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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/17
LAST UPDATED _____ **HB** _____

SPONSOR Griggs

SHORT TITLE Liquor Dispenser License Privilege Leases **SB** 211

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
Total	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 37, SB 57, SB 58, SB 124, SB 201, and HB 39, HB 51, HB 56, HB 162, HB 262, HB 296

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 New Mexico Office of the Attorney General (NMAG)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 211 amends and enacts new material of the Liquor Control Act to allow certain dispenser licensees to lease a privilege granted by their license. SB 211 addresses lessor and lessee liability and requires rules. This bill has an effective date of July 1, 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 211 amends and enacts new material of the Liquor Control Act (Act) to allow certain dispenser licensees to lease a privilege granted by their license. SB 211 addresses lessor and lessee liability and requires rules.

Section 1 amends the Wholesaler's License (Chapter 60-6A-1 NMSA 1978) by allowing a wholesaler to sell or offer to sell alcoholic beverages to the lessee or partial lessee of license as otherwise provided by the Act.

Section 2 amends the Dispenser's License (Chapter 60-6A-3 NMSA 1978) by noting exceptions are provided in the new material in Section 3.

Section 3 adds new material to the Dispenser's License addressing a 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.

Section 3 makes clear these provisions do not apply to a dispenser's license that has been transferred outside of its local option district pursuant to Chapter 60-6B-12 NMSA 1978. In the event a partial lease is made it is subject to approval by the governing body where the lessee's licensed premises are located, except for class B counties. The class B county must have a population between 71,000 and 72,000 according to the 2010 federal census. The exception also applies to those municipalities within those class B counties and any other municipality or county that prohibits by election the transfer of a license from another local option district.

Section 3 also ensures that a lessee's privilege to sell and serve provided all sections of the Act and rule are applicable, shall have no impact on the maximum number of license that may be issued.

Section 3 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.

As further outlined in Section 3, notwithstanding another provision of law, as indicated in SB 211, 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.

Section 4 relates to the transfer or partial lease of license requiring the approval of the appropriate governing body. This provision is pursuant to the new material in Section 3.

Section 5 provides an exception to certain violations of the Liquor Control Act. A violation would occur in the event any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club sells alcoholic beverages at any location or place except the premises used under a partial lease pursuant to the new material in Section 3

CONFLICT, RELATIONSHIP

SB 211 relates to the Liquor Control Act and as such, relates to SB 37, SB 58, SB 124, SB 201 and HB 39, HB 51, HB 56, HB 162, HB 262, HB 296

SB 57 Section 2 and 3 are duplicative of portions of Sections 2 and 3 of SB 211. SB 211 makes changes to other relevant sections of the Liquor Control Act to assist in accomplishing the purpose of SB 211.

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 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.

The NMAG notes it is unclear what a partial lease is according to the proposed act. In particular, it is unclear what effect a partial lease has on the licensee's ability to conduct business with a lease that is partially leased. For instance, will the lessor be limited in any way once the lessor has partially leased their licensee to a lessee? The NMAG suggests without clarification of the limits to a lessor's license when partially leased, it appears that the proposed act is an attempt to circumvent Chapter 60-6A-18 NMSA 1978 which provides for the maximum number of licenses that may be issued. The NMAG also suggests amending the policy provision (Chapter 60-3A-2(B) NMSA 1978) to include partial leases.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Leasing of full dispenser licenses (either in its whole or part) 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.

JMA/sb/jle