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FISCAL IMPACT REPORT

SPONSOR Heaton ORIGINAL DATE 01/25/10
LAST UPDATED _____ HB 83
SHORT TITLE Concealed Guns in Certain Restaurants SB _____
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Public Defender Department (PDD)
Department of Health (DOH)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 83 amends section 30-7-3 NMSA 1978 (unlawful carrying of a firearm in licensed liquor establishment) to allow a person licensed to carry a concealed handgun to “enter a restaurant licensed to sell only beer and wine that derives no less than sixty percent of its annual gross receipts from the sale of food for consumption on premises, unless the restaurant has a sign posted, in a conspicuous location at each public entrance, prohibiting the carrying of firearms, or the person is verbally instructed by the owner or manager that the carrying of a firearm is not permitted in the restaurant.”

FISCAL IMPLICATIONS

There are no apparent significant fiscal implications for the state.

SIGNIFICANT ISSUES

Data from the Department of Finance and Administration's DWI screening and tracking database indicates that 5% of convicted DWI offenders drank in restaurants prior to their DWI arrest for the period 2004-2007. While these data are certainly not specific to concealed-carry handgun licensees, they do suggest that drinking to impairment is a regular occurrence in New Mexico restaurants.

The PDD offers the following information.

A lieutenant with the Torrance County Sheriff Department confirmed statistics that many handguns are stolen from automobiles while their owners are elsewhere (this has also been this reviewer's long experience as a prosecutor and criminal defense lawyer). As news stories have shown, guns are frequently stolen even from unattended police vehicles.

Presently, New Mexico law requires licensed handgun carriers to remove their guns whenever entering a restaurant that happens to serve alcohol – leaving their guns in their unattended vehicles. *See* NMSA 1978, § 30-7-3. Accordingly, enactment of this bill into law would make it less likely for handguns to be left unattended in vehicles for criminals to steal and use, and would therefore reduce the number of stolen guns on the street and bring a concomitant reduction in gun crime.

Most other states have a provision permitting licensees to carry into restaurants that happen to serve alcohol but that are primarily places of food service. The proposed statute would be stricter than other states' provisions: for example, Nevada and Indiana allow licensed carry regardless of whether alcohol is served in an establishment; Texas requires only that 51% of revenue be derived from non-alcoholic sales. *See* Ind. Code § 35-47-2-1, *et seq.*; Nev. Rev. Stat. § 202.3653; Texas Penal Code § 30.06.

Handgun licensees are required to be citizens at least 21 years of age who are psychologically sound, who are not addicted to drugs or alcohol, and have taken a sixteen-hour training that includes extensive safety and legal education, a demonstration of proficiency. *See* NMSA 1978, §§ 29-19-1, *et seq.* Licenses are not issued without a successful background check on criminal and psychological issues and the filing of fingerprints and information with the DPS. *Id.* Licenses require recertification every two years. *Id.*

This bill would not allow handgun carry into bars: such would remain felonious conduct under New Mexico law. *See* NMSA 1978, § 30-7-3.

DPS adds the following.

Although persons holding concealed carry permits are responsible for knowing and adhering to all state laws, the bill could mislead the permit holder to believe that he/she can consume alcoholic beverages while armed, contrary to 30-7A-4(2) NMSA 1978 (negligent use of a deadly weapon). This amendment would also require the armed citizen to determine the restaurant's gross receipts from food sales prior to entering. Likewise an investigating police officer would have to make a similar determination before a violation could be prosecuted. The introduction of a firearm, legal or otherwise into an environment where alcohol is consumed is inherently dangerous.

OTHER SUBSTANTIVE ISSUES

It seems that the intent of the 30-7-3 NMSA 1978 as written is to separate firearms from alcohol consumption in public places. If the statute errs, it on the side of caution to ensure that if a person's judgment is impaired by alcohol consumption a firearm will not be close by. The concealed carry statute recognizes the potential danger of a firearm and alcohol by denying a permit to those addicted to alcohol or controlled substances or those convicted of the misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license.

POSSIBLE QUESTIONS

As a corollary, should the statute be changed to also allow concealed carry with permit allowed on school or preschool premises which is now denied?

How will an individual permit holder or law enforcement officer be aware in advance of entry if the establishment is legal for concealed carry or not?

MW/svb