

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Rodella ORIGINAL DATE 02/03/15  
 LAST UPDATED 02/23/15 HB 243/aHBEC

SHORT TITLE Liquor Licenses & Definitions SB \_\_\_\_\_

ANALYST Cerny

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 11, HB 198, SB 71, SB 238, SB 241, and SB 300.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Regulation & Licensing Department (RLD)
- Department of Health (DOH)
- Department of Public Safety (DPS)
- Children, Youth and Families Department (CYFD)
- Human Services Department (HSD)

### SUMMARY

#### Synopsis of HBEC Amendment

The House Business and Employment amendment to House Bill 243 adds a definition for the word “cider” to mean “alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent alcohol by volume and not more than seven percent alcohol by volume.”

The amendment strikes the word “merchandise” from the bill with regard to the “reasonable return from a retailer to a wholesaler” in Section 9, replacing that word with “alcoholic beverages,” thus narrowing and clarifying what is being returned. In the same section, it also deletes “unfit for human consumption” and instead clarifies that such returns must be at or near the spoilage or expiration date and may not include returns that were damaged by the retailer or their employees or customers.

Synopsis of Original Bill

House Bill 243

- Expands the definition of alcohol to include frozen and powdered forms. Other states have passed legislation to ban or regulate powdered alcohol.
- Clarifies that small brewers may fill growlers for sale for off-site consumption. This is allowed but not specified under current law.
- Allows craft distillers and small brewers to have three offsite premises, just as winegrowers are allowed under current law.
- Allows winegrowers to also fill and sell wine or cider in growlers, just as small brewers are allowed under current law.
- Adds an additional two weeks to the required notice for public hearings for liquor license approval at the local option district level. It also encourages, but does not require, the local option district to add website notification of the public hearing. Under current law, notice must be published in the newspaper twice, for a period of two consecutive weeks, prior to the public hearing held in the local option district.
- Allows for alternating proprietorships for small brewers, winegrowers and craft distillers – this allows smaller start-ups to use another small brewer, winegrower or craft distiller’s excess manufacturing capabilities, equipment and location to begin their business until they are large enough to afford to go out on their own. This is permitted for winegrowers under federal law and for other manufacturers in other states.
- Allows retailers, such as small independent grocers, to form purchasing pools or cooperatives in order to bulk purchase alcohol in order to be more price competitive with the larger chains. Purchasing co-ops are allowed in other states.
- Clarifies what is considered a reasonable return from a retailer to a wholesaler under the trade practices section so that retailers are allowed to return alcohol that is damaged (wine bottles with damaged corks, e.g.) and/or near the expiration date (in particular, beer, which has a short shelf life). While this is a generally accepted industry practice, it is not currently specified in law.

**FISCAL IMPLICATIONS**

HB 243 carries no appropriation and no fiscal impact.

**SIGNIFICANT ISSUES**

Frozen Powdered Alcohol is a new product that is currently not covered by state law. On April 8, 2014 the United States Alcohol and Tobacco Tax and Trade Bureau (TTB) approved seven labels for a product called Palcohol, a combination of the words powdered and alcohol. Less than two weeks later, TTB stated that the label approvals were issued in error. At the federal level,

*The Sober Truth on Preventing Underage Drinking Reauthorization Act S. 2935*, 113th Cong. (2014) was introduced in November 2014 and, if enacted, would prohibit the “manufacture, sale, distribution, or possession of powdered alcohol.”

HSD analysis suggests that Frozen Powdered Alcohol presents several challenges related to the state’s effort to prevent substance abuse:

This new product is easy to over consume, conceal, and obtain, particularly for minors. Powdered alcohol has no taste or smell making it difficult to detect and easier to consume in excess. The powdered form is easy to inhale, increasing risk for abuse. Inhaling (or snorting) powdered alcohol bypasses metabolism by the liver, resulting in quicker delivery to the brain. Consequently, snorting can increase the risk for alcohol poisoning and death. The powdered form also makes it easy to put into another's drink, creating opportunities for victimization. The small package is easy to conceal and carry into venues where alcohol is not allowed such as movie theaters, malls, or schools.

DOH analysis states:

Products that are made of dehydrated alcohol (i.e., powdered alcohol) have recently been proposed for approval for sale to the United States Alcohol and Tobacco Tax and Trade Bureau. Several states, including Colorado and North Dakota, are currently exploring how to regulate powdered alcohol, including banning alcohol in powdered form.

HB 243 would include “powdered alcohol, frozen or freeze-dried alcohol” in the definition of alcoholic beverages in the New Mexico Liquor Control Act. Because powdered alcohol is a new product, its impact on health has not been well researched. However, there are concerns that the product may lend itself to abuse and misuse because it is a very high concentration of alcohol, is easily concealed, and is produced in flavors that may appeal to children.

With regard to the definition and sale of growlers, DOD analysis states:

There is currently no evaluation of the impact on alcohol-related harm by allowing growlers...The industry standard for growlers is 64 fluid ounces or a half of a gallon. This would be more than five standard drinks of 5% alcohol beer. HB 243 proposes to define a growler as no more than a gallon of beer [128 oz.], which is twice the industry standard.

Increasing public notice of new or transferred licenses will increase a local government’s ability to regulate alcohol outlet density (i.e. the numbers of locations that sell alcohol in a given area).

DOH analysis notes:

High alcohol outlet density is strongly associated with increased alcohol consumption, alcohol-related hospitalizations, and violent crime and regulating alcohol outlet density is an evidence-based intervention for reducing alcohol related harm ([www.thecommunityguide.org/alcohol/outletdensity.html](http://www.thecommunityguide.org/alcohol/outletdensity.html)).

This legislation came out of recommendations from the Liquor Control Act Task Force which

met pursuant to Senate Memorial 77, passed in the 2013 regular session. The Task Force was convened in December 2013, met through 2014, and made recommendations to the Economic and Rural Development Interim Committee. The Interim Committee endorsed the consensus recommendations and developed this bill from those recommendations.

### **PERFORMANCE IMPLICATIONS**

Additional administrative rules must be promulgated to carry out the duties created by this legislation. The Alcohol & Gaming Division will need to update performance measures to allow for additional time to process licenses with the additional two weeks required for a public hearing.

### **ADMINISTRATIVE IMPLICATIONS**

RLD comments that “Most of the components of this bill impact how the industry does business, rather than how they are regulated by the Alcohol & Gaming Division. There may be additional applications for offsite premises for small brewers and craft distillers as well as for alternating proprietorships.”

### **RELATIONSHIP**

HB 11, HB 198, HB 243, SB 71, SB 238, SB 241, and SB 300 all relate to the regulation and licensing of alcohol sale.

HB 11 proposes to amend the Liquor Control Act to extend hours of sale for alcoholic beverages from midnight until 2 AM for package liquor (off-premise consumption) and winegrowers. HB11 would also eliminate restrictions on Sunday and holiday sales.

HB 198 and SB 300 both propose to allow governmental licenses to sell distilled spirits as well as beer and wine at municipal golf courses. Currently governmental licenses can only sell beer and wine at municipal golf courses.

SB 71 proposes to amend the Liquor Control Act so that local option districts may hold an election to allow restaurant licenses to sell distilled spirits produced in New Mexico, as well as beer and wine. Currently, restaurant licenses may sell beer and wine, but not distilled spirits.

SB 238 proposes to allow licensed small brewers to hold interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant, dispensers, or wholesalers license issued pursuant to the Liquor Control Act.

SB 241 proposes to amend the Liquor Control Act to allow the transfer of dispenser and retailer license out of local option districts which are below the number allowed by law (“under-quota”).

SB 258 also defines a growler as “a clean, refillable and resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider for consumption off premises” and allows growlers to be sold for off-premise consumption.

**TECHNICAL ISSUES**

Although “cider” and “alternating proprietorships” are defined in federal law, HB 243 does not define these critical terms.

CAC/bb/aml