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FISCAL IMPACT REPORT

CS/HB255/
/aHF1#1/aHF1#2/aHF1#
3/aSJC/aSF1#1/aSF1#2/
aSF1#3/aSF1#4/aSF1#5/
aSF1#6

SPONSOR HTRC **ORIGINAL DATE** 02/18/21 **LAST UPDATED** 03/10/21 **HB** _____

SHORT TITLE Alcohol Deliveries **SB** _____

ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

	*Estimated Revenue		Recurring or Nonrecurring	Fund Affected
	FY22	FY23		
Tax relief for liquor license holders	(\$1,520.0)	(\$1,520.0)	Recurring until January 1, 2026	General Fund (PIT/CIT deduction)
Tax relief for liquor license holders	(\$1,805.0)	(\$1,805.0)		General Fund (GRT Deduction)
Tax relief for liquor license holders	(\$1,140.0)	(\$1,140.0)		Local Governments (GRT Deduction)
Licenses held on June 20, 2021	(\$1,345.0)	(\$1,345.0)	Recurring fee waiver until June 30, 2026	General Fund
Licenses purchased CY17-CY21	(\$455.0)	(\$455.0)	Recurring fee waiver for CY22-CY31	General Fund
Restaurant A & B license fees	Indeterminate		Recurring	General Fund
Delivery Fees	Indeterminate		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD		\$318.7	\$120.0	\$438.7	Recurring	General Fund
DPS/NMSP		\$920.0	\$920.0	\$1,840.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Department of Public Safety (DPS)
Regulation and Licensing Department (RLD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SF1#1, SF1#2, SF1#3, SF1#4, SF1#5, SF1#6 Amendments

Senate Floor amendments #1 through #6 to House Taxation and Revenue Committee substitute for House Bill 255 prohibit the sale of containers of fewer than 3 fluid ounces of liquor for off site consumption; add requirements for claiming deductions; strike retailer's excise tax; establish fees of \$500 for a New Mexico spirituous liquors permit and \$10,000 for a restaurant B license; requires the alcohol delivery to verify purchaser's identity; clarifies when restaurants can stop selling/serving alcohol; adds new restaurant licenses under the statute related to licensed premises restrictions near churches and schools; restricts the sale of liquor other than beer for some licensees that also sell retail gasoline; and within five years of enactment, requires the Department of Health to study the effects of home alcohol delivery.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Taxation and Revenue Committee substitute for House Bill 255 strikes all House Floor amendments; strikes proposed deductions from the income tax, corporate income tax, and gross receipts tax from leasing a retailer's license or from sales made from a retailer's license; adds language to recognize third-party delivery permittees use of independent contractors, in addition to employees, and requires those permittees to carry liability insurance for both categories of workers; and clarifies issuance of restaurant licenses by LODs for the sale of spirituous liquors, alongside beer and wine.

The amendment also allows restaurant A licensees after one year to be entitled to a New Mexico spirituous liquor permit for a \$1,200 fee; modifies license provisions for certain inter-LOD transfers; allows a licensed club to allow other nonprofits to use its licensed premises up to 4 times a year for fundraising purposes, up from 2 times a year; and adds a delayed repeal date of July 1, 2025 for the new section of the Liquor Excise Tax Act that established a retailer's tax.

SIGNIFICANT ISSUES

Synopsis of HF1#1, HF1#2, HF1#3 Amendments

The House Floor amendment #1 to House Taxation and Revenue Committee substitute for House Bill 255 requires restaurant B licenses to stop alcohol sales at 10 p.m. or when food sales end, whichever is earliest, and allows no more than 3 drinks containing no more than one and one-half ounces of spirituous liquor each visit. House Floor amendment #2 adds an emergency clause to allow some provisions to take effect immediately. House Floor amendment #3 waives renewal fees for some older dispenser's licenses that lost package sales capability due to being transferred for the life of the license holder and their successor/successors if a spouse, sibling or child.

Synopsis of Original Bill

The House Taxation and Revenue Committee substitute for House Bill 255 proposes new sections for laws taxing alcohol sales to provide deductions from income tax, corporate income tax and gross receipts tax for liquor license holders and to create a new retailer's tax pursuant to the Liquor Excise Tax Act. The bill also amends the Liquor Control Act to provide for home delivery of alcoholic beverages alongside food and allow craft distillers to participate in tastings and distribution alongside wine growers and craft breweries.

More specifically,

Section 1 proposes a new section of the Income Tax Act to allow liquor license lessors, who held licenses on June 30, 2021, to claim a deduction from net income in an amount equal to gross receipts from alcohol sales by lessees up to \$50 thousand if a dispenser's license, or up to \$25 thousand if a retailer's license, for four taxable years. This section also requires TRD to report the cost of the deduction to the LFC and Revenue Stabilization and Tax Policy Committee.

Section 2 proposes a new section of the Corporate Income and Franchise Tax Act which would provide similar taxpayer privileges as in Section 1, along with legislative reporting requirements.

Section 3 proposes a new section of the Gross Receipts and Compensating Tax Act to allow liquor license holders, who held licenses on June 30, 2021, to deduct from gross receipts from alcohol sales up to \$50 thousand if a dispenser license, and up to \$25 thousand if a retailer license, for four consecutive years. This section also includes legislative reporting requirements.

Section 4 proposes a second new section of the Liquor Control Act to establish a non-transferable, renewable, third-party delivery license and alcohol delivery permit. Under this section, a delivery permit can only be issued to valid retailer, dispenser, craft distiller, winegrower, small brewer or restaurant licensees, and if a restaurant licensee, only if the indoor space is less than 10,000 square feet. The alcohol delivery must be concurrent with \$10 of food delivery, and only for up to 750 milliliters of wine, six 12 ounce containers of prepackaged wine, beer, cider or spirituous liquors, or one locally produced growler. This section provides for rules to be promulgated for packaging, payment methods, pricing including delivery fees, and proof of age, hours, and locations not eligible for delivery. This section also establishes obligations on the delivery service to prohibit the delivery of alcoholic to intoxicated persons and minors, and makes the third-party delivery service carry separate liability insurance coverage and be subject to penalties and fines.

Sections 5 establishes a 2 percent retailer's tax pursuant to the Liquor Excise Tax Act on retailers who sell, offer for sale, or possess for the purpose of selling alcoholic beverages to customers.

Section 6 exempts from the new tax the sale of alcoholic beverages to or by the military.

Sections 7 and 8 clarify date new tax is due and the department's role and responsibilities.

Section 9 amends the Liquor Control Act to add clubs at any airport terminal, not just international airport terminals, to be included in the definition for "clubs; to clarify that the definition of "golf course" includes those golf course that may have restaurants and banquet

halls; and to exclude all beer that is not New Mexico produced to be included in the definition of “growler”.

Section 10 amends Section 60-6A-4 NMSA 1978 to provide that a local option district (LOD) that approves restaurant licenses for beer and wine sales is “deemed to have approved” licenses for the sale of beer, wine and spirituous liquors, barring the adoption of an opt-out ordinance; and establishes restaurant A and restaurant B licenses depending on whether they sell just beer and wine (A) or beer, wine and spirituous liquors (B). Also, if a LOD approves Sunday sales, clarifies restaurant B licensees may sell spirituous liquors alongside beer and wine until food sales end or 11 pm. These licenses are only transferrable from one location to another within the same LOD.

Section 11 amends Section 60-6A-6.1 NMSA 1978 to allow New Mexico craft distiller licensees to obtain beer, wine or cider from a small brewer or winegrower, and conduct tastings.

Section 12 amends Section 60-6A-10 NMSA 1978 to allow governmental licenses to sell alcohol at “government facilities” and “suites” instead of at “municipal baseball parks” and “skyboxes”.

Section 13 amends Section 60-6A-11 NMSA 1978 to allow a winegrower licensee to obtain spirituous liquor from a craft distiller and beer from a small brewer, and conduct tastings.

Section 14 amends Section 60-6A-15 NMSA 1978 to establish fees for the new licenses and permits. For license holders who purchased their licenses during 2017 through 2021, this section waives all issuance and renewal fees for those license holders from 2022 through 2031. This section also establishes restaurant B license fees for the sale of beer, wine and spirituous liquor, from \$2,500 to \$10,000, based on seating capacity; third-party alcohol delivery licenses, not to exceed \$1,000 and alcoholic beverage delivery permits, not to exceed \$300; and removes renewal fees for applications filed by licensees or their successors on or before June 30, 2026.

Section 15 amends Section 60-6A-26.1 NMSA 1978 to allow a small brewer licensee to sell beer to a craft distiller or winegrower, and conduct beer, wine and spirituous liquor tastings.

Section 16 amends Section 60-6A-32 NMSA 1978 to allow out-of-state wineries to participate in beer, cider, or spirituous liquor tastings.

Section 17 amends Section 60-6C-1 NMSA 1978 to eliminate reporting a charge against an alcoholic beverage delivery permittee to local law enforcement, when also reporting to DPS.

Section 18 amends Section 60-6C-2 NMSA 1978 to allow public hearings to also be held at the business of the alcoholic beverage delivery permittee, in addition to the licensed premises.

Section 19 amends Section 60-6C-4 NMSA 1978 to allow license co-owners who did not receive notice of a hearing, to appeal or reopen proceedings, and includes permittees alongside licensees.

Section 20 amends Section 60-6C-6 NMSA 1978 to remove a prohibition on use of injunctions or writs of mandamus for aggrieved parties, and includes permittees alongside licensees.

Section 21 amends Section 60-6E-3 NMSA 1978 within the definitions section for purposes of the Alcohol Server Education Article of the Liquor Control Act, to include deliveries.

Section 22 amends Section 60-6E-8 NMSA 1978 which outlines server permit fines and penalties, to add language to include delivery of alcoholic beverages.

Section 23 amends Section 60-6E-9 NMSA 1978 which provides for alcohol server education, to include delivery as a basis for requiring education.

Section 24 amends Section 60-6E-10 NMSA 1978 which covers administrative hearings, to include delivery permits alongside server permits.

Section 25 amends Section 60-7A-4 NMSA 1978 which controls the unlawful shipment, sale, and delivery of alcohol into New Mexico mandate, to require compliance with Section 4.

Section 26 amends Section 60-7A-12 NMSA 1978 which covers offenses, to prohibit the employment of a server delivering alcohol if the server permit of that person has been revoked.

Section 27 amends Section 60-7A-16 NMSA 1978 to include a prohibition of delivering to intoxicated persons, alongside selling to intoxicated persons.

Section 28 amends Section 60-7B-2 NMSA 1978 to allow evidence of age and identity verified with an expired identity document (ID) or not needed if the person looks older than 35 years.

Section 29 amends Section 60-7B-5 NMSA 1978 to give discretion to a person selling, serving or delivering alcohol, to provide that alcohol, and again, provides that an ID document is valid if expired and that it is unnecessary to ask someone for ID if they look older than 35 years.

Section 30 amends Section 60-7B-6 NMSA 1978 to provide when a licensee/permittee is accused of furnishing alcohol to a minor, a defense is being shown ID that person was of age.

Section 31 amends Section 60-7B-11 NMSA 1978 to prohibit the employment of someone under 18 (previously 19) to sell/serve alcohol, or employment of someone under 21 to deliver alcohol.

Section 32 repeals Sections 60-6A-25 NMSA 1978 for brandy manufacturer's licenses; Section 60-6B-1.1 NMSA 1978 for licenses held by noncitizens; Section 60-6B-10 NMSA 1978 for licenses near churches or schools; Section 60-B-11 for licenses near military facilities, Section 60-6B-15 NMSA 1978 for canopy licenses replaced with dispenser's licenses; Section 60-6E-6 NMSA 1978 to require copies of server permits be maintained; and Section 60-7A-18 NMSA 1978 to permit dancing at dispenser licensees during the same hours alcohol sales are permitted.

Section 33 provides the effective date of the act as July 1, 2021.

FISCAL IMPLICATIONS

The bill provides deductions from the income tax, corporate income tax, and gross receipts tax for liquor license holders. Using data from RLD on current licenses, LFC staff believe the income tax deductions have an estimated general fund cost of \$1.6 million, and the gross receipts tax deductions an estimate general fund cost of \$1.9 million and local government cost of \$1.2 million. TRD noted more taxpayers will qualify for the deduction against personal income tax than corporate income tax liability.

The bill establishes a “retailer’s tax” that applies to all businesses that sell alcohol for consumption, including food and liquor stores as well as eating and drinking places. Using data from the U.S. Department of Agriculture’s *Food Expenditure Series* that includes information on alcohol sales, population adjusted for New Mexico, LFC and TRD staff expect the new 2 percent retailer’s tax to generate \$29.5 million in new revenue to the general fund in FY22; \$30.8 million in FY23; \$32 million in FY24; and so forth, increasing each year due to inflation. Notably, this new tax is in addition to the existing liquor excise tax for wholesalers of alcoholic beverages.

The bill establishes fees for new alcoholic beverage delivery permits (not to exceed \$300) and new third-party alcohol delivery licenses (not to exceed \$1,000) and restaurant A licenses for beer and wine (\$1,050) and B licenses for beer, wine and spirituous liquors, based on seating;

- 1) 0-25 seats; \$2,500
- 2) 26-50 seats, \$5,00
- 3) 51-100 seats, \$7,500
- 4) More than 100 seats, \$10 thousand

The bill also eliminates renewal fees for license holders until June 30, 2026, if the licensee held the license on June 30, 2021. For license holders who purchased their licenses in 2017 through 2021, the bill eliminates all the initial and renewal fees through 2031. The Alcoholic Beverage Control (ABC) division currently has 1,385 active liquor licenses that will not have to pay renewal fees until after June 30, 2026; and from that total, between 350 and 500 of those license holders will not have to pay renewal fees until 2031. The annual estimated general fund cost is \$1.8 million until 2026, then between \$455 thousand to \$650 thousand from 2026 through 2031.

The substitute bill does not include an appropriation to TRD to implement changes for income taxes, the new GRT deduction and for a new account type in GenTax, the tax system of record, for the retailer’s tax. The costs are reflected in the table above and include \$177 thousand in staff workload and \$120 thousand for 2 FTE to implement the program, and \$347,002 for IT-related updates, composed of \$21,689 in staff workload and \$325,313 for contractual services. The ABC division will also need additional resources to establish new licenses and for rulemaking.

The substitute bill also does not include an appropriation to hire what DPS expects will be 10 new investigators for the New Mexico State Police (NMSP) to do the additional investigative and enforcement work that may be required. Using a cost estimate for salary and benefits of \$92 thousand per FTE, LFC staff assume the additional budget impact is \$920 thousand annually. This does not include the additional administrative and overhead expenses that may be incurred.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

RLD commented that some licensees own a license through one company and lease the license to themselves through a different company. This may allow them to claim a deduction as a lessor of a license and again as a holder of a license (as the lessee does hold and operate the license).

SIGNIFICANT ISSUES

The substitute bill allows for the delivery of alcoholic beverages. According to TRD, this may result in additional revenue for New Mexico businesses that may result in improved profitability, expansion, or replacement of lost revenue from alcoholic beverage sales due to the public health emergency. In addition, the deductions allowed for in the substitute bill may reduce the cost of business for liquor license holders, lessees, and lessors as a result of lower tax liabilities. Consequently, this may result in business growth, job creation, and increased economic activity.

The bill may create an economic hardship for license holders that are not large or out-of-state corporations, if it results in devaluing their liquor licenses. However, because of the high cost, some believe the current system disproportionately impacts young entrepreneurs starting out.

In addition to deductions from the income tax, corporate income tax and gross receipts tax for license holders, the bill establishes a retailer's tax of two percent to be imposed on a retailer that sells alcoholic beverages, to be applied to the price paid for those beverages sold by that retailer.

The substitute allows inter-local dispenser's licenses (dispenser's licenses who have lost package sales due to transfer out of the original LOD) to also benefit from the potential tax deductions.

The bill removes all license renewal fees through 2031 if purchased in CY17 through CY21. RLD noted that applies to retailer, dispenser and canopy licenses, all others are nontransferable.

The bill allows both types of restaurant licenses, located in LOD's with Sunday sales, to serve alcoholic beverages, and may begin that service at 7 am. According to RLD, the Liquor Control Act does not currently allow alcoholic beverage sales between 2 am and 11 am on Sundays.

Restaurant B license annual fees are to be based on the seating capacity; however, there is no basis for how that would be determined (i.e. square footage, number of chairs, etc.).

The bill will allow for winemakers or wineries, licensed outside of New Mexico, to participate in regional wine, cider, beer, or spirituous liquor tastings or competitions within the state.

ADMINISTRATIVE IMPLICATIONS

RLD noted allowing disciplinary cases to be re-opened because a "co-owner" did not receive notice of a hearing or proceeding creates several issues, as there is no way to provide notice to everyone who owns a share in a publicly traded company. Also, the Liquor Control Act only requires applicants and licensees to disclose to ABC only those individuals who own 10 percent or more of a license. The bill may allow a minority owner, never disclosed to ABC, to have a case re-opened because they never got notice. If a licensee has several non-disclosed owners, each owning less than 10 percent, for instance, the case could be reopened several times.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB8 Liquor Delivery & Licenses, and SB6 Liquor Control Act (duplicate bills) which add a type of delivery permit similar to HB255, but do not contain tax relief for license holders.

Relates to HB164, New Liquor Dispenser Licenses

Relates to SB2, Waive 2021 Liquor License Fees

Relates to SB320, New Liquor License Types, which contemplates a “package license” instead of a retailer’s license, as well as different classifications of licenses to permit alcohol sales.

Relates to SB136, Local Option for Restaurants, which proposes that LOD’s have the ability to hold elections to allow certain restaurant licensees to sell beer and wine, or beer, wine and spirituous liquors from New Mexico, but does not include third-party home delivery services.

TECHNICAL ISSUES

Confidentiality Conflict. The personal income tax and corporate income tax credit is for the lessor but is based on the receipts of the lessee. If the gross receipts tax made in a year is lower than the top amount allowed (\$50,000 for a dispenser license and \$25,000 for a retailer license), TRD will be violating the confidentiality statutes in the Tax Administration Act. By disclosing through the amount of the credit awarded the receipts of the lessee to the lessor; TRD would therefore be disclosing information about another taxpayer through this credit, which violates Section 7-1-8 NMSA 1978. However, Section 7-1-8.10 NMSA 1978 already does permit disclosure of some information regarding liquor license lessees to their lessors, namely the amount of any unpaid tax assessments.

TRD suggests revising 7-1-8.10(A) NMSA 1978 to include the annual gross receipts of a lessee in addition to unpaid assessment of tax as information that may be shared with the lessor. TRD will then develop procedures to share the information between taxpayers (the lessor and the lessee) when requested to substantiate a deduction.

Section 3. TRD suggests that the bill could be clarified by substituting the term “liquor license lessee” for “license holder” in subsection (A) of this section to conform to the defined term in Section 2(D) of the bill.

Retailer’s Tax. Section 7-17-5.2 (B) NMSA 1978 requires TRD to base the retailer’s tax due on the reasonable value of an alcoholic beverage if the price paid does not represent the value of the beverage sold. TRD believes this would be difficult to administer because there is no basis to determine whether any beverage was sold for reasonable value, or what that value should be. The provision might also deter price reductions, or “specials”, by sellers. TRD suggests it may be simpler to delete the final sentence of subsection (B), and just rely on the price paid for the alcoholic beverage, and rely on general anti-fraud provisions already in the tax code to deter any tax fraud in pricing.

Restaurant Licenses. RLD noted it is unclear whether McKinley County (class B counties having a population of between 56,000 and 57,000 according to the 1980 federal decennial census) is excluded from needing to have an opt-out ordinance or if they are excluded from having restaurant B Licenses.

- The language how written, only creates the exemption for the LOD of McKinley County, not the LOD of Gallup (which is located in McKinley County).
- The Liquor Control Act has previously used the language, “except class B

counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class B counties...”

AHO/sb/al/rl/al