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FISCAL IMPACT REPORT

SPONSOR <u>Romero, A/Serrato/Hernandez</u>	LAST UPDATED <u>3/3/2023</u>
	ORIGINAL DATE <u>2/21/2023</u>
SHORT TITLE <u>Direct Beer Shipment Permits</u>	BILL NUMBER <u>House Bill 343</u>
	ANALYST <u>Hanika-Ortiz</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	(Indeterminate, minimum)	(Indeterminate, minimum)	Recurring	ABC operating (nonresident license fees)
None	\$5.9 - \$10.0	\$5.9 - \$10.0	Recurring	ABC operating (new DTC permit & out-of-state competition permit fees)
None	Indeterminate, minimum	Indeterminate, minimum	Recurring	GF (Liquor Excise Tax)
None	Indeterminate, minimum	Indeterminate, minimum	Recurring	GF (Gross Receipts Tax)

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD (staff workload)	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	ABC operating

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to HB230 and SB259

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)
 Economic Development Department (EDD)
 Regulation and Licensing Department (RLD)
 Department of Health (DOH)

No Response Received

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 343

House Bill 343 (HB343) amends Section 60-6A-11.1 NMSA 1978 to create a new direct beer shipment permit for persons with a brewery license or a small brewer’s license. The bill also amends Section 60-6A-32 NMSA 1978 to allow out-of-state licensed brewers or breweries to participate in regional wine, cider, beer, or spirituous liquor tastings or competitions in New Mexico “...exempt from the procurement of any other license or permit issued pursuant to the terms of the Liquor Control Act, but not exempt from the procurement of a competition permit.”

The bill defines “brewer” as a person who manufactures or produces beer; and "brewery" as an establishment at which beer is manufactured or produced and that is licensed for that purpose by the state or country in which it is located.

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 Alcoholic Beverage Division (ABC) at RLD said it is difficult to predict the impact direct-to-consumer beer shipments will have on licensing fees for nonresident licensees, as it is currently set up based on a licensee’s sales to wholesalers. Under the current system, “nonresident” manufacturing licensee sales in excess of one dollar to in excess of \$3 million, pay fees ranging from \$300 to \$10,500. RLD says HB343 will allow large manufacturers (not just out-of-state craft brewers) to ship to consumers in New Mexico without having first obtained a “non-resident” license and without having to use a distributor that is licensed in New Mexico.

EDD and RLD included different estimates for the impact on excise tax revenue. EDD estimates adding breweries will result in increased revenues with applicable permit and licensing fees, as well as increased liquor excise and gross receipts taxes. With regards to the proposed direct-to-consumer (DTC) “beer shipment permit,” RLD thought otherwise; however, RLD did not see an issue with the proposed “interstate beer tasting and competition permit” for out-of-state brewers.

According to RLD, who referenced the Brewer’s Association, there were 9,500 breweries in the U.S. as of 2021. Of those, 129 were large breweries. The rest were regional craft breweries, microbreweries, taprooms, and brewpubs. ABC has issued 118 small brewers licenses.

SIGNIFICANT ISSUES

The bill allows New Mexico holders of a small brewer’s license or any out-of-state licensed brewer or brewery to apply to RLD for a direct beer shipment permit, just as a person with a winegrower’s license may apply for a direct wine shipment permit. The fee is \$50 per year and allows direct shipment to New Mexico residents - 21 years of age or older - of no more than two 12-quart cases (sixty-four 12 oz. cans) of beer per month. The bill also extends competition permits to out-of-state brewers and breweries to participate in New Mexico beer tasting

competitions with up to 75 gallons of beer into the state for the event. The fee is \$25 per year.

PERFORMANCE IMPLICATIONS

RLD commented that New Mexico craft brewers are allowed under New Mexico law to export their product to other states. But if they do, they must follow rules and laws of that other state.

RLD and DOH both noted that according to the federal Alcohol and Tobacco Tax and Trade Bureau, the 21st Amendment Enforcement Act provides states with tools to address interstate shipments and transportation of alcohol beverages in violation of State laws

(<https://www.ttb.gov/publications/direct-shipping>). Ten states (plus the District of Columbia) have rules in place to allow breweries to sell directly to their residents: Alaska, Kentucky, Nebraska, New Hampshire, North Dakota, Ohio, Oregon, Vermont, and Virginia according to the National Brewers Association. Only two carriers can legally ship alcohol for direct-to-consumer alcohol businesses (UPS or FedEx).

ADMINISTRATIVE IMPLICATIONS

The ABC division said it can process direct shipment and interstate competition permits and update administrative rules concerning shipment permits and internet sales with existing staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB230, SB259 which increase liquor excise tax rates 25 cents per serving, indexes rates to inflation, and distributes a portion of tax revenue to the alcohol harms alleviation fund.

OTHER SUBSTANTIVE ISSUES

DOH reports 1 in 11 deaths in New Mexico were due to alcohol-related causes. The age-adjusted death rate per 100,000 New Mexican residents for alcohol-related causes increased from 65.7 deaths in 2017 to 102.8 deaths in 2021. Enabling greater accessibility and convenience to alcohol via direct-to-consumer beer sales may increase these deaths overall and especially in counties with higher age-adjusted death rates.

In 2021, the age-adjusted death rate per 100,000 New Mexican residents who died from alcohol-related causes was nearly double that for males (146.5) compared to females (60.9). Nearly 3 in 4 (1655 individuals) of the alcohol-related deaths occurred in New Mexicans 25-64 years old, making alcohol the leading cause of death in this age group. American Indians bore the highest burden of alcohol-related deaths with a death rate of 311.1 deaths per 100,000 residents.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico holders of a small brewer's or brewery license will not be able to obtain a direct shipment permit as New Mexico winegrowers' with licenses are currently able to acquire.