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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/17

SPONSOR Griggs LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Liquor Dispenser License Privilege Leases SB 57

ANALYST Amacher

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	\$0.0 - \$495.0	\$0.0 - \$495.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 37, SB 58, SB 124, and HB 39, HB 51, HB 56, HB 162  
 Duplicates SB 211

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)  
 Department of Public Safety (DPS)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 57 amends and enacts new material of the Liquor Control Act to allow certain dispenser licensees to lease a privilege granted by their license. SB 57 addresses lessor and lessee liability and requires rules be promulgated no later than November 1, 2017. The bill, if enacted, will be effective June 16, 2017.

## FISCAL IMPLICATIONS

In 2016, RLD indicated the number of dispenser license leases could increase by 825 split lease agreements. This would correspond to an increase up to \$495 thousand from application fees. Application fees include \$250 for the lease application plus \$200 for the transfer of location application, \$50 for resident agent designation, and \$100 for Sunday sales. The number of quota liquor licenses would remain the same, but this bill could significantly increase the actual number of liquor sales by allowing leasing of the portion of the licensure that is not currently being used by the license holder.

## SIGNIFICANT ISSUES

Senate Bill 57 amends the Dispenser's License (Chapter 60-6A-3 NMSA 1978) by ensuring a dispenser's license is only used by the person to whom the license is issued within the licensed premise consistent with the provisions of the Liquor Control Act. There are a few exceptions to this use as outlined in the new material proposed in SB 57.

Section 2 delineates the dispenser's lease of license privileges, liability and rules. As proposed, a dispenser, using the licensed privileges, may *sell by the drink* alcoholic beverages in unbroken packages for consumption, but not for resale, off the licensed premises provided it is at an approved site outside the local option district where the dispenser-lessor's premises are located.

The other option outlined permits the dispenser to *sell by the package* alcoholic beverages in unbroken packages for consumption, but not for resale, off the licensed premises provided it is at an approved site outside the local option district where the dispenser-lessor's premises are located.

SB 57 requires the approval of the lease by the local government where the lessee's premises are located for both options to be implemented and must be consistent with the approval process outlined in existing law (see Chapter 60-6B-4 NMSA 1978.)

SB 57 requires the director (*i.e.* Director of the Alcohol and Gaming Division of RLD) to promulgate rules to implement the provisions as outlined, which must include a form of acknowledgment by the dispenser-lessor and lessee the terms of their agreement. This must be completed no later than November 1, 2017.

Notwithstanding another provision of law, as indicated in SB 57, a violation of the Liquor Control act or applicable rules by the lessee or at the lessee's licensed premises shall not subject the dispenser-lessor or the their license to civil damages or sanctions or to administrative sanctions.

## CONFLICT, RELATIONSHIP

SB 57 Section 2 and a portion of Section 3 are duplicated in SB 211. SB 211 provides additional amendments and new material to the Liquor Control Act addressing liability and requiring rules.

SB 57 relates to the Liquor Control Act and as such, relates to SB 37, SB 58, SB 124, and HB 39, HB 51, HB 56, and HB 162.

## **OTHER SUBSTANTIVE ISSUES**

The dispenser liquor license is a type of quota liquor license. It is commonly referred to as a full liquor license since it allows for the sale and service of beer, wine, and sprits both by: 1) the drink for consumption on the licensed premises, and 2) and by package for consumption off the licensed premises. In 2016, there were 1,411 quota liquor licenses statewide. Of those, there were 383 inter local dispenser licenses – licenses that have lost their package rights and only retain the rights that allow for on-premise sales.

Under current law, a dispenser license holder may lease the liquor license but only to one lessor. And only the single lessor may operate and directly profit from the operation of the license. The lessor will usually exercise the right to either sell and serve alcohol on the licensed premises or sell alcohol for consumption off of the licensed premises. Dispenser licenses are leased to entities whose business models require the service of beer, wine and spirits for on-premise consumption (ex: chain restaurants.) Alternatively, dispenser licenses are also leased to entities wishing to use the package rights of the license to sell liquor for consumption off of the licensed premises (ex: grocery stores.) RLD notes that of all the quota licenses, the full dispenser license type is the most valuable. Because it is a quota license type, there is more demand than supply, driving the price to \$750,000 and above.

RLD notes that under current law, a liquor license can only be used by one business, as specifically noted in the regulatory section of offenses NMAC 15.10.70.8. To enact the goals of this legislation, the bill would need to amend the Offenses by Dispensers, Canopy Licensees, Restaurant Licensees, Governmental Licenses, or Their Lessees and Clubs (Chapter 60-7A-12 NMSA 1978.) The impact of this bill would be to allow another (800+ number of licenses with package portion intact) potential businesses to operate without changing the underlying quota (1 quota type license per 2,000 New Mexicans).

RLD further comments that it appear this bill does not apparently intend to disturb a local option district's election to prohibit inter-local transfers pursuant to Chapter 60-6B-12(A) by allowing leases but not transfers. This intent should be made explicit, so that a local option district's prohibition on inter-local transfers automatically includes inter-local leases.

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

Leasing the entirety of full dispenser licenses would not be permitted. Chain stores that wish to sell alcohol solely for off-premise consumption (package sales only) will continue to find someone with a full dispenser license in order to utilize the off-premise license privileges.

## **POSSIBLE QUESTIONS**

In light of the need for new rules to be promulgated by November 2, 2017, does the June 16, 2017 effective date raise any logistical issues?

JMA/sb