Highway and Transportation Department reports that failure to pass this bill will prevent New Mexico from conforming to federal standards required by October 1, 2001 and will result in use restrictions on federal highway funds.

FISCAL IMPLICATIONS

While the failure to pass this bill will not result in any increase or decrease in federal funds, it will limit the state's ability to control the use of 1 1/2 percent of these funds. The agencies report no additional fiscal impact.

OTHER SUBSTANTIVE ISSUES

Federal law requires that:

- (1) ...each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.
- (2) Motor vehicles designed to transport many passengers. For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)--
 - (A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or
 - (B) in the living quarters of a house coach or house trailer,the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

Furthermore, federal law provides:

(c) Transfer of funds.

- (1) Fiscal years 2001 and 2002. On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1 1/2 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402--
 - (A) to be used for alcohol-impaired driving countermeasures; or
 - (B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).
- (2) Fiscal year 2003 and fiscal years thereafter. On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).
- (3) Use for hazard elimination program. A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

POSSIBLE QUESTIONS

If the argument is that exempting the employee under the Liquor Control Act fails to meet federal requirements, don't the medical use and clergyman exceptions also violate the federal requirements? What is the distinction between them?

FAR/njw