

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) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Griggs ORIGINAL DATE 2/18/16
 LAST UPDATED _____ HB _____

SHORT TITLE Liquor Dispenser Rights Leases SB 175

ANALYST Liu

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	\$0.0 - \$495.0	\$0.0 - \$495.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB47, SB94, SB147, SB163, SB175

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 175 amends the Liquor Control Act allowing a dispenser liquor license to lease certain license rights. The bill would allow the dispenser license holder to lease the liquor license rights to one other person, outside of the licensee’s local option district, for the sale of alcoholic beverages in unbroken packages for consumption (not for resale) or the sale of alcoholic beverages by the drink for consumption on licensed premises. The bill requires the Alcohol Gaming Division of the Regulation and Licensing Department to develop a lease form.

FISCAL IMPLICATIONS

According to RLD, 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

This bill allows the dispenser liquor license holder to use one portion of the license and to lease the other portion of the license to another entity, outside the local option district, without losing the package rights. According to RLD, this would allow more than one entity to profit from the operation of a liquor license, which is currently not allowed. Currently, if such a license holder leases the liquor license outside the local option district, it is a transfer of location which causes the license to become an “inter local license” and loses its package rights. In order to accomplish the desired intent of the bill, other sections of the Liquor Control Act would have to be amended. These sections are noted in the Amendments section.

ADMINISTRATIVE IMPLICATIONS

According to RLD additional applications generated could be handled by existing staff. However, a new numbering system would need to be created to track the additional use of quota licenses by lessees.

RELATIONSHIP

HB 47, SB 94, SB 147, SB 163, SB 193, and this bill all relate to liquor control. HB 47 allows governmental liquor licenses to be leased and operated at qualifying facilities which are not owned or operated by governmental entities. SB 94 provides local option districts the option of holding an election to allow the sale of New Mexico-produced distilled spirits by restaurant licensees. SB 147 allows for governmental licenses to be issued to the Spaceport Authority. SB 163 proposes rulemaking that allows segregated sales of beer, wine, or cider packaged in growlers and establishes procedures related to refilling growlers. SB 193 amends certain sections of the Liquor Control Act to allow service of alcohol in ski areas.

OTHER SUBSTANTIVE ISSUES

The dispenser liquor license is a type of quota liquor license commonly referred to as a full liquor license since it allows for the sale and service of beer, wine and spirits both by the drink for consumption on the licensed premises and by package for consumption off of the licensed premises. There are 1,411 quota liquor licenses statewide. Of those, there 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 such as chain restaurants and hotels whose business models require the service of beer, wine and spirits for on-premise consumption. Alternatively, dispenser licenses are also leased to entities such as convenience stores, grocery stores and pharmacies wishing to use the package rights of the license to sell beer, wine and spirits for consumption off of the licensed premises.

AMENDMENTS

RLD provided the following:

The following amendments are required to prevent a dispenser from losing package rights if the location is transferred outside the local option district and to allow a license holder to use some of the license rights and lease the other half of those rights:

Section 60-6B-12(C) NMSA 1978 provides that, in the event of a transfer of a dispenser's license outside its local option district, the license loses its right to sell alcoholic beverages by the package. Due to the fact that this bill would allow a transfer, via a lease, outside the local option district that would preserve the right to package sales, Section 60-6B-12(C) would need to be amended to add: “Nothing in this paragraph shall affect a dispenser license’s ability to sell alcoholic beverages by the drink in the event of a lease pursuant to Section 60-6A-3(C).”

Also, Section 60-6B-4 NMSA 1978 should be amended to add local option district approval before any dispenser's license is leased outside its local option district. Section 60-6B-4 requires such approval for any transfer. Paragraph A of this section should be amended to include: “...or any lease pursuant to Section 60-6A-3...”

POSSIBLE QUESTIONS

It is unclear how citations would be handled. Would each half of the license be allowed “three strikes” before triggering revocation or would an aggregate number result in revocation? Regarding renewals, if one operator has a tax hold, would that keep both portions of the license from being renewed or would the tax hold only operate to prevent renewal of that portion of the license? Currently, a license may not be renewed when there is a tax hold due to unpaid taxes resulting from the operation of the liquor license. Taxes owed must be paid before renewal.

SL/jle