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FISCAL IMPACT REPORT

SPONSOR: Hurt DATE TYPED: 3/2/03 HB _____

SHORT TITLE: Sale of Liquor to Repeat DWI Offenders SB 526

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$35.0	Recurring	OSF

Relates to: HB 117, HB 189, HB249, HB250, HB335, HB 415, HB 569, HB 139, SB 16, SB 90, SB 93, SB 170, SB242, SB248, SB259, SB262, SB264 and SB267

SOURCES OF INFORMATION

Responses Received From
 Regulation & Licensing (RLD)
 Attorney General's Office (AGO)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 526 enacts a new section of the Liquor Control Act prohibiting the retail sale of alcoholic beverages to a person convicted of a fourth or subsequent conviction while driving while under the influence of intoxicating liquor or drugs, for a period of one year after the fourth or subsequent conviction and requires the Motor Vehicle Division (MVD) to establish a database and procedure to determine if a person is prohibited from purchasing alcoholic beverages.

Further, SB 526 amends Section 66-5-15 of the Motor Vehicle Code requiring a driver's license to have a magnetic code that allows a licensed retailer to determine if the licensee is not authorized to make purchases of alcoholic beverages.

SB 526 further provides that any person who purchases alcoholic beverages for a person unable to purchase alcoholic beverages or who gives, loans, sells or delivers an identification card to a person unable to purchase alcoholic beverages knowing that the person intends to purchase alco-

holic beverages is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1.

Significant Issues

DWI continues to be a serious problem in the state of New Mexico. According to the Division of Government Research, at the University of New Mexico, in fiscal year 2002, 40% of those arrested for DWI had previous DWI convictions. Among those 40% , there were 60% whose most recent conviction was within the past five years. At present, there is no way to prevent individuals from purchasing liquor and then driving.

The language in SB 526 makes 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.

The AGO points out SB 526 prohibits a person who has four or more DWI convictions from purchasing alcoholic beverages from a retailer for a period of one year after the latest conviction. SB 526 prohibits such purchases from a "retailer," but does not prohibit purchase from a "dispenser" or a "wholesaler."

Thus, under SB 526, a person with four DWI convictions could not walk to a neighborhood grocery store to buy a bottle of wine within one year of a DWI conviction, even if there was no doubt that he intended to drink the wine later at home or to give it away as a hostess gift. However, that person could drive off to a bar and drink all day long. Similarly, a grocery store would commit a petty misdemeanor to sell the bottle of wine to such a person, while there is no penalty under SB 526 for a tavern owner to serve the same person. SB 526, Section 1(E), may also be interpreted to penalize a person who bought a bottle of wine, intending to serve it by the glass at his house to a person with a fourth DWI conviction within the past year may prevent SB 526.

SB 526 also prohibits a person who does not have a driver's license from purchasing alcoholic beverages from a retailer for a one-year period after a fourth or subsequent DWI conviction. The bill thus prevents a person who is prohibited from driving at all (because he does not have a license) from purchasing alcohol from a retailer.

The AGO argues it is possible SB 526 may be open to attack on constitutional grounds. Under substantive due process, a statute must bear a reasonable relation to the legislative purpose. As noted in the preceding two paragraphs, SB 526 prohibits buying alcohol even when it could be argued that there is not a close enough relationship, for purposes of the requirements of substantive due process, between the prohibition and the legislative purpose of preventing the purchaser from driving while intoxicated. It could be argued that preventing a person from walking to buy a bottle of wine is not closely related enough to the purpose of preventing him from driving while intoxicated—particularly when that same person is not prevented from driving to a bar to drink. It could also be argued that preventing a person who has no valid New Mexico driver's license from buying a bottle of Tequila does not have a close enough relationship to the goal of preventing that person from driving while intoxicated; while it is true that such a person could drive even though he did not have a driver's license, legislation prohibiting driving without a license already exists to address that problem.

SB 526 does not explicitly address the issues of how the magnetic code or other marking will be

placed on the driver's license or identification card, or how it will be removed when the one-year period expires.

FISCAL IMPLICATIONS

Implementing SB 526 will require, among other things, updating driving records to prevent people from acquiring unrestricted licenses where appropriate. Costs would result from reprogramming the driver's license system and implementing a communication network allowing judges and magistrates to transfer conviction information to the MVD. This type of process will require approximately one full-time employee at a cost of approximately \$35,000 annually.

ADMINISTRATIVE IMPLICATIONS

Placing magnetic codes or other markings on driver's licenses and identification cards and removing such codes or markings at the end of the one-year period will take MVD staff resources.

There are also administrative implications to the DPS in SB 526. Within the law enforcement program both the Special Investigations Division (SID) and the State Police Division (SPD) have the authority to enforce the liquor control act, and each would play a significant role in the enforcement of this Bill. The SPD will be required to enforce provisions of the proposed legislation in the field, while the SID will be responsible for enforcing the act on retailers who sell alcoholic beverages.

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

Relates to:

HB 117, DWI Penalties for Certain Offenders
HB 139 and SB 248, DWI Vehicle Seizure
HB 189, DWI Abuse Screening and Treatment
HB 249, Limited Driver's License Availability
HB 250, SB 242 and SB 262, Commercial Driver's License Changes
HB 335, Increase DWI Probationary Period
HB 415, Sale of Liquor to Repeat DWI Offenders
HB 569, Expand Aggravated DWI
SB 16 and SB 264, DWI as Habitual Offender
SB 90, Drug & DWI Court Expansion
SB 93, DWI increased Penalties
SB 170, Create Duty to Report DWI Convictions
SB259, Multiple DWI Offender Registry Act
SB267, Allow Prior DWI Conviction as Evidence

TECHNICAL ISSUES

TRD would like wording in proposed Section 2 to be changed to reflect emerging technology, for example: "The license shall have a magnetic code, chip, or other marking as determined by the department ..."

DOH notes the citation found on page two, line nine is not a section of the Liquor Control Act. It is a section of the Motor Vehicle Code. This is significant because the purpose of this paragraph

is to provide a penalty to the retailer for the sale by the retailer. Also, even if the Liquor Control Act had been cited, it is not likely that the Liquor Control Act currently contains language for this offense. In other words, this critical paragraph does not define or determine the penalty as it was meant to do.

OTHER SUBSTANTIVE ISSUES

At present, data users report that it can be difficult or perhaps even impossible to obtain DWI data from some of the state's courts. Information obtained from MVD is often months out of date and is often incomplete.

DW/sb