

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 466 (SB 466) amends the Liquor Control Act (Act) in numerous respects:

Section 1 of the Bill amends the licensing structure for Restaurant Licenses issued by the Alcoholic Beverage Control Division (ABC) of the New Mexico Regulation and Licensing Department (RLD) with an effective date of July 1, 2025.

- The Act currently structures Restaurant Licenses:
 - Restaurant A License allows the licensee to sell and serve beer and wine only.
 - Restaurant A License holders may obtain a New Mexico Spiritous Liquor Permit, which allows the licensee to sell and serve spiritous liquors produced by or for a Craft Distiller's License holder, in addition to beer and wine allowed by their license.
 - Restaurant B License allows the licensee to sell and serve beer, wine, and spiritous liquors.
- The Bill amends this in the following way:
 - Restaurant A License will allow the licensee to sell and serve beer, wine, and spiritous liquors produced by or for a Craft Distiller's License holder.
 - This eliminates any need for a New Mexico Spiritous Liquor Permit.
 - Restaurant B License will continue to allow for the sale and service of beer, wine, and spiritous liquors.
 - Restaurant C License will allow the licensee to sell and serve beer and wine only.
- The Bill removes any Sunday sales language regarding restaurant licenses, conforming with previous legislation (2021 HB 255) removing Sunday sales restriction.
- The Bill removes the ability for any Local Option District (LOD) to opt-out, by ordinance, of allowing Restaurant A License if they previously voted to allow Restaurant Licenses, when Restaurant Licenses allowed for the sale and service of beer and wine only.
 - LODs still can hold elections to allow for restaurant licenses, or not.
 - Election results will either allow Restaurant A, Restaurant B, and Restaurant C Licenses, or will not allow restaurant licenses of any type.
- The Bill continues to require that restaurant licenses have a valid food service establishment permit, its primary source of revenue be derived from food and not beer and wine (technical correction may be needed), and renewal is conditioned on no less than sixty percent (60%) of gross receipts from the preceding twelve (12) months be derived from the sale of food.
- The Bill as drafted only requires Restaurant A Licenses to cease alcohol service at time food sales and service ceases or at 11:00pm, whichever is earlier.
 - If the intent is to apply to all restaurant licenses Section 1, Page 4, lines 17 through 20 will need to be amended.
- The Bill continues to allow all restaurant licenses to be transferrable from location to location within an LOD.
 - The Bill continues to prohibit the transfer of restaurant licenses from person to person.

Section 2 of the Bill amends licensing fees, specifically those of restaurant licenses.

- The current annual fees are as follows:
 - Restaurant A License = one thousand fifty dollars (\$1,050).
 - New Mexico Spiritous Liquor Permit = five hundred dollars (\$500) (only Restaurant A License holders qualify for this permit).
 - Restaurant B License = ten thousand dollars (\$10,000).
- The Bill will change the relevant fees as follows:
 - Restaurant A License = one thousand five hundred and fifty dollars per year (\$1,550/year).
 - Restaurant B License = ten thousand dollars (\$10,000) initial license fee with six thousand dollars (\$6,000) each subsequent year.
 - Restaurant C License = one thousand fifty dollars per year (\$1,050/year).

Section 3 of the Bill creates a new section within the Act, governing bodies of LODs to establish “entertainment zones.”

- The Bill allows the governing body to determine what qualifies as an “entertainment zone” based on the governing body’s finding that the areas concentration of restaurants, bars, theaters, music venues, and other entertainment-related businesses make the area suitable for leisure, arts, culture and entertainment activities.
- Section 3, page 11, lines 1-6, of the Bill allows the LOD governing body to adopt its own regulations governing the public purchase, possession and consumption of alcohol, including open container allowances, hours of operation and licensing provisions despite any limitations set forth by the Act.
- Section 3, page 11, lines 7-10, of the Bill require that establishments within an entertainment zone, that sell and serve alcoholic beverages, comply with all applicable Liquor Control Act licensing requirements and any additional conditions imposed by the governing body.

Section 4 of the Bill removes all distance requirements currently imposed by the Act.

- Currently, the Act prohibits the issuance of a license to a location within three hundred (300) feet of a church or school unless the applicant receives a waiver from the local governing body of the LOD the license is to be issued.
- The Bill will remove this prohibition and remove the waiver requirement for such instances.

FISCAL IMPLICATIONS

- RLD will need to implement changes into the NM-PLUS online licensing system before the effective date of the Bill. The RLD estimates the cost of developing, programing, testing, and implementation of the necessary changes to the licensing system to be approximately forty thousand dollars (\$40,000).
- The ABC will continue to generate approximately one million eight hundred sixty thousand five hundred and fifty dollars (\$1,860,550) annually from licensing fees for the licenses related to the Bill, as the decrease in cost for Restaurant B Licenses will be offset by an increase in number of Restaurant B Licenses renewed each year.

SIGNIFICANT ISSUES

- Section 3, page 11, lines 1 through 6, of the Bill allows the LOD governing body to adopt its own regulations governing the public purchase, possession and consumption of

alcohol, including open container allowances, hours of operation and licensing provisions notwithstanding any limitations set forth by the Act.

- This will allow municipalities and counties to disregard state statutes, concerning the public purchase, possession and consumption of alcohol, hours of operation, and even the licensing requirements set by the state and instead institute their own laws to be followed as long as the area has been deemed by them as an entertainment zone.
 - It will allow local municipalities or counties to pass alcohol ordinances that contradict the restrictions placed by the Act, including but not limited to:
 - Hours of operation past 11pm for restaurant licenses and beyond 2am for dispenser’s licenses and retail licenses.
 - Allowing alcohol service and consumption in unlicensed public establishments.
- This change to the law will create significant challenges for the ABC and the Special Investigations Unit (SIU) at the Department of Public Safety in enforcing state liquor laws. It will create a jurisdictional checkerboard across the state, making enforcement of liquor laws with any consistency very difficult to impossible.

PERFORMANCE IMPLICATIONS

Existing ABC staff will be able to handle any changes in initial license and renewal applications the Bill may cause.

However, it must be noted that the changes made by Section 3 of SB 466 will impose substantial difficulties for the ABC and SIU concerning any consistent enforcement of the Act statewide.

ADMINISTRATIVE IMPLICATIONS

The RLD will be required to update the NM-PLUS online licensing application and permitting system to include a new Restaurant C License as well as amend requirements for Restaurant A Licenses at a cost of forty thousand dollars (\$40,000) in FY25.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

- Section 1, page 4, lines 5 through 8 currently reads “the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from food and not from the sale of beer and wine.”
 - This will need to be corrected to read “the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from food and not from the sale of alcoholic beverages.”
 - The reason is that the language contained in these lines currently only applies to Restaurant A Licenses (which only sell and serve beer and wine) while the amendments the Bill makes will apply to all Restaurant License types.
- SB 466 as drafted only requires Restaurant A Licenses to cease alcohol service at time food sales and service ceases or at 11:00pm, whichever is earlier.
 - If the intent is to apply to all restaurant licenses Section 1, Page 4, lines 17

through 20 will need to be amended.

- Section 3, page 11, lines 1 through 6, of the Bill contradict Section 3, page 11, lines 7 through 10.
 - Section 3, page 11, lines 1 through 6, of the Bill allows the LOD governing body to adopt its own regulations governing the public purchase, possession and consumption of alcohol, including open container allowances, hours of operation and licensing provisions despite any limitations set forth by the Act.
 - Section 3, page 11, lines 7 through 10, of the Bill require that establishments within an entertainment zone, that sell and serve alcoholic beverages, comply with all applicable Liquor Control Act licensing requirements and any additional conditions imposed by the governing body.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the Bill is not enacted:

- Restaurant B Licenses will continue to have a ten thousand dollar (\$10,000) annual fee.
- The designation of an entertainment zone will have no relation to the licensing and regulation of alcoholic beverages, with such authority remaining with the State.

AMENDMENTS

Please see comments and recommendations for amendments to SB 466 in the “Technical Issues” section, above.