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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11
LAST UPDATED 03/14/11 **HB** _____

SPONSOR Cravens

SHORT TITLE Increasing Penalty for Underage Drinking **SB** 309/aSJC

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$5.0-\$10.0)*	(\$5.0-\$10.0)*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases) * Eliminate the \$1000 fine for a first offense, Relates to HB 182 & SB 228

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$10.0-\$25.0	\$10.0- \$25.0	\$30.0-\$75.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Department of Transportation (DOT)
 Regulation & Licensing (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 309 states that in the case of a first violation for selling or giving alcoholic beverages to minors or the possession of alcoholic beverages by minors the offender shall be ordered by the sentencing court to perform 40 hours of community services, preferably related to the reducing the incidence of driving while under the influence of intoxicating liquor and may include attending a victim panel.

In addition, the offender shall be ordered by the sentencing court to attend an alcohol prevention or early intervention program approved by the local DWI county program. The program shall be a minimum of eight and up to 16 hours in length.

If the offender fails to complete the requirements of this bill an adjudication of guilt shall be entered and the offender's driver's license shall be suspended for a period of 90 days. If the minor is too young to possess a driver's license at the time of the violation, then 90 days shall be added to the date that the minor would otherwise become eligible to obtain a driver's license.

The amendment defines intoxicated to mean` the impairment of a person's mental and physical faculties as a result of alcoholic beverage use so as to diminish substantially that person's ability to think and act in a manner in which an ordinarily prudent person, in full possession of the person's faculties, would think and act under like circumstances.

Synopsis of Original Bill

Senate Bill 309 amends sections of the criminal codes and the Liquor Control Act to:

- Add language defining “visibly in an intoxicated condition” and making it a violation for a minor to be visibly in an intoxicated condition.
- Eliminate the \$1000 fine for a first offense and instead add a provision for suspension of the driver’s license for 60 days.

If the offender is too young to have a driver’s license, the bill will add 60 days to the date the minor will otherwise have been eligible to obtain a driver’s license. Additionally, the offender will be required to attend eight hours of an alcohol prevention or intervention program approved by the local DWI program. If the offender successfully completes the requirements, there will be no adjudication of guilt and the offender will be discharged and the proceedings dismissed. Dismissal and discharge under this section will only be allowed once and will not be deemed a conviction for purposes of disqualifications or disabilities imposed by law.

FISCAL IMPLICATIONS

There will be an associated cost with developing and maintaining a tracking system for minors who have violated this provision.

SB 309 makes it a violation for a minor to be visibly intoxicated. This will increase the need for enforcement activity by DPS and will increase the workload for MVD and require them to monitor driver’s license suspensions.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The AOC is currently working on possible parameters to measure the resulting case increase.

SIGNIFICANT ISSUES

Data from the 2009 Youth Risk and Resiliency Survey shows that underage drinking is a serious problem in New Mexico. In 2009, 25% of high school students reported past-month binge drinking. Binge drinking is drinking five or more drinks in a single occasion. Drinking, and particularly binge drinking, is strongly associated with a range of other teen risk behaviors such as DWI, suicide, fights and alcohol poisoning that put students at immediate risk of harm.

New Mexico also has the highest rate of drinking before the age of 13 in the nation at 29.4%.

New Mexico has statutes that prohibit both purchase and possession of alcohol by minors, but not with respect to intoxication or being under the influence.

The AODA notes that the addition of “visibly in an intoxicated condition” to the violations of the Liquor Control act, even with the definition provided in the amendments in this bill, will be difficult to prove in court. There needs to be a way for all of the courts in the state to apply the same standard to this violation so that all offenders are treated equally - equal protection of the law challenges will otherwise arise.

RLD also notes that the definition of “visibly in an intoxicated condition” is not very descriptive and vague. They suggest that the definition should contain some of the commonly recognized signs of intoxication such as: bloodshot, watery eyes; loss of balance –swaying or staggering; impairment of fine motor skills; a strong odor of alcohol coming from their person; or an inability to complete standard sobriety tests.

ADMINISTRATIVE IMPLICATIONS

Agencies affected by this bill will have to handle the provisions of this bill with existing staff as part of ongoing responsibilities

RELATIONSHIP

SB 309 relates to HB 182 & SB 228, Penalties for Serving Alcohol to Minors

ALTERNATIVES

Some of the counties may lack capacity or content expertise. In order to ensure statewide standardization of prevention and early intervention courses, DOT advises amending the bill to provide that courses must be approved by a single entity such as DFA’s Local Government Division which currently manages a DWI program.

DW/bym