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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Garcia, T. LAST UPDATED _____ HB 599

SHORT TITLE Administrative Sanctions for Alcohol Licenses SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of District Attorneys (AODA)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

This bill proposes to add language prohibiting the director of the Alcohol and Gaming Division (AGD) from taking administrative action against a license for certain violations if a criminal charge for the same violation has been dismissed.

FISCAL IMPLICATIONS

No significant fiscal impact is identified.

SIGNIFICANT ISSUES

House Bill 599 in effect provides that the AGD director shall not revoke or suspend a license holder's liquor license for serving alcohol to a minor or serving an intoxicated person if the criminal charge for the same offense has been dismissed. According to the Administrative Office of District Attorneys (AODA), HB 599 appears to be intended to help liquor license holders in the following situation. Serving a minor is currently a fourth degree felony, NMSA 1978, §60-7B-1(F). However, because servers usually do not have any prior criminal record,

DA's are often unwilling to prosecute the crime of serving a minor as a felony. Consequently, the felony charge is dismissed and the server is allowed to plead to the misdemeanor of attempting to serve a minor. This has in the past then raised double jeopardy issues when the license holder is charged administratively with sale to a minor for the action of the license holder's employee, who was only convicted of attempting to sell to a minor. This double jeopardy issue is currently working its way through the appellate process.

According to the AODA, HB 599 would allow liquor license holders to avoid a possibly adverse ruling in the appellate courts, i.e., a ruling that the administrative proceeding against the liquor license holder's license is not barred by double jeopardy. And HB 599 would simultaneously allow the license holder to avoid any administrative consequences when an employee sold liquor to a minor if the employee pled to the lesser offense.

According to the Department of Public Safety, if implemented, HB 599 protects a licensee and/or his employee/agent from administrative sanctions that are meant to deter the sale of alcohol to minors and intoxicated persons and meant to deter a licensee and/or his employee/agent from providing false statements or concealing material facts in the licensee's application for license/permit. The burden of proof in an administrative hearing differs significantly from that in a criminal proceeding. Therefore, the fact that a citation is dismissed in criminal court has no bearing on whether or not a case can be proven administratively.

TECHNICAL ISSUES

According to the AODA, the sponsor of HB 599 should amend § 60-7B-1 (F) to make sale to a minor a misdemeanor instead of a felony. With this change there would be no incentive to allow server's with no criminal records to plead to attempting to sell to a minor, and liquor license holders would not be able to avoid answering charges of violating the Liquor Control Act in administrative hearings by claiming double jeopardy.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mew