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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/07

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 1193

SHORT TITLE Serving Alcohol to Minors Penalties SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Bernalillo County Metropolitan Court (BCMC)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Bill 1193 amends Section 60-7B-1 NMSA 1978 to base the degree of the offense of selling or giving alcohol to minors upon the volume of alcoholic beverage sold, served, given, bought or delivered. The first violation is a misdemeanor if the volume of alcoholic beverage is:

- (1) five hundred milliliters or less of spirits;
- (2) one liter or less of wine; or
- (3) one quart or less of beer.

Any violation is a fourth degree felony if the volume of alcoholic beverage is:

- (1) more than five hundred milliliters of spirits;
- (2) more than one liter of wine; or
- (3) more than one quart of beer.

HB 1193 also provides that it is *not* a violation of the Liquor Control Act when a parent, legal guardian or adult spouse of a minor serves alcoholic beverages to that minor on licensed premises.

### **FISCAL IMPLICATIONS**

In amending Section 60-7B-1 NMSA 1978 to provide that the first violation of the statute is a misdemeanor where the volume of the alcoholic beverage provided does not exceed a proscribed amount, HB1193 has created a new misdemeanor that will create an undetermined number of additional criminal cases for courts.

According to the Administrative Office of the Courts, 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.

### **SIGNIFICANT ISSUES**

According to the Administrative Office of the District Attorneys, the law should remain the same; a violation of Subsection A should be a 4<sup>th</sup> degree felony regardless of the quantity of alcohol. It will be a heavy burden for the State to have to prove quantity in these cases. There will be times that it will even be impossible to prove the quantity. So there will be occasions in which the State can prove that a minor was illegally provided alcohol, but the case will be weakened by an inability to prove quantity. I do not understand why the State should be placed in such a position.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

According to the Administrative Office of the District Attorneys, if this bill **is** enacted, the Legislature will have succeeded in making it harder to prosecute a person for illegally providing alcohol to minors. It will make it harder to hold a violator accountable. It will give Defendants a “loop-hole” to use to fight the case. It will make my job and the jobs of prosecutors in this state even harder. It will make the jobs of law enforcement even harder. It will send a message to the community that it is not as bad to provide a minor with “some” alcohol, just as long as it is not “a lot” of alcohol.

### **TECHNICAL ISSUES**

House Bill 1193 needs to lay out penalties for a subsequent offense, as that is missing at this time.

## OTHER SUBSTANTIVE ISSUES

According to the Department of Health, in 2005, 42% of New Mexico high school students reported drinking alcohol in the past month (Youth Risk and Resiliency Survey). Two-thirds (68%) of these high-school students who drank reported high-risk binge drinking (drinking five or more drinks on a single occasion). These levels of consumption represent a serious health threat to New Mexico's youth. Alcohol consumption is a risk factor in the three leading causes of death in the underage population (motor vehicle crashes, homicide, and suicide), and binge drinking is strongly associated with a wide range of risk behaviors such as drinking and driving, fighting, weapon carrying, and sexual activity.

The best available review of alcohol-related prevention strategies (Babor et al, Alcohol: No Ordinary Commodity, 2003) rates server liability statutes as having a "high degree of effectiveness" in reducing alcohol availability and preventing alcohol-related harm among high-risk adolescent drinkers. In 2004, in an effort to strengthen its laws and reduce the availability of alcohol to its underage population, New Mexico increased the penalty for provision of alcohol to a minor, from a misdemeanor to a fourth degree felony. New Mexico's statute allowed only relatively narrow exemptions for family members under certain circumstances.

Despite this increased penalty and increased enforcement of the enhanced statute, evidence continues to show that adult provision of alcohol to minors is a major problem in New Mexico. In 2005, according to the YRRS, a quarter (26%) of all high school drinkers, and almost one-third (32%) of binge drinkers reported they got their alcohol by giving money to "someone else to buy it for me" (this was the most common reported source). By comparison, relatively small proportions of high school drinkers reported that they bought their own alcohol at a store (3%), restaurant (2%), or public event (2%). Consistent with these findings, it is adults who respond to "shoulder-tap" purchase requests from minors, not servers in licensed establishments, who are the principle target for the current tough statute. The current statute provides adequate protections from penalty for responsible servers.

HB1193, by reducing the penalty for first-offense provision to a minor (from a fourth degree felony to a misdemeanor); by adding exemptions for provision of smaller amounts of alcohol; and by expanding the exemption for family members to allow provision on licensed premises, would represent a significant step away from tough server liability statutes and their attendant prevention effects at reducing alcohol-related harm among youth.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/nt