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FISCAL IMPACT REPORT

SPONSOR HCEDC LAST UPDATED 2/18/2023
ORIGINAL DATE 2/16/2023
BILL CS/House Bill
SHORT TITLE Alcohol Delivery, Licenses & Ad Money NUMBER 364/HCEDCS
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD/ABC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	ABC operating (from permit fees)

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to HB230, SB259, and HB233.

Sources of Information

LFC Files

Responses to Original Bill Received From

New Mexico Attorney General (NMAG)
Regulation and Licensing Department (RLD)

No Responses Received From

Taxation and Revenue Department (TRD)
New Mexico Department of Health (NMDOH)

SUMMARY

Synopsis of HCEDC Substitute for House Bill 364

The House Commerce and Economic Development Committee Substitute for House Bill 364 (HB364/HCEDCS) amends Section 60-6A-37 NMSA 1978 within the New Mexico Liquor Control Act (LCA), where it pertains to the delivery of alcoholic beverages by licensees.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill is anticipated to increase the number of alcoholic beverage delivery permit applications submitted by large retailers. Therefore, more revenues from permit fees should be expected.

Larger licensees will no longer be prohibited from using third-party alcohol delivery services. This may have unintended consequences for smaller licensees competing for more market share.

SIGNIFICANT ISSUES

Effective July 1, 2021, the State allowed for the sales and service of spirituous liquor under the “Restaurant License” as follows: 1) Restaurant A, for beer and wine, 2) Restaurant A+ for a NM Produced Spirits-only Permit, and 3) Restaurant B, for beer, wine, and spirits. Also enacted was the ability to sell and deliver alcoholic beverages with a minimum \$10.00 food order. A current restaurant licensee needs to obtain an alcohol beverage delivery permit with requirements that include: 1) the purchase must be made at the establishment and delivery must be made within normal, business hours, and 2) the deliverer must be an employee with a server permit and driver’s license, at least 21 years of age. This law allowed use of a third-party delivery service.

The bill will remove the prohibition on licensees in class A counties, with indoor retail space of more than 10 thousand square feet, from contracting with third-party delivery companies for the delivery of alcoholic beverages. RLD said this will allow large grocery stores, throughout the state, to contract with third-party delivery companies holding delivery licenses, for the delivery of alcoholic beverages alongside grocery orders, or on its own. The bill will also remove the prohibition on those same licensees from delivering spirituous liquors. This means all licensees, except restaurant A licensees, will be able to deliver spirituous liquors pursuant to their license.

HB364/HCEDCS eliminates a prerequisite in the original bill that the license holder, applying for an alcoholic beverage delivery permit, use a system approved by RLD to establish that the purchaser’s identification was checked, scanned, and stored. Instead, the substitute bill requires RLD to promulgate rules for obtaining valid proof of a recipient’s identity and age by permittees.

Lastly, the bill prohibits licensees from accepting advertising money from suppliers in exchange for preferential listing of a product in that licensee’s delivery ordering system. According to RLD, this is a version of a common prohibition against “slotting fees” (or shelving fees) in which products are given preferential shelving space in exchange for money or things of value.

Alcohol delivery services make it simpler to anonymously buy alcohol which may lead to overconsumption. However, these services may also mean fewer intoxicated drivers on the road.

ADMINISTRATIVE IMPLICATIONS

RLD staff will be expected to handle the additional workload related to issuing more permits.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB230 and SB259 that increase liquor excise taxes by 25 cents per serving, indexed to inflation; and diverts tax revenue from the general fund to a new fund to address alcohol harm.

HB233 reorganizes RLD to include hiring compliance officers with police powers to enforce the laws and rules of the Alcoholic Beverage Control Division and the Cannabis Control Division.