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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/10

SPONSOR Cervantes LAST UPDATED _____ HB 211

SHORT TITLE Liquor Control Limited Dispenser License SB _____

ANALYST Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$0-\$200	\$0-\$200	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 211 amends the Liquor Control Act to create a new type of dispenser's license for rural restaurants. More importantly, it also imposes a separate set of criminal penalties for servers who provide alcohol to minors. Liquor license owners/managers/operators and servers would face increased fines/suspensions and possible license revocation if alcohol is sold/served to a minor or intoxicated customer or if a minor is allowed to enter and remain on a licensed premises. Servers who intentionally and willfully commit a violation of the Act are guilty of a

fourth degree felony, while servers who merely should have known that their actions were a violation of the Act are guilty of misdemeanors for the first and second offenses (and of a fourth degree felony for a third and subsequent offense).

FISCAL IMPLICATIONS

According to RLD, revenue may be generated from the establishment of minimum penalties for sales to minors, sales to intoxicated persons and minor in a restricted area. The amount of fines cannot be determined as the number and nature of citations issued will vary.

Revenue would be generated from application fees and licensure fees for the proposed Limited Dispenser license. The amount of revenue generated would depend upon the number of licenses of this type requested and cannot be determined at this time.

According to the Department of Corrections, the slightly fewer felony convictions resulting from this bill could decrease Department's costs by leading to a minimal decrease to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of fewer new convictions, or to result in a substantial or even a moderate decrease in the Department's inmate population or probation/parole caseloads. However, it is always difficult to accurately predict or estimate the ultimate effect of any bill that narrows the scope of a crime.

According to the Alcohol and Gaming Division, the bill will allow hearings to take place in Santa Fe where many of the personnel required for the hearing are located. The change will save the State travel and per diem costs as well as lost staff time traveling to outlying areas of the state. An estimate of savings is indeterminate as the number of hearings held and their locations varies.

SIGNIFICANT ISSUES

The bill would repeal the penalty for "servers" selling/serving/providing alcohol to a minor from a fourth degree felony to a misdemeanor for the first and second violation unless the investigating officer can determine the sale/service was "intentionally and willfully" committed. This bill minimizes the penalty for providing alcohol to minors at convenience stores, gas stations, restaurants and retail stores licensed to sell liquor.

A major concern for the Department of Safety is the fact that servers who have been trained to scrutinize the sale and service of alcohol are given a pass while adults who have not had the benefit of training are punished to the fullest extent of the law without a first or second pass.

RLD believes HB 211 will eliminate the contention by defense attorneys that if the Alcohol and Gaming Division did not receive a copy of the citation within 30 days, the citation should be dismissed. Citations will be dismissed if not received within six months.

The Alcohol and Gaming Division believes the creation of a new Limited Dispenser License would be limited to, and would allow economic development in, lesser populated areas where availability of liquor licenses is limited. The license would be non-transferable, remaining the property of the State, and would not increase the quota of licenses in New Mexico.

According to RLD, this bill targets those individuals who willfully break the law and provides

some respite to those servers who make a genuine mistake in the reading of an ID card or who sell to persons who may not be showing visible signs of intoxication at the time of the sale

TECHNICAL ISSUES

According Administrative Office of the District Attorney, use of the terms "intentionally and willfully" and "should have known" in relation to servers in section 60-7B-1(F) are somewhat vague, and could be difficult to apply in this context. Presumably "intentionally and willfully" would apply in a situation in which the server knew for a fact, either from prior knowledge or from looking at identification that showed the person was under 21, that the minor was not yet 21, but served them alcohol anyway. It is not clear what other situations the language would apply to. Does "should have known" apply if the minor presents false identification, but still looks younger than 21? If identification is not requested by the server, and the person served is under 21, is that an automatic violation, and would it be of the felony or misdemeanor variety? Is there an appearance of a certain age, under which age the server should always ask for identification?

Further, in subsection (F) of 60-7B-1, the term "offender" seems to be used in two different contexts--both referring to the person selling or giving alcohol illegally to the minor, and to the minor themselves. The bill should substitute the term "minor" for offender when referring to the minor obtaining the alcohol.

OTHER SUBSTANTIVE ISSUES

HB 211 redefines "public nuisance" to clarify what types of activities would be violations of the Liquor Control Act and which could result in revocation of the liquor license. The current language is vague and administrative citations issued for public nuisance are difficult to prosecute. The changes would allow easier prosecution for establishments that cause serious problems in the neighborhoods where they are located.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/svb