

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Sharer DATE TYPED 3/08/05 HB _____

SHORT TITLE Sale of Alcohol to DWI Convicts SB 587

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1 See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 581

Conflicts with HB 282, HB 472, HB 492, HB 493, HB 494, HB 502, SB 154

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Department of Public Safety (DPS)
- Regulation and Licensing Department (RLD)
- Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 587 prohibits an individual who has been convicted of DWI from purchasing alcohol from a retailer for a period of 5 years. It prohibits a retailer of alcoholic beverages to sell alcohol to a person convicted of DWI for a period of 5 years. The bill requires retailers to require purchases to show identification in the form of a driver's license or identification card. If the identification is issued by the state of New Mexico, the retailer shall determine if the purchaser is restricted from purchasing alcohol. The retailer is relieved of this requirement if the driver's license or identification card is not issued by this state.

The bill also requires the Motor Vehicle Division (MVD) of the TRD to place a magnetic code or other indication on the driver's license to allow a retailer to determine if the person is permitted to purchase alcohol.

The bill provides that it is a petty misdemeanor to give, loan, sell or deliver an identification card to a person unable to purchase alcohol with the knowledge that the person intends to use the identification to purchase alcohol. The measure also provides that it is a petty misdemeanor to purchase alcohol for a person unable to purchase alcohol under the provisions of the bill.

Significant Issues

The goal of the bill presumably is to reduce the number of repeat DWI offenses by limiting access to alcohol for all DWI offenders. However, the bill raises a number of concerns relating to enforcement.

The bill prohibits a licensed retailer from selling alcohol to a DWI offender for a period of 5 years. However, the law defines “retailer” very narrowly and includes only a person selling alcoholic beverages in unbroken packages for consumption, and not for resale, off the licensed premises. RLD indicates that there are approximately 77 retailer licenses in the state. As written, the bill would not apply to other establishments such as restaurants, bars, clubs etc. Thus, DWI offenders would be allowed to purchase alcohol from these other establishments. If the intent of the bill is to encompass all establishments selling alcohol, the language should be changed from “retailer” to “any holder of a liquor license issued under the provisions of the Liquor Control Act.”

Another potential enforcement issue is in the identification of DWI offenders. The bill requires the MVD to include a magnetic code or other marking that will allow a retailer to determine if the person is not authorized to purchase alcohol. This raises a number of questions. First, if the MVD chooses to use a magnetic code, the liquor license-holder would require special equipment to read the license. According to the MVD, these readers cost approximately \$100 each. It is relatively easy to check an individual’s age since the date of birth is printed on the front of the driver’s license, but obtaining information from the magnetic strip would be more cumbersome. If the bill is meant to cover all liquor license holders, this provision could prove even more burdensome. For example, a server at a restaurant would not be able to check identification at the table but would presumably be required to collect the licenses of all those ordering alcohol, run the licenses through a reader, then return the licenses.

Another issue regarding the notation on the driver’s license is the use of the term “identification card.” It is unclear what kind of identification card is required. Under current law, a liquor license holder shall not sell alcohol to a person who cannot produce identification to verify his/her age. Section 60-7B-2 NMSA 1978 provides that evidence of age and identity “may be shown by any document which contains a picture of the person issued by a federal, state, county or municipal government, or subdivision agency thereof, including but not limited to a motor vehicle operator’s license or an identification card issued to a member of the armed forces.” Section 66-5-401 NMSA 1978 allows the MVD to issue identification cards to persons who do not have a driver’s license.

Thus, it is unclear if the bill’s reference to “identification card” is specific to the MVD-issued card, which presumably would carry information about the holder’s eligibility to purchase alcohol, or any government issued identification card, such as a military identification.

The bill further provides that if the driver’s license or identification card is not issued by the state

of New Mexico, the retailer is relieved of the obligation to determine if the purchaser is eligible to buy alcohol. This section clearly relieves the retailer of checking the eligibility of an individual from out-of-state, but does this provision also apply when a New Mexico resident uses an identification issued by a federal or local government, such as a military identification? If the bill allows a New Mexico resident to use identification other than that issued by the MVD, then the provision creates a rather significant loophole in the enforcement of the purchasing restriction since such identification would not carry information regarding the person's eligibility to purchase alcohol. On the other hand, if the bill allows only an MVD-issued identification to be used, the bill may have a detrimental effect on individuals who do not have such identification but wish to legally purchase alcohol.

Section 1 of the bill provides that it is a petty misdemeanor for a person to purchase alcoholic beverages for a person unable to purchase alcohol because of a DWI conviction. This section also raises a number of issues.

First, as DPS points out, this creates strict liability because it does not require that the individuals know the other person is prohibited from purchasing alcohol. Unlike the current age requirement, it would be difficult for an individual who is buying alcohol that is to be shared whether someone in his/her group is prohibited from buying alcohol.

Another uncertainty is whether this provision applies to private functions such as a party or a wedding. If the host of the function purchased alcohol for all his/her guests and one of those guests was prohibited from purchasing alcohol as a DWI offender, would the host be guilty of a petty misdemeanor?

TRD notes that it may be difficult to mark the offender's driver's license and meet the record keeping requirements under current conditions because MVD does not receive conviction information in a timely manner. Courts must wait until appeal times have lapsed and often don't send MVD copies of the conviction until sentencing, which can be weeks, months or even years later.

The bill does not specify what fees, if any, the DWI offender would have to pay to MVD for the special driver's license. Would MVD be authorized to charge its usual fee for issuing a driver's license? Should MVD be authorized to charge an additional fee to cover the expense of developing a new license?

FISCAL IMPLICATIONS

TRD indicates that significant changes would be required. The magnetic strip on the current driver's license would have to be encoded with a special code or other identifying mark. Cost estimates vary depending on how MVD decides to implement the driver's license requirements. However, if MVD re-issues driver's licenses for only those individuals convicted of DWI, the cost would likely be under \$100,000. This cost could be off-set by fees charged to the individual.

DPS writes that its "...Special Investigations Division would be required to monitor and investigate alleged violations of the proposed bill. There will be substantial costs associated with these investigations and their enforcement." DPS indicates that, if fully staffed, it would be able to enforce these new provisions.

ADMINISTRATIVE IMPLICATIONS

The bill would necessitate administrative changes for the MVD, which would have to develop a method for encoding or otherwise marking the driver's license and would have to keep records of such individuals. This would require close coordination with the courts. MVD indicates that the July 1 effective date may not be realistic given the changes that are necessary.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 587 is nearly identical to Senate Bill 581. Several other bills have been introduced to combat New Mexico's DWI problem which would amend the same code sections as those amended in Senate Bill 587. These bills include House Bills 282, 472, 492, 493, 494, and 502 and Senate Bill 154.

TECHNICAL ISSUES

If the intent of the bill is to limit all access to alcohol for DWI offenders, the bill should be expanded to prohibit the sale from all liquor license holders, not just licensed retailers.

EF/yr:lg