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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/19  
 LAST UPDATED 2/05/19

SPONSOR Soules HB \_\_\_\_\_

SHORT TITLE Election for Sale of NM-Produced Liquor SB 78/aSRC

ANALYST Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 273

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation & Licensing Department (RLD)  
 Department of Finance & Administration (DFA)  
 New Mexico Municipal League (NMML)

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 78 strikes unnecessary language, and does not change the substance or intent of the bill.

#### Synopsis of Original Bill

Senate Bill 78 amends various sections of the Liquor Control Act to allow local option districts to hold an election that, if passed by the voters, creates a new level of restaurant license that allows the sale of spirits that are distilled and bottled in New Mexico. Currently, restaurant licenses are only allowed to sell and serve beer and wine by the glass for on premise consumption. The bill creates a second level of restaurant license that would allow license

holders to also serve New Mexico-produced and bottled distilled spirits.

These new restaurant licenses are limited to locations in specific geographic areas: an enterprise zone (Enterprise Zone Act); a tax increment development district (Tax Increment for Development Act); an arts and cultural district (Arts and Cultural District Act); within an area designated as a main street (Main Street Act); a business improvement district (Business Improvement District Act); a frontier community; or any other geographic location within a local option district that has been identified by the main street program coordinator or relevant local government as a location in need of revitalization or economic development improvements. The expanded restaurant license serving spirits distilled and bottled in New Mexico carries a fee of \$2,000.

The effective date of this legislation is July 1, 2019.

### **FISCAL IMPLICATION**

The fee for the newly created category of restaurant license authorized in this bill--which allows serving New Mexico-made distilled and bottled spirits--is \$2,000 (which is \$950 greater than the current license for beer and wine service only). Since it is unknown how many of these new licenses may be issued, the Revenue Table above reflects only a minimal increase to revenues resulting from issuance of these new licenses. Any increase may be at least partially off-set by the increased administrative costs to RLD related to issuing these new licenses, which LFC staff also estimates will be minimal.

### **SIGNIFICANT ISSUES**

Both RLD and DPS in its analysis of a similar bill introduced in the 2017 session (SB 37) question whether the provisions of this bill, which appears to discriminate in favor of New Mexico distilled and bottled spirits, may violate the Commerce Clause of the of the United States Constitution (Clause 3, Section 8, Article 1) as constituting an undue burden on interstate commerce. DPS reported that the requirement under the new restaurant license that the spirits being served be distilled and bottled in New Mexico runs afoul of a long line of United States Supreme Court interstate commerce decisions.

RLD also suggests the creation and issuance of this new form of license will likely negatively impact the economic value of all transferable dispenser licenses, the value of which is based at least partially on the ability of the license holder to sell spirits by the drink in a restaurant setting.

Additionally, the term “frontier community” used in Section 1(B)(6) is not defined, which could lead to confusion in administering this new license.

### **ADMINISTRATIVE IMPLICATIONS**

RLD may need to adopt new rules or procedures concerning the implementation of this new license to address issues that may arise, including whether a licensee currently holding a beer and wine license will be required to submit a new application, or can simply upgrade its license to cover the expanded activity authorized by this bill.