

LFC Requester:	Anne Hanika-Ortiz
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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date February 13, 2021
Bill No: HB255a

Sponsor: Rep. Antonio Maestas
Rep. Javier Martinez
Rep. Roger Montoya
Short Title: Alcohol Deliveries

Agency Name and Code
Number: 305–Office of the Attorney General
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis: Original Analysis:

HB255 is a comprehensive update to the Liquor Control Act which would add a provision for alcohol delivery and update the act to support the new addition. Additionally, HB255 would broaden the ability for craft distillers to participate in tastings and distribution alongside wine growers and craft breweries. Finally, HB255 would provide for tax relief for certain liquor license holders through January 1, 2026, and bring about a new alcohol beverage serving tax.

HB255, Section 1, provides a new section of the Income Tax Act which would give a taxpayer holding a liquor license between June 30, 2021 and January 1, 2026, the ability to claim a deduction from net income in an amount equal to the gross receipts from alcohol sales in certain situations

HB255, Section 2, provides a new section of the Corporate Income and Franchise Tax Act which would grant taxpayers the opportunity to claim a deduction from taxable income in an amount equal to the gross receipts from sales of alcoholic beverages up to certain specified amounts.

HB255, Section 3, provides a new Section of the Gross Receipts and Compensating Tax Act which would allow for a deduction based on sales made by retailers or dispensers license holders in certain situations.

HB255, Section 4, provides a new section of the Liquor Control Act which would establish a non-transferable, renewable, alcohol delivery permit and third party delivery license. Under this section, a person could apply for a delivery permit if they held a valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant license with certain criteria for the restaurant, including a food delivery concurrent with the alcohol delivery. Section 4 further instructs the Director to promulgate a series of rules governing the delivery process, including limiting the delivery hours, price, and locations eligible for delivery. Section 4 also establishes obligations on the delivery to comply with Section 60-7A-16 NMSA 1978 and 60-7B-1, NMSA 1978, which would prohibit delivery to intoxicated persons and minors, respectively. Section 4 further spells out qualifications for individuals delivering on behalf of

permit holders, including third party delivery services.

HB255, Section 5, updates Section 7-17-2 NMSA 1978, which provides definitions pursuant to the Liquor Excise Tax Act, to include a definition for “alcoholic beverage serving”, which would consist of serving 16 ounces or less of a beverage to customers for immediate consumption.

HB255, Section 6, outlines a new section, designated 7-17-5.2, which would establish an “alcoholic beverage serving tax” of 5% applied to each alcoholic beverage being sold.

HB255, Section 7, amends Section 7-17-9 NMSA to add an exemption from taxes for alcoholic beverage servings and sales to or by instrumentalities of the military.

HB255, Section 8, updates language in Section 7-17-10 NMSA 1978, which outlines the date payment of the Liquor Excise Tax is due, to be plural, in light of the newly established tax.

HB255, Section 9, updates language in Section 7-17-12, NMSA 1978, which controls the administration of the enforcement of the act, to be plural, in light of the newly established tax.

HB 255, Section 10, amends Section 60-3A-3 NMSA 1978, which provides definitions used in the Liquor Control Act, to allow “clubs” at any airport terminal, rather than just international terminals, to be included in the definition of “clubs” pursuant to the Liquor Control Act. Section 10 also updates the definition of “dispenser” to include those selling “locally produced” growlers, rather than any growlers. Section 10 further provides that “restaurants and banquet halls” that are part of golfing facilities can be included as part of the “golf course” definition. Section 10 also provides that “growlers” are limited to New Mexico-produced beverages. Additionally, Section 10 broadens the definition of “licensed premises”, removing certain physical structural requirements. Finally, Section 10 updates the definition of “wine” to remove the requirement of the words “fruit juices” and provides that wine bottlers do not have to be “new Mexico” wholesalers.

HB255, Section 11, amends Section 60-6A-4, NMSA 1978, which covers restaurant licenses, to allow a local option district to approve restaurant licenses for the sale of alcohol by adoption of an ordinance, and establishes “A” and “B” type classifications for restaurants depending on the type of alcohol they serve. Section 11 also removes a prohibition on restaurant licenses selling alcohol for consumption off the premises and allows for beer and wine to be sold at type A and type B restaurants on Sundays from 7:00 AM-11:00 PM.

HB255, Section 12, amends Section 60-6A-6.1, NMSA, which governs Craft Distiller’s Licenses, to allow licensees to buy or obtain beer from a small brewer or cider from a winegrower, and to conduct tastings of cider or beer, as well.

HB255, Section 13, amends Section 60-6A-10 NMSA 1978, which deals with governmental licenses, to broaden the abilities of government licensees to sell alcohol at “government facilities” and “suites”, rather than “municipal baseball parks” and “skyboxes.”

HB255, Section 14, amends Section 60-6A-11, NMSA 1978, which covers winegrower’s licenses, to allow a person issued a winegrower’s license to obtain spirituous liquor from a craft distiller in addition to obtaining beer from a small brewer, and allows for tastings of both beer and spirituous liquor.

HB255, Section 15, amends Section 60-6A-15 NMSA 1978, which governs property rights in licenses, to account for fees for the newly established license types (A and B), as well as delivery and permit licenses.

HB255, Section 16, amends Section 60-6A-19 to limit transfer to “on or before July 1, 2026” of licenses otherwise transferable pursuant to this section of the Liquor Control Act.

HB255, Section 17, amends Section 60-6A-26.1 NMSA 1978, which governs small brewer’s licenses, to allow them to conduct wine and spirituous liquor tastings for liquor produced by a craft distiller.

HB255, Section 18, amends Section 60-6A-32 NMSA 1978, which governs interstate wine tasting competitions, to allow for wineries outside New Mexico to participate in cider, beer, or spirituous liquor tastings.

HB255, Section 19, amends Section 60-6B-4 NMSA 1978 which controls the approval of the issuance or transfer of licenses, to prohibit transfers after June 30, 2026.

HB255, Section 20, amends Section 60-6C-1, NMSA 1978, which lays out grounds for suspension, revocation, and fines, to make stylistic changes and remove gendered language, as well as to eliminate a provision where a charge filed against a licensee would be reported to local law enforcement, leaving the charges reported to the Department of Public Safety only.

HB255, Section 21, amends Section 60-6C-2, NMSA 1978, which governs hearings, to account for the location of a permit holder in the designation of a hearing location.

HB255, Section 22, amends Section 60-6C-4, NMSA 1978, which controls administrative proceedings, to make stylistic changes, including the removal of gendered language. Section 22 allows for co-owners of a license who did not receive notice of a hearing to appeal or reopen proceedings. Permit holders are also included alongside licensees in this section.

HB255, Section 23, amends Section 60-6C-6 NMSA 1978, which controls the appellate process, to remove a prohibition on the use of injunctions or writs of mandamus for aggrieved parties and includes permit holders alongside licensees.

HB255, Section 24, amends Section 60-6E-3, Definitions for purposes of the Alcohol Server Education Article of the Liquor Control Act, to include deliveries.

HB255, Section 25, amends Section 60-6E-8, NMSA 1978 which outlines server permit penalties, to make stylistic changes and add language to include permit holders and those making deliveries.

HB255, Section 26, amends Section 60-6E-9 NMSA 1978, which deals with alcohol server education, to remove gendered language and include delivery as a basis for requiring education.

HB255, Section 27, amends Section 60-6E-10 NMSA 1978, which covers administrative hearings, to include delivery permits alongside server’s permits.

HB255, Section 28 amends Section 60-7A-4 NMSA 1978, which controls the unlawful shipment, sale, and delivery of alcohol into NM to mandate compliance with Section 4 of the act.

HB255, Section 29 amends Section 60-7A-12 NMSA 1978, which governs offenses by dispensers, canopy licensees, restaurant licensees, government licensees, and clubs, to prohibit employing a person for delivery by a person whose license is revoked.

HB255, Section 30, amends Section 60-7A-16 NMSA 1978 to include a prohibition of delivering to intoxicated persons alongside selling to intoxicated persons.

HB255, Section 31, amends Section 60-7B-2 NMSA, which controls documentary evidence of age and identity, to allow for expired identification for the purposes of the Liquor Control Act and outlines that it is “unnecessary” to ask for an identity document (“ID”) if a person “clearly” looks older than thirty-five.

HB255, Section 32, amends Section 60-7B-5, which controls situations where a person is unable to produce an ID card to give discretion to a person selling or delivering alcohol to provide alcohol, and adds language that an ID card would be valid if it expired. Also adds that it is unnecessary to ask someone for ID if they clearly look older than thirty-five.

HB255, Section 33 amends Section 60-7B-6 NMSA 1978, which governs demands to see ID when providing alcohol, to include delivery.

HB255, Section 34 amends Section 60-7B-11 NMSA 1978 to prohibit the employment of someone over the age of eighteen (previously nineteen) to deliver alcohol.

HB255, Section 35 Repeals Sections 60-6A-25, which provides for a brandy manufacturer’s license. 60-6A-28, which provides for Nonresident licenses, 60-6B-1.1, which provides for licenses held by noncitizens, 60-6B-11, which provides restrictions on licenses being issued to locations near military facilities, 60-6B-15, which replaces canopy licenses with dispenser’s licenses, 60-6E-6, which mandates licensees maintain copies of server permits of their employees, and 60-7A-18, which limits dancing at dispensers to the same hours that alcohol sales are permitted.

Section 36 provides that July 1, 2021 will be the effective date of this act.

Proposed Committee Amendment:

The Commerce and Economic Development Committee Amendment proposes to add retailers as licensees, simplify and clarify language, modify restrictions regarding alcohol delivery permits, streamline the process set forth for local option districts in issuing restaurant licenses, amend specified deadlines, and strike certain sections (Sections 5, 16, and 19) in their entirety.

The Committee Amendment first proposes to amend the bill summary, clarifying that the bill will provide deductions from the income tax, corporate income tax and gross receipts tax for certain license holders and impose a retailer's tax on retailers pursuant to the liquor excise tax act.

The Committee Amendment amends Section 4 of the bill to limit delivery permits, based on the size of the permit holder's indoor retail space, rather than the size of the restaurant facility; lowers the minimum price of food to ten (\$10) dollars, rather than twenty-five (\$25); lowers the maximum delivery amount of wine to seven hundred fifty (750) milliliters, rather than twenty-five (25) fluid ounces; and changes the maximum delivery amount to "six twelve-ounce containers of pre-packaged wine, beer, cider or spirituous liquors," rather than "seventy-two fluid ounces of beer."

The Committee Amendment amends Section 6 to retitle the proposed enactment of Section 7-17-5.2 NMSA 1978, to read "retailer's tax," rather than "alcoholic beverage serving tax," substitutes "beverages" for "beverage servings" when referring to retailers, and applies the retailer's tax to beverages sold by the retailer, rather than "each beverage serving sold" or "servings."

The Committee Substitute amends language in Section 7 to strike a reference to Section 7-17-5 NMSA 1978 and state, instead, that certain sales to or by instrumentalities of the military are exempted from the taxes imposed by "Sections 7-17-5 and 7-17-5.2" NMSA 1978 and removes a reference to proposed amendment "and alcoholic beverage servings," leaving alcoholic beverages.

The Committee Substitute amends Section 11 to eliminate the requirement that local option districts that have already approved the issuance of restaurant licenses for the sale of beer and wine must take action to separately approve the issuance of restaurant licenses for the sale of wine, beer, and spirituous liquors and, instead, are "deemed to have approved" such restaurant licenses, unless the local option district affirmatively adopts an opt-out ordinance. The Committee Substitute also removes the formal designation of "type A" and "type B" restaurants and refers to restaurant in such categories as restaurant A and restaurant B, instead. Amendments to Section 11 also substitute "spirituous liquors" for "alcoholic beverages" when mentioned in the same phrase with beer and wine; provide for a restaurant B license to be issued, subject to certain conditions, as long as the licensee has met the deadline for completion of all requirements for the license to be issued by July 1, 2021 (formerly 2020), barring the adoption of an opt-out ordinance by the local option district.

At Section 15, the Committee Substitute removes the formal designation of "type A" and "type B" restaurant licenses and refers to restaurants licenses in those categories as "A" and "B" licenses. It also establishes a fee not to exceed one thousand dollars (\$1,000.00) for a third-party alcohol delivery licenses (formerly \$300.00). Section 15 also provides that there will be no renewal fees for applications for retailer's, dispenser's or canopy licenses up to June 30, 2026, for licensees or successor licensees, as long as licensees held such licenses on June 30, 2021 (formerly 2020).

The Committee Substitute would strike from Section 35 of the bill the inclusion of Section 60-6A-28 NMSA 1978, which provides for Nonresident licenses, from among the proposed repealed statutory provisions.

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

None

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB255 relates to HB8, Liquor Delivery & Licenses, and SB6, Liquor Control Act, which are duplicate bills that contemplate adding a type of delivery permit similar to the permit outlined in HB255. These bills do not, however, contain any tax act provisions. These bills also have a provision for third party delivery services to disclose agreements with licensees and ensure that no indemnification or similar liability transfer agreements shall take place.

HB255 also relates to HB164, New Liquor Dispenser Licenses, which contemplates the addition of a greater amount of licenses issued pursuant to the Liquor Control Act.

HB255 relates to SB2, Waive 2021 Liquor License Fees, which proposes waiving all 2021 license fees due to the public health emergency.

HB255 relates to SB320, New Liquor License Types, which contemplates the addition of a “package license” instead of a retailer’s license, as well as different classifications of licenses that permit the sale of different types of alcohol and the sale at different hours.

Proposed Committee Amendment:

HB255a relates to SB136, Local Option for Restaurants, which proposes that local option districts have the ability to hold elections to allow certain restaurant licensees to sell beer and wine, or beer, wine, and spirituous liquors distilled and bottled in New Mexico, pursuant to procedures set out in Section 60-5A-1 NMSA 1978, listing proposed fees for a variety of licenses, which do not include the third-party alcohol delivery license. SB136 does not use the A and B categories with associated criteria and standards for restaurants contemplated HB255a (restaurant “A” and restaurant “B”).

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

HB255, Section 32, amends Section 60-7B-5 to grant a person providing alcohol discretion to demand an ID card. The language in this section would provide the person providing alcohol with the option of requesting an ID in any case, regardless of whether the purchaser appeared older than thirty-five.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None