F I S C A L I M P A C T R E P O R T

SPONSOR SCORC **ORIGINAL DATE** 02/04/11 **LAST UPDATED** 02/22/11 **HB**

SHORT TITLE Penalties for Serving Alcohol to Minors **SB** CS/228/aSFL#1

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(unknown)* See below	(unknown)*		Recurring	District Courts funds
		Unknown* See below	Unknown*		Recurring	Magistrate & Metropolitan Court funds

(Parenthesis ( ) Indicate Expenditure Decreases) *courts are currently studying this issue

Duplicates HB 182

SOURCES OF INFORMATION
LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Corrections Department (CD)
Department of Public Safety (DPS)
Regulation & Licensing (RLD)

SUMMARY

Synopsis of SFL Amendment #1

The Senate Floor amendment #1 to Senate Corporations and Transportation Committee substitute for Senate Bill 228 reinstates language saying that a person knows or has reason to know that he or she is violating the Liquor Control Act.

Synopsis of Original Bill

The Senate Corporations and Transportation Committee substitute for Senate Bill 228 amends NMSA 1978, Section 60-7B-1 of the Liquor Control Act. This section relates to sales of alcoholic beverages to minors. Currently, the Liquor Control Act states that it is a violation for a person, including a licensee, lessee, employee or agent of the licensee to sell, serve or give

alcoholic beverages to a minor or to permit a minor to consume alcohol on the licensed premises if the person violating the Act knows or has reason to know that he is violating the Act. This bill removes the phrase "or has reason to know".

This bill also amends the penalty Section of 60-7B-1. Under the amendment, a person, other than a server, who sells, serves or gives alcohol to a minor shall be charged with a fourth degree felony. For a server, it will be a petty misdemeanor for a first offense of selling alcohol to a minor, a misdemeanor for a second offense of selling alcohol to a minor and a fourth degree felony for a third or subsequent offense.

FISCAL IMPLICATIONS

The AOC states the provisions of this bill will increase the caseload in the magistrate courts statewide and reduce the caseload in the district courts. The costs to the magistrate courts and the savings to the district courts are unknown and being analyzed at this time.

The AODA notes that for a server the first two violations are a petty misdemeanor and a misdemeanor. The cases will be sent to magistrate and metropolitan courts. These court systems are already overwhelmed by their caseloads; so adding more cases to their courts without any funding will create ongoing problems with backlogs and cases being dismissed because they were not tried within the proper time frame.

SIGNIFICANT ISSUES

In the last year there were 85 felony serving alcohol to minors cases statewide. Out of the 85 cases, 47 were dismissed by the prosecutor. It is possible that the dismissed cases were sent to a pre-prosecution diversion program. The 85 cases do not include cases which were sent to a diversion program pre-indictment. Thus, at least 85 cases will be filed in the magistrate courts plus any cases which were diverted pre-indictment. This will entail an increase of use of resources in the magistrate courts, possibly more than the reduction of resources in the district courts.

RLD believes removal of the phrase "or has reason to know" will severely limit enforcement of sales to minors. Currently, a licensee will have reason to know a person is a minor because he is required to ask for identification showing that the person is twenty-one years of age or older. Under SB 228, if a licensee fails to require identification, either intentionally or unintentionally, then he will not know the person is under twenty-one and will therefore be exempt from prosecution under the Act. Licensees will no longer have any incentive to restrict sales to minors.

The AODA provided the following:

> In this version of the bill a person must know he is selling alcohol to a minor. To prove a violation of this statute, the State will have to prove that the offender knew the person they were providing liquor to was a minor. The State will have to prove actual knowledge instead of being able to use circumstantial evidence.
>
> It is very difficult to procure proof of prior convictions from the Magistrate and Metropolitan Courts; so, like with DWI cases, it could be an offender's fifth violation,

but it will be treated as a first violation as proof if the prior four violations cannot be found. It will also take increased personnel in the district attorneys' offices to attempt to locate prior convictions so that the offender can be properly changed.

The current law is a fourth degree felony for any violation. This sentencing structure is much easier to enforce than the one proposed in this bill.

Making a distinction between servers and everyone else may cause an equal protection argument when a non-server is charged with a felony on the first and second offenses. There needs to be a stated reason why servers are receiving special consideration in this substitute bill.

CD noted the following:

The bill will probably help prevent alcohol servers in restaurants and other businesses from having their careers and freedom jeopardized by the current law which subjects them to prosecution and conviction for having any "reason to know" that they are perhaps serving minors.

On the other hand, some businesses or servers may do everything in their power not to actually learn or know that they are serving minors when they could perhaps obtain this actual knowledge with little or no effort by looking at a driver's license, etc.

ADMINISTRATIVE IMPLICATIONS

The AODA claims increased personnel will be needed in the magistrate and metropolitan courts and the district attorneys' offices.

POSSIBLE QUESTIONS

The AODA asks why the substitute bill gives more protection to a server than to non-servers.

DW/bym:mew:svb