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FISCAL IMPACT REPORT

SPONSOR Wirth/Griggs **ORIGINAL DATE** 1/24/2021
LAST UPDATED 2/02/2021 **HB** _____
SHORT TITLE Liquor Control Act **SB** 6/aSTBTC
ANALYST Hanika-Ortiz

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	\$50.0 - \$100.0	\$50.0 - \$100.0	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
Total		\$91.9	\$91.9	\$183.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Department of Public Safety (DPS)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of STBTC Amendment

The Senate Tax, Business and Transportation Committee amendment reduces the sum of food that must be delivered along with the alcoholic beverage to \$10 from the proposed \$25, increases third-party delivery license fees to no more than \$1,000 from the proposed \$300, removes language no longer applicable relating to the number of licenses that may be transferred or issued, removes language that prohibited rural licenses to be transferred to a location within ten miles of another licensed premises, reduces the payment to the department for reinstating certain privileges for dispensers to \$25 thousand from the proposed \$50 thousand, and replaces the term “alcoholic beverages” with “spirituous liquors” throughout the Act for conformity purposes.

Synopsis of Original Bill

Senate Bill 6 amends and enacts new sections of the Liquor Control Act to permit certain persons to deliver alcoholic beverages to homes, adds a new type of license that allows the sale of certain alcoholic beverages in restaurants, imposes additional fees, allows dispenser's licenses to be transferred out of local districts intact, and allows certain dispenser's licenses to reinstate retail privileges.

SB6 further directs RLD's alcoholic beverage control division to promulgate rules to implement these new provisions.

More specifically:

Section 1 allows a holder of a retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant license to apply for a delivery permit for up to 25 fluid ounces of wine or 72 fluid ounces of beer with at least \$25 worth of food. This permit is not transferable from person to person or from one location to another and is valid for one year and renewable. Within this section, the rules promulgated must include the following restrictions; alcohol must be delivered in unbroken packages, payment may only be received by the licensed premises, delivery fees must be upfront, deliveries may only occur during the licensee's regular business hours and only within the county the licensed premises is located, deliveries are not allowed to a business, commercial establishment, or school campus excluding home schools, valid ID must be provided to receive the alcohol, deliveries may not be made to intoxicated persons, and record retention is required.

This section also provides that a third-party delivery service may be used which would be separately liable for violations, including delivering alcohol to an intoxicated person or minor. By rule, RLD would create a third-party alcohol delivery license that requires the delivery service to carry liability insurance with a liquor endorsement, and require drivers to hold an alcohol server permit. This third-party delivery license will also be valid for one year, and may be renewed.

Section 2 amends definitions in the Act by changing the term "meals" to "food" throughout.

Section 3 allows a local option district to approve the issuance of restaurant licenses that sell alcohol in addition to beer and wine by the adoption of an ordinance. Restaurant licenses issued or renewed on or after July 1, 2021 that sell only beer and wine will be called a type A restaurant license and restaurants that sell beer, wine and spirits will be called a type B restaurant license. This section will allow type A restaurant licenses to be transferrable from one location to another. This section further provides after the adoption of an ordinance, a restaurant may apply for a type B license if the applicant has a valid food service establishment permit, no less than 60 percent of gross receipts from the preceding twelve months derived from the sale of food, and does not sell alcohol for off-site consumption. Like type A restaurant licenses, type B are not transferable from person to person but are transferable from one location to another within the same local district.

Section 4 adds restaurant license fees of \$1,050 for type A and \$3,000 for type B licenses; and third-party alcohol delivery license fees and alcohol beverage delivery permit fees of \$300 each.

Section 5 allows a dispenser's license that lost the privilege to sell alcohol in unbroken packages due to a transfer out of its original district, to have that privilege reinstated for \$50 thousand.

Sections 6-9 subject new alcohol beverage delivery licensees to the same penalties, complaint, and appeal processes as other licensees that may be or are in violation of the Act.

Section 10 adds to the definition of server for educational requirement purposes, a person who delivers alcoholic beverages.

Sections 11 and 12 subject servers delivering alcohol to the same penalty and education requirements as other servers selling, serving or dispensing alcohol.

Section 13 adds penalties for those who violate the act while the server is delivering alcohol.

Section 14 adds language that any delivery of alcohol must be in accordance with Section 1 of the amended Liquor Control Act (see Section 1 above).

Section 15 adds a violation to employ someone to deliver while they are suspended or revoked.

Sections 16 and 17 adds delivery alongside serving regarding violations for providing alcohol to intoxicated persons or persons unable to produce identification that they are of legal age.

Section 18 adds delivery alongside serving with regard to demanding and seeing identification of a person prior to furnishing them with alcohol as a defense to a prosecution or proceeding.

Section 19 states that the effective date of the provisions of this act is July 1, 2021.

FISCAL IMPLICATIONS

SB6 requires fees annually for new licenses and permits, as follows:

- type B restaurant license (includes spirits, in addition to beer/wine) - \$3,000;
- third-party alcohol delivery license - no more than \$300; and
- alcoholic beverage delivery permit - no more than \$300.

Any increased revenue derived from the new fees will be dependent upon market demand.

SB6 also allows for a one-time fee of \$50 thousand per dispenser's license to reinstate package sales privileges, paid to the department.

The additional operating budget impact table above reflects the estimated impact from DPS for investigative and enforcement work related to the creation of these new licenses and permits.

SIGNIFICANT ISSUES

RLD believes SB6 would allow for enhanced economic activity in New Mexico's hospitality sector in several different ways. Currently, restaurants that wish to serve spirituous liquor in conjunction with beer and wine would have to invest, on average, \$350 thousand to obtain an inter-local dispenser license or \$500 thousand for a full dispenser license. This bill would allow restaurants to obtain a lower cost restaurant license to serve beer, wine and spirits while insuring

restaurants do not essentially turn into bars (type B restaurant licenses would need to show over 60 percent of revenue is from the sale of food and would have reduced hours – restaurants need to stop alcohol service by 11 pm or when food service stops whichever is earlier.) The ability for restaurants to serve spirits may benefit economic development, particularly in New Mexico counties that do not have many dispensing type licenses. Sale of spirits should enhance restaurants notoriously narrow margins and is also expected to increase tipped staff wages accordingly.

Home delivery of alcohol reflects new models of how people purchase products, especially in a Covid-19 and post Covid-19 environment. This bill would allow for socially distanced methods to shop for alcoholic beverages while instituting a structural framework that is expected to insure compliance to prevent sales to minors or intoxicated persons. SB6 would also allow current dispenser licensees to regain package service lost when the license moved from its original district.

ADMINISTRATIVE IMPLICATIONS

Creates two new license types for RLD to process and issue, as well as one new permit type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 8, despite the difference in title.

TECHNICAL ISSUES

RLD suggests the language for type B restaurant licenses should include the term “spirituous liquors” instead of “alcoholic beverages” to conform with the rest of the Liquor Control Act.

The NMAG noted Section 6(D) provides that a charge filed against a licensee shall be reported to DPS and local law enforcement whose jurisdictions include the licensed establishment “or the address of record of the person issued an alcoholic beverage permit.” A law enforcement agency serving the home of record may not have jurisdiction to investigate a violation. For example, a person with a delivery permit may violate when delivering in Bernalillo County’s South Valley, but the permit holder may have a home of record in Albuquerque. The Albuquerque Police Department would qualify under the Section, but would not have jurisdiction to investigate the violation, which occurred outside city limits and in the county.

AHO/al/rl/al