

<b>LFC Requester:</b>	Eric Chenier
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**AGENCY BILL ANALYSIS**

**2013 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

<i>Check all that apply:</i>			<b>Date Prepared:</b>	01/18/2013 02/11/2013
<b>Original</b>	<input type="checkbox"/>	<b>Amendment</b>	<input type="checkbox"/>	<b>Bill No:</b> HB137 (CS)--205
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input checked="" type="checkbox"/>	

<b>Sponsor:</b>	Zachary J. Cook / HBIC	<b>Reviewing Agency:</b>	Attorney General's Office
<b>Short Title:</b>	CONCEALED GUNS IN LIQUOR ESTABLISHMENTS	<b>Person Writing Analysis:</b>	Trevor A. Rigler, AAG
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**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

The **original** bill, if enacted, would amend §30-7-3 (“Unlawful carrying of a firearm in licensed liquor establishments”) to permit persons with valid concealed handgun permits to carry concealed firearms in *establishments* which serve alcoholic beverages for consumption on premises, irrespective of the type of beverage (for example, beer vs. “hard” liquor) and of whether the establishment also sells food for consumption on premises and what percentage of the establishment’s revenue is comprised of food vs. alcoholic beverage sales. The bill replaces the term “restaurant” with “establishment”.

**The House Business and Industry Committee Substitute bill would permit the carrying of a concealed firearm by license-holders on the premises of a restaurant and would define a restaurant pursuant to s60-3A-3(T) (“Liquor Control Act”).**

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

None.

**SIGNIFICANT LEGAL ISSUES**

The bill is narrowly drafted. Also, the bill removes confusion existing in the current state of the law regarding determining the food:alcohol ratio which would permit the carrying of concealed firearms in restaurants. The bill imposes no new burdens on permit holders, private property owners, or law enforcement personnel. Finally, the bill does not decrease the standards for obtaining, maintaining, or lawfully using a concealed carry permit. As a result, the bill will likely face no substantive legal challenge.

**The HBIC substitute bill relies on a definition of “restaurant” found in the Liquor Control Act, as follows:**

**“‘restaurant’ means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;”**

**However, this definition is dated. It could also be interpreted to mean that a license-holder could lawfully carry a concealed firearm in a traditional, “sit-down” restaurant, but not a fast-food restaurant or a casual dining restaurant. The substitute appears to be drafted to mean that a license-holder may carry a concealed weapon on the premises of a restaurant regardless of whether that restaurant serves alcohol. However, because of the reliance on the Liquor Control Act’s definition of the term “restaurant”, confusion could be the actual result.**

#### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

None.

#### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

None.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

None.

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

None.

#### **OTHER SUBSTANTIVE LEGAL ISSUES**

None.

#### **ALTERNATIVES TO ENACTING THIS BILL**

None.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

#### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

Include language from 10.8.2.27 NMAC, which requires that private property owners who wish to prohibit concealed carrying of firearms on the premises in question to comply with §30-14-6 NMSA, which clearly details the requirements for legally effective signage (as an

alternative to verbal notice). This would clarify confusion about the rights and responsibilities of private property owners and concealed carry permit holders.

**Include a more modern definition of the term “restaurant” and/or amend the Liquor Control Act accordingly.**