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## FISCAL IMPACT REPORT

SPONSOR: Lundstrom DATE TYPED: 2/19/03 HB 415

SHORT TITLE: Sale of Liquor to Repeat DWI Offenders SB \_\_\_\_\_

ANALYST: Chavez

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Public Defenders (PD)  
 Department of Public Safety (DPS)  
 Alcohol & Gaming Division (AGD)  
 Administrative Office of the District Attorney's (AODA)  
 LFC Files

### SUMMARY

#### Synopsis of Bill

House Bill 415 enacts a new section of the Liquor Control Act. It would prohibit the retail sale of alcoholic beverages to persons, or purchase by persons, convicted of a fourth or subsequent violation of driving while under the influence of intoxicating liquor or drugs for a period of one year after the completion of the jail term imposed for the conviction.

House Bill 415 requires a retailer, his employee or agent to obtain from each purchaser identification in the form of a driver's license or identification card, and to determine, in a manner established by MVD, if the person is restricted from the purchase of alcoholic beverages as a result of multiple convictions for driving while under the influence of intoxicating liquor or drugs.

Further, the bill would create a petty misdemeanor for any individual who gives, loans, sells or delivers an identification card to a person unable to purchase alcohol due to the statutory restrict

tion. It would also be a petty misdemeanor to purchase alcoholic beverages for an individual so restricted by law.

In addition, the bill amends various sections of the NMSA 1978. The amendments require that licenses and identification cards have a magnetic code or other marking determined by MVD in order to allow retailers to determine if the purchaser is restricted from the purchase of alcoholic beverages as a result of multiple convictions for driving while under the influence of intoxicating liquor or drugs.

Further, the bill provides that if a person is arrested for driving while under the influence of intoxicating liquor or drugs and has been convicted three or more times previously, a condition for bail, if authorized by the court, shall include the provision that the person shall not purchase alcoholic beverages from a retailer.

### Significant Issues

The impact of the bill on retailers would be that everyone must be carded in order to determine if the purchaser is restricted from the purchase of alcoholic beverages.

The language in the bill provides that it is a violation of the Liquor Control Act for a licensed retailer to sell alcoholic beverages to a person who is prohibited from making purchases of alcoholic beverages. However, there are no penalty provisions in the bill for a violation by a licensed retailer.

A retailer is one type of approximately 25 types of licenses defined under the Liquor Control Act. A *retailer* is defined as *a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises*. There are approximately 78 licensed retailers in the State of New Mexico.

According to the Administrative Office of the District Attorney's (AODA), the bill appears to be somewhat duplicative with a defendant's probation where he/she would presumably not be able to consume alcohol. However, the bill would provide a further hurdle to a covered individual who decided to consume alcohol despite conditions of probation or enrollment in alcohol abuse counseling or other programs. The AODA suggested modifying the prohibition to one year after the termination of all liability from the commission of the DWI 4<sup>th</sup> offense including incarceration, probation, and parole.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

According to the Administrative Office of the Courts (AOC), any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions.

## **ADMINISTRATIVE IMPLICATIONS**

It is indeterminate what the administrative implications would be to the MVD. The MVD by this proposed legislation is mandated to establish a database and procedure for licensed retail liquor distributors to determine if a person is prohibited from the retail purchase of alcoholic beverages.

The Department of Public Safety (DPS) indicates there are administrative implications upon passage of the proposed legislation. Within the law enforcement program, both the Special Investigations Division and the New Mexico State Police Division have the authority to enforce the Liquor Control Act, and each would play a significant role in the enforcement of the proposed statutory language. The New Mexico State Police would be required to enforce provisions of the proposed legislation in the field, while the Special Investigations Division would be responsible for enforcing the act on retailers who sell alcoholic beverages.

The Alcohol and Gaming Division (AGD) indicates the administrative implications would be dependent upon citations for violations of the proposed legislation that would be forwarded to the Alcohol and Gaming Division for disposition.

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

There are multiple bills proposed in the current legislative session which involve driving, DWI and related issues. It is possible that this proposed legislation bears significant conflict, duplication, companionship or relationship to many of those.

## **TECHNICAL ISSUES**

It is noted by the AGD that Subsection E on page 3 provides that a person who purchases alcoholic beverages for a person prohibited from making purchases is guilty of a petty misdemeanor. The AGD states this section should require the person making the purchase to have *knowledge* that he/she is making purchases of alcoholic beverages for those prohibited from making their own purchases. Without knowledge, it becomes a strict liability crime which could potentially not withstand legal challenge.

The AODA suggests that the prohibition should be extended to five years to better deter chronic DWI offenders.

## **OTHER SUBSTANTIVE ISSUES**

Constitutional issues were raised by DPS and the public defenders. The public defenders are concerned that once the database is established, it might open the floodgates to more intrusive "checks" on innocent citizens and, in the hands of investigating officers, may eventually and un- duly infringe on the constitutional protections of the 4<sup>th</sup> Amendment.

DPS states that because of the prohibition of ex post facto laws, this legislation should not apply to those individuals convicted of four or more DWI's prior to the passage of the proposed legislation.