F I S C A L I M P A C T R E P O R T

		ORIGINAL DATE	2/06/16		
SPONSOR	Ortiz y Pino/Smith	**LAST UPDATED**		**HB**	
SHORT TITLE	Local Beer & Wine Delivery Licenses			**SB**	264
				ANALYST	Liu/McIntyre

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**		
	$255.0	$262.0	Recurring	General Fund
	$173.0	$178.0	Recurring	Local Government Funds
	$33.0	$34.0	Recurring	DWI Fund
	$28.0	$29.0	Recurring	Lottery Tuition Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$99.2	$99.2	$198.4	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 47, SB 94, SB 147, SB 175, SB 163, SB 193

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Bill 264 creates a new license for beer and wine delivery. The bill allows each local option district to hold a special election to approve the issuance of beer and wine delivery licenses. To qualify for this license type, an applicant must submit evidence that they have either: a restaurant beer and wine license with a valid food establishment permit; a current business license and contracts with at least six permitted food service establishments; a valid food establishment permit and a dispenser license (which allows for the sale of beer, wine, and spirits for on and off premise consumption); or a valid food establishment permit and a retailer license (which allows for the sale of beer, wine, and spirits for off-premise consumption only).

The delivery of beer or wine would be limited to 144 ounces of beer (up to two six-packs of 12 oz. cans or bottles) and 1.5 liters of wine (up to two standard 750 ml bottles) and must be in conjunction with a minimum purchase of $20 of prepared food. This bill also requires the primary source of revenue from the operation of the restaurant or the delivery company be derived from meals. Renewal is conditioned upon at least 70 percent of gross receipts from the preceding twelve months being derived from the sale of meals. Licensees are required to provide an annual report indicating the annual gross receipts from the sale of prepared foods and from the sale of beer or wine.

Sales and delivery of beer and wine authorized by SB 264 shall cease at the time meals sales and delivery services cease or at 10:00 p.m. (whichever is earlier). Sales and delivery services will cease at 9:00 pm or at the time meals sales and delivery services cease (whichever is earlier) on Sundays in local option districts that allow Sunday sales. A beer and wine delivery license is not transferrable. The license shall be limited to the local option district in which the delivery service is located. Deliveries from one local option district to another are not permitted.

The bill restricts alcohol deliveries to private residential addresses or to licensed lodging facilities and only one delivery shall be made to the same address per 24 hour period. Deliveries to public property, public rights of way, and commercially zoned property except for lodging facilities are prohibited. Deliveries are prohibited to locations 300 feet from schools, youth centers, academic campuses, and dormitories. Each local option district may designate other zoning or geographic restrictions. Property owners or residents may also designate their address as a “do not deliver” address. SB 264 allows for fines or temporary suspension of the delivery license for delivery licensees that deliver to a “do not deliver” address or to a location where deliveries are prohibited by local ordinance or zoning requirements. Enforcement for violations of those restrictions rests with the local governing body.

Delivery persons are required to be alcohol server certified and license holders are required to use best practices. Delivery vehicles shall be monitored using a real-time global positioning system and information about the vehicle’s location will be available at all times to local and state law enforcement. The department (which refers to RLD for licensing and DPS for enforcement) must adopt rules prescribing best practices for licensees to guide enforcement of beer and wine delivery licenses. These best practices must be updated annually based on current technology, health, and safety information. Sales and delivery are required to be via credit card, debit card, or electronic means. Cash sales are prohibited. Electronic records will be maintained of each customer’s identification and acknowledgement of penalties for serving alcohol to minors, penalties for driving under the influence of alcohol, and dangers of consuming alcohol with drugs. Sales records are to be available for review by the director for five years.

Licensed delivery companies shall sell and deliver beer and wine only from licensed package retail locations, licensed restaurants under contract to deliver items on their menu, licensed small brewers, licensed winegrowers, and licensed wine blenders in New Mexico. The annual fee for a beer and wine delivery license is $1,300. Beer and wine delivery licenses are not subject to the quota limitations and may be issued regardless of the number of licenses in any local option district. "Customer" is defined as a person 21 or older who places the order and "prepared food" is defined as food prepared at a restaurant and ordered along with the beer or wine for delivery.

FISCAL IMPLICATIONS

According to the National Restaurant Association, the New Mexico restaurant industry generated $3.3 billion in sales in 2015. The Restaurant Marketing and Delivery Association estimates 10 percent of all restaurant sales came from the food delivery industry in 2015, or $330 million in sales in New Mexico. Analysis of U.S. Department of Agriculture and National Restaurant Association data indicates 7 percent of all restaurant sales are comprised of alcohol sales. If, in 2015, the food delivery industry was permitted to serve alcohol, and alcohol delivery sales reflected the same proportion of total sales as the rest of the restaurant industry, then an additional $23 million in alcohol would have been sold in New Mexico.

If half of New Mexico restaurants in only urban areas develop the network and infrastructure to profit from food and alcohol delivery, additional sales could reach $6 million. This would generate approximately $255 thousand in gross receipts tax for the state general fund and $173 thousand for local government. If restaurants sell six-packs of beer at $20 each, this estimate would yield approximately 170 thousand gallons of additional alcohol sold, or $72 thousand generated in liquor excise tax. The liquor excise tax is distributed to the DWI grant fund (46 percent), general fund (14 percent), and Lottery tuition fund (39 percent). Revenues would be expected to match the restaurant industry's rate of 3 percent annual growth for sales in the United States.

According to RLD, the license ($1,300), application ($200), and annual renewal ($1,300) fees would also generate general fund revenues depending on the number of license applications and issuances. The agency would require 1.25 FTE, in addition to current staff, to audit records from restaurant and food delivery companies and promulgate rules for best practices as referenced in the bill.

SIGNIFICANT ISSUES

According to the National Conference of State Legislatures, 47 states allow for the direct shipment of alcoholic beverages to consumers. New Mexico currently allows a licensee with a winegrower's license or a person licensed in a state other than New Mexico that holds a winery license to apply for a permit to ship up to two 9 liter cases of wine monthly directly to a New Mexico resident (Section 60-6A-11.1 NMSA 1978).

Senate Bill 503 of the 2015 regular legislative session was an earlier version of this bill, specifying that beer and wine sales would have to conclude at 9:00 P.M. on Sundays and at 10:00 p.m. during the rest of the week; beer and wine deliveries could still be made after those hours.

SB 264 differs from SB 503 by outlining prohibited delivery times for all sales and deliveries.

RLD provides this analysis:

> SB 503 contained a requirement that "licensed delivery companies shall maintain liquor liability coverage of at least one million dollars ($1,000,000)." SB 264 contains no insurance requirement. SB 264 also does not require "do not deliver" lists to be reported annually to RLD as part of the license renewal process.
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> This bill differs from the previous SB 503 by mandating that only one delivery shall be made to "the same private residential address or lodging unit" in any 24 hour period. Additionally, this bill requires electronic record of a customer's identification, including the customer's date of birth and photograph, and acknowledgement of the assumption of risk taken on by the customer, including the assumption of personal liability for serving alcohol to an intoxicated person, a person under the age of 21, and for driving under the influence of alcohol. Furthermore, SB 264 adds a requirement that the delivery licensee shall use a GPS or similar real-time position monitoring device and make the information collected available to local and state law enforcement agencies upon request.
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> There are no guidelines for local governments as to penalty amounts or suspension of delivery privileges, which may result in unequal enforcement. Additionally, there is no reporting requirement to the state for disciplinary action taken on licensees by local governments. Without this information, RLD would be unable to refuse issuance or renewal of licenses to unlawful applicants. However, the department is required to adopt rules prescribing best practices for licensees to guide enforcement of beer and wine delivery licenses.

RELATIONSHIP

HB 47, SB 94, SB 147, SB 163, SB 175, SB 193, and this bill all relate to liquor control. HB 47 allows governmental liquor licenses to be leased and operated at certain qualifying facilities not owned or operated by governmental entities. SB 94 provides local option districts the option of holding an election to allow the sale of New Mexico-produced distilled spirits by restaurant licensees. SB 147 allows for governmental licenses to be issued to the Spaceport Authority. SB 163 permits liquor license holders with package rights to fill and sell growlers of beer, cider, and wine. SB 175 allows a dispenser licensee to lease certain license rights. And SB 193 allows the sale, service, delivery, or consumption of alcoholic beverages on the grounds of ski areas.

TECHNICAL ISSUES

Since purchase from retail locations would allow delivery licensees to have and hold amounts of alcohol in their possession prior to delivery, such licensees would need to have a secure and bonded area – this is what is required for wholesalers who hold alcohol but do not dispense directly to the general public. The section regarding storage of alcohol (Section 60-3A-4 NMSA 1978) may also need to be amended to allow for such storage by delivery licensees.

Wine blenders are prohibited by their license type from selling to anyone other than a wholesaler, a winegrower or a winegrower's agent so this provision would have to be amended. Also, it is unclear whether the delivery licensee would be allowed to deliver growlers of beer, wine or cider.

A server's licensure generally is to allow the sale of open containers. This would expand server's licenses into the sale of closed containers.

OTHER SUBSTANTIVE ISSUES

According to EDD, New Mexico's liquor quota system has driven up the price of licenses and created a demand for more affordable license types. The quota system limits the number of retailer and dispenser licenses using one license per every 2,000 people. Additional licenses allow more restaurants and businesses to open, which allows "mom and pop" restaurants and businesses to be competitive with franchise operators. However, issuing more licenses potentially drives down values of existing license holders.

In 2013, the New Mexico Legislature enacted Senate Joint Memorial 77 requesting RLD to convene a task force and make recommendations for reforming the Liquor Control Act. The Alcohol reform taskforce that convened made recommendations to the Economic and Rural Development Interim Committee on July 8, 2014. The recommendations did not include a measure for the issuance of beer and wine delivery licenses.

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