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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Sale of NM Beer & Wine in Gift Shops, License SB 368

ANALYST Sanchez, C.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
\$300.0	\$300.0	\$300.0	Recurring	General

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$80.0	\$80.0	\$160.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

SB 368 creates a new type of liquor license for gift shops and amends other sections of the Liquor Control Act.

- The new license limits sales to New Mexico beer and wine for off-premise consumption but also allows for shipment of New Mexico made beer and wines out of state via common carrier by small brewers, retailers or gift shop licensees. The bill requires that local option districts approve gift shop licenses by holding an election on the question.

- Gift shop licenses would have the following restrictions:
 - the person granted the license shall not serve food or beverages except as permitted by the bill;
 - shall not own, lease or manage another liquor license;
 - shall not sell gasoline or other fuel used to power motorized vehicles from the premises;
 - the premises cannot be licensed under another license;
 - shall submit annual reports of total gross receipts and gross receipts from beer and wine sales, including separate reporting of sales of beer and wine shipped by common carrier;
 - sell only beer & wine, in unbroken packages, produced in New Mexico by a licensed winegrower or small brewer for consumption off the licensed premises;
 - the license would not be transferrable from person to person or from location to location and would expire each June 30;
 - the amount of liquor sold to one person in a twenty-four hour period would be limited to the equivalent of no more than four six packs of twelve-ounce containers or twelve 750 milliliter bottles of wine;
- The total annual gross receipts must be reported annually and the sales of beer and wine shall not exceed twenty percent of the total gross receipts, however the gross receipts from beer & wine shipped by common carrier are not included in the calculation of the twenty percent. If the twenty percent annual limit is exceeded, the license shall be revoked and the licensee may not reapply for a gift shop license for twenty-four months.
- The beer and wine sold on the premises shall be held at an appropriate temperature for storage but not chilled to discourage immediate consumption. Beer and wine shall not be available for consumption on the licensed premises.
- The gift shop license would not be subject to the quota limitation.
- Gift shop licensee employees must be 21 years of age or older to sell beer and wine on the premises.
- The initial application fee for a gift shop license is \$200 with a license fee and annual renewal fee of \$1,300.00.
- SB 368 creates a new section allowing shipment of beer & wine by small brewers, retailers and gift shop licensees via common carrier to those jurisdictions in the United States that permit such shipments. The amount of such shipments is limited to not more than four six packs of twelve-ounce containers of beer or twelve seven hundred fifty milliliter bottles of wine to any address or single purchaser in any twenty-four hour period.

FISCAL IMPLICATIONS

Senate Bill 368 includes an application fee for a gift shop license of \$200 with a license fee/annual renewal fee of \$1,300. It is unknown how many licenses would be issued. According to the Alcohol and Gaming Division (AGD), an estimate of 200 licenses at \$200 plus \$1,300

each for FY 11 and FY 12 would generate \$300,000.

As the bill contains language regarding annual reporting, the Alcohol and Gaming Division estimates that it would need at least one FTE auditor to audit the reports and conduct on-site audits of the business records to ensure reporting compliance. Estimated salary and benefits for the FTE is approximately \$54,000 plus overhead, mileage and per diem for traveling throughout the state for audits.

SIGNIFICANT ISSUES

According to RLD, Senate Bill 368 would allow shipment of domestic beer & wine by small brewers, retailers and gift shop licensees via common carrier. The Liquor Control Act does not currently address or authorize direct shipment of beer and wine. This bill's new language creates that authority, however there would be disparity between small brewers, retailers and gift shop licensees and the other types of licenses currently authorized under the LCA. Under the Liquor Control Act, "retailer" is defined in NMSA 1978 60-3A-3 U as a person having in the person's possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises. A retailer license is one which allows the package sale of beer, wine and spirits only and there are only 71 of these licenses statewide. Examples of the types of businesses that have a retailer license are grocery stores, liquor stores and convenience stores. The language in Senate Bill 368 would not permit the shipment of beer and wine by Dispenser license holders or winegrower's

According to the AGO, this bill may conflict with the Commerce Clause by giving preferential treatment to locally produced alcohol. Even though the 21st Amendment gives the States special power to regulate alcohol, the US Supreme Court has held that this amendment does not supersede the Commerce Clause.

The bill also leaves open the question of whether gift shops will be selling alcohol by mail to a customer after the customer has appeared in person at the gift shop, or whether the gift shop will be selling alcohol through electronic orders (i.e. phone, internet, fax, etc.)—the latter would open an avenue for underage drinkers to purchase alcohol because there will be no age verification

Also, the bill does not mention whether servers have to attend alcohol server education; the bill simply states that servers have to be 21.

DUPLICATES

HB 77

PERFORMANCE IMPLICATIONS

Passage of this bill will require additional staff time to process license applications, audit reports and to ensure compliance will be required.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mew