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FISCAL IMPACT REPORT

SPONSOR <u>Cadena/Lente/Parajón/Hernandez</u>	LAST UPDATED <u>2/6/24</u> ORIGINAL DATE <u>1/31/24</u>
SHORT TITLE <u>Liquor Taxes & Definitions</u>	BILL NUMBER <u>House Bill 213/aHHHC</u>
ANALYST <u>Gray/Garcia</u>	

APPROPRIATION* (dollars in thousands)

FY24	FY25	FY26	FY27	Recurring or Nonrecurring	Fund Affected
			\$500.0	Nonrecurring	Alcohol and Substance Use Harms Alleviation Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
LET			(\$25,200.0)	(\$25,500.0)	(\$25,700.0)	Recurring	General Fund
LET			(\$22,900.0)	(\$23,100.0)	(\$23,300.0)	Recurring	Local DWI Grant Fund
LET			(\$249.0)	(\$249.0)	(\$249.0)	Recurring	Class A Muni
LET			\$450.0	\$430.0	\$410.0	Recurring	Drug Court Fund
LET			\$25,400.0	\$25,500.0	\$25,500.0	Recurring	Alcohol and Substance Use Harms Alleviation Fund
LET			\$25,400.0	\$25,500.0	\$25,500.0	Recurring	Medicaid Program
Net Total			\$2,900.0	\$2,580.0	\$2,160.0	Recurring	All State Revenues
LDWI Grant Fund Balance			(\$9,500.0)			Nonrecurring	Local DWI Grant Fund Balance
LDWI Grant Fund Balance			\$9,500.0			Nonrecurring	Alcohol and Substance Use Harms Alleviation Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Conflicts with House Bills 112, 179, 212, and 217 and Senate Bill 147

Agency Analysis on Original Bill Received From
Administrative Office of the Courts (AOC)
Regulation and Licensing Department (RLD)
Health Care Authority (HCA)
Taxation and Revenue Department (TRD)

Agency Analysis on Amended Bill Received From
Health Care Authority (HCA)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HHC Amendment to House Bill 213

The Health and Human Services Committee amendment to House Bill 213 changes how liquor excise tax revenues are distributed. All general fund revenues is removed in favor of a distribution to the alcohol and substance use harms alleviation fund. Money in the fund would be used for the state Medicaid program (50 percent), distributed to counties (40 percent), and appropriated to the Indian Affairs Department (IAD) to make distributions for alcohol and substances use disorder services and programs for Native American populations. Drug court fund revenues are set at \$3 million per year.

The amendment also appropriates \$500 thousand from the newly created alcohol and substance use harms alleviation fund to the Indian Affairs Department in FY27 to execute and report on a study of effects of tax policy on alcohol and substance use across demographic groups statewide.

Synopsis of House Bill 213

HB213 changes the liquor excise tax from a tax on the wholesale transaction to one on the retail transaction. All consumers would pay an excise tax equivalent to 2 percent of the price of beer, 3 percent of the price of wine, and 4 percent of the price of spirits.

HB213 levies the liquor excise tax against retailers, which is defined as any person having a place of business who sells alcoholic beverages.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The FY27 appropriation of \$500 thousand contained in this bill is a nonrecurring expense to the alcohol and substance use harms alleviation fund.

The bill does not include a recurring appropriation, but diverts or “earmarks” revenue, representing a recurring loss from the general fund. LFC has concerns with including continuing distribution language in the statutory provisions for funds because earmarking reduces the ability of the Legislature to establish spending priorities.

LFC provides a revenue point estimate using available data to inform policymakers to the greatest extent possible. The Taxation and Revenue Department (TRD) did not provide an

estimate due to technical issues. The agency writes:

TRD is unable to estimate the fiscal impact of the bill to convert from a taxable base on wholesalers to retailers and from volume to the price paid for alcoholic beverages sold by the retailers.

TRD points out various potential technical issues with the bill. See “Technical Issues.”

The broad change in the tax structure presents major forecasting risks and actual revenues could be significantly different than those presented in this analysis.

This analysis estimates the fiscal implications of the contemplated rate increase in two steps. First, the analysis estimates the tax revenue impact on purchases of packaged liquor, or alcohol purchased at a retailer that is then taken home to consume. Second, the analysis estimates the revenue impact on alcohol consumed on-site, like at a restaurant, bar, or brewery. Because HB213 imposes a tax as a percent of the retail value, the higher priced beverages consumed at restaurants, bars, and breweries brings in new revenues. However, this increase is somewhat offset by an estimated decrease in revenues collected on purchases of packaged liquor.

Currently, liquor excise taxes are levied at a set amount at the wholesale level. This trickles through the supply chain and ultimately results in a tax per serving of:

Type	Current Tax per Serving
Beer	\$0.04
Wine	\$0.07
Spirits	\$0.07
Cider	\$0.04

This tax is paid regardless of the source of the alcohol, meaning that a person purchasing a 1.5-ounce serving of liquor for \$5, pays an effective tax rate of 1.4 percent, while a person purchasing a \$15 cocktail with 1.5 ounces of liquor pays an effective tax rate of 0.5 percent. HB213 would make the rates of tax paid the same, meaning a person purchasing expensive alcohol would pay substantially more tax compared with someone purchasing inexpensive alcohol.

Type (HB213 rate)	Cost (for illustration only)	Total Tax Paid	Tax per Serving
Beer (2%)	\$10 per 6-pack	\$0.20	\$0.03
	\$25 per 6-pack	\$0.50	\$0.08
	\$5 12 oz draft	\$0.10	\$0.10
	\$15 12 oz draft	\$0.30	\$0.30
Wine (3%)	\$15 per 1.5-liter bottle	\$0.45	\$0.04
	\$40 per 1.5-liter bottle	\$1.20	\$0.12
	\$8 per 5 oz glass	\$0.24	\$0.24
	\$20 per 5 oz glass	\$0.60	\$0.60
Spirits (4%)	\$20 per 1.5-liter bottle	\$0.80	\$0.02
	\$50 per 1.5-liter bottle	\$2.00	\$0.30
	\$5 per 1.5 oz of alcohol	\$0.20	\$0.20
	\$17 per cocktail with 1.5 oz of alcohol	\$0.68	\$0.68

Note: Prices listed here are for illustrative purposes only and were not necessarily used in the estimates presented in this analysis. See *Methods*.

The proposed rates under HB213 could decrease the tax paid on some packaged liquor purchased off the shelf at a retail store. However, tax paid on expensive packaged liquor and liquor consumed at restaurants, bars, and breweries would likely increase substantially.

Distributions

The table below reflects the estimated distributions to each component contemplated by HB213.

**Proposed Distribution Comparison HB213
(in thousands)**

	Fund	Current FY26 Estimate	HB213 Proposed FY26 Distributions**	
1	General Fund	\$25,200	\$0	1
2	Local DWI Grant Fund	\$22,900	\$0	2
3	Class A Municipality (Farmington)	\$249	\$0	3
4	Drug Court	\$2,500	\$3,000	4
5	Medicaid program	\$0	\$25,400	5
6	Alcohol & Substance Use Harms Alleviation Fund*	\$0	\$25,400	6
7	20% of ASUHAF to tribes*	\$0	\$5,100	7
8	80% of ASUHAF to counties*	\$0	\$20,300	8
9	Total State Revenues	\$51,000	\$53,900	9

*20% of the alcohol & substance use harms alleviation fund is contemplated for distribution to tribes or municipalities with significant native populations; 80% of the alcohol & substance use harms alleviation fund is contemplated for distribution to counties.

**Note this table does not include the \$9.5 million transfer of the LDWI fund balance in FY26. This is omitted to clearly reflect the recurring revenue impacts; however, FY26 distributions could be higher because of this transfer.

***Totals may not sum due to rounding.

Methods

Prices. Estimating how HB213 will impact revenues requires an estimate of retail and wholesale average prices. Wholesale prices are closely guarded and can vary dramatically by product, industry, and location. This estimate uses survey data on retail prices and estimates retail markup based on the Pennsylvania Liquor Control Board, a public entity that controls the retail sale of alcohol in Pennsylvania.

Impact of Taxing On-site Consumption. Estimating new revenue generated by increasing the tax paid on alcohol consumed at restaurants, breweries, or bars is very challenging. This analysis uses survey data, data from the Regulation and Licensing Department’s Alcohol Beverage Control division, and census data to make an estimate. Where possible, this analysis seeks to present a conservative estimate.

Impact of Eliminating Wholesale Tax. HB213 eliminates the excise tax that is currently levied against alcohol wholesalers. It is uncertain whether wholesalers—and subsequently retailers—will react to this change by lowering their prices or keeping them the same.

This analysis assumes that, while wholesalers may lower their prices to account for the tax change, retailers will not pass those savings along to consumers and will keep their prices the same. This is assumed for two reasons. First, it is unlikely that retailers will be able to change prices in a \$1 increment because the tax reduction may not be sufficiently large. Retailers typically prefer \$1 increments when changing prices. Second, the consumer response to lower prices may not outweigh the opportunity cost of maintaining prices because consumer demand for alcohol is inelastic.

Gross Receipts Tax (GRT). HB213 also excludes liquor excise tax as it relates to gross receipts. This means that consumers will continue to pay GRT on the product value of an alcoholic beverage and that the liquor excise tax will not increase GRT. Accordingly, HB213 will not impact GRT revenues.

Effects of Inflation

Alcohol taxes have not been increased in over 20 years, shrinking their impact by 44 percent. Taxes on alcohol have remained at their current levels since 1994. Because alcohol is currently taxed by volume at a fixed point, the value of the tax has eroded by about half since it was last changed. If tax rates had followed inflation, alcohol excise taxes would be 73 percent higher today. The issue of eroding alcohol excise tax rates is a national trend identified as a concern by public health researchers. Under HB213’s proposal, alcohol taxes will increase as prices increase.

Regressivity

New Mexico’s liquor excise tax is regressive. The tax makes up a higher share of a person’s income if their income is low. HB213’s proposal to impose an excise tax as a percent of the price removes some of the regressivity effects because people with higher incomes likely purchase more expensive alcohol compared with people with lower incomes. However, like a sales tax, HB213’s contemplated excise tax structure will still impact people with lower incomes more than people with higher incomes.

A 2018 study found that the heaviest drinkers—the 4 percent who drink the most—consume about 30 percent of alcohol. In total, the top 25 percent of drinkers consume about 78 percent of alcohol.¹ BRFSS data generally suggests that people with higher incomes drink more and engage in more excessive drinking.

The Substance Abuse and Mental Health Services Administration (SAMHSA) [notes](#) that some research has found that if there are regressive effects from an increase in alcohol taxes, they are small and primarily concentrated among the heaviest concentrated among the heaviest drinking populations, not the broader population of people who drink alcohol. For example, currently, moderate drinkers in New Mexico pay about \$5 annually while heavy drinkers pay \$40 annually.

¹ <https://www.recoveryanswers.org/research-post/alcohol-sales-excessive-drinking/>

Further, the benefits of higher alcohol taxes are generally considered to be progressive because people with lower incomes are more likely to use the services provided by new revenues than those with more wealth.

Transfer of Fund Balance

Section 6 of HB213 transfers the fund balance of the local DWI grant fund to the alcohol and substance use harms alleviation fund. The FY23 audit of the Department of Finance and Administration shows a year-end fund balance of \$9.5 million, which is used here. The fund typically spends most of the revenue it receives in a year, but a fund balance has accumulated.

SIGNIFICANT ISSUES

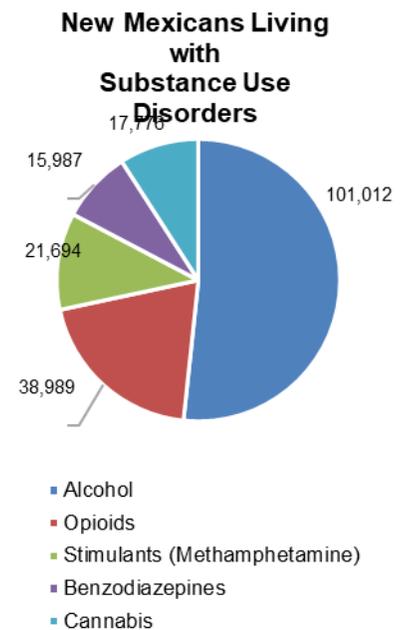
Overall, HB213 addresses a major public health issue by using a research-supported structural policy mechanism known to make alcohol less available. The legislation will also increase resources available for treatment and prevention of alcohol use disorder (AUD). However, the bill lacks mechanisms that would ensure the new resources are invested in evidence-based programs, and weak implementation may reduce the legislation’s potential to improve public health outcomes.

Alcohol Use Disorder in New Mexico

According to a 2023 LFC progress report, alcohol is New Mexico’s predominant substance-use problem. In 2021, 2,274 New Mexicans died from alcohol-related causes, roughly six people each day. The state has had the highest alcohol-related death rate in the country for over a decade, and the state’s alcohol related death rate grew by 32.4 percent between 2019 and 2021.

Between 2019 and 2021, the most recent year for which the Department of Health (DOH) has published data, the state’s rate of alcohol-related deaths increased from 78.5 deaths per 100 thousand people to 102.8 deaths per 100 thousand people, a 31 percent increase. In 2016, New Mexico’s alcohol-related death rate was nearly twice the national rate.

A 2020 DOH gap analysis suggests, of the 100 thousand people who live with an alcohol use disorder, about 70 thousand do not receive treatment. DOH estimated about 10 percent of those who need treatment and do not receive it will never receive it.



Source: 2020 DOH SUD Treatment Gap Analysis

TECHNICAL ISSUES

The following technical issues were noted by TRD.

Section 3

Wholesalers vs Retailers. The bill changes the imposition of the liquor excise tax from the wholesaler to the retailer. The current definition of “wholesaler” refers to a person

licensed as a wholesaler under the Liquor Control Act, Section 60-6A-1 NMSA 1978. “Retailer” is defined in Section 60-3A-3(W) NMSA 1978, and the definition of retailer there does not match the proposed definition of “retailer” in this bill. TRD suggests that, to avoid ambiguity or confusion, the bill should adopt the definition of “retailer” from the Liquor Control Act or follow the existing definition of “wholesaler” in the Liquor Excise Tax Act as follows: “‘retailer’ means a person holding a license issued under Section 60-6A-2 NMSA 1978 or a person holding a craft distiller’s license under Section 60-6A-6.1 NMSA 1978.”

Alcoholic Products. Under current law, some newer alcoholic products do not clearly meet definitions under the statute, and therefore there could be disputes which rate applies to them. For example, premade alcoholic mixed drinks; alcoholic seltzers, and alcoholic mead do not cleanly fall in the current definitions. TRD suggests defining broader categories that will anticipate the vast variety of alcoholic beverages on the market.

Fortified Wine. This section also removes the definition of “fortified wine.” Currently, ordinary wine is taxed at \$0.45/liter, while fortified wine is taxed at \$1.50 liter. By removing the separate category of “fortified wine,” the bill may be reducing the tax on that type of beverage—it is not clear if that is the intent.

Sections 3 & 4

Wholesaler vs Retailer. By removing the definition of “wholesaler” rather than amending it, it is not clear if the intention is to include wholesalers in the definition of “retailer,” as it appears that definition could apply to them. Section 7-17-5 NMSA 1978 provides that the tax is imposed on a retailer who sells alcoholic beverages on which the liquor excise tax has not been imposed. In that case, it would not apply at the retailer level if already paid by a wholesaler. Inquiries regarding proof of the point at which tax has been paid could be an issue if the definitions and intent are not clarified.

The new definition of a “retailer” and the imposition being on the sale by retailers specifies that it is a business that is in the state selling, meaning that they will have a premise in New Mexico. Under the changes to 7-17-5(B), page 12, which provides the exemptions for microbrewers, small winegrowers, craft distillers, and manufactures that are all also retailers will not be filing and reporting. Additionally, there is an exemption for alcoholic beverages sold on a retailer’s premises, subsection 7-15-5(B)(3), which when reviewing the definition of a retailer effectively imply that any sales of alcoholic beverages on the premises of a retailer whether a liquor store, at a manufacturer/retailer, or at a bar is not subject to the excise tax.

Craft distillers. Section 60-6A-6.1(B)(9) NMSA 1978 allows a craft distiller to sell its own product, or that of other craft distillers, “at no more than three other locations off the craft distiller’s premises....”. Section 4(B) exempts from the liquor excise tax receipts of craft distillers selling alcoholic beverages “on the retailer’s premises.” This language would therefore exclude from the exemption receipts of craft distillers from selling alcoholic beverages at locations where they are licensed to sell them, but that are not their “premises”. This distinction greatly increases the complexity of compliance for taxpayers, and of administration for TRD. TRD suggests changing the language of Section 4(B)(3) to state “the alcoholic beverages are sold at locations at which it has a

license to sell such beverages pursuant to Section 60-6A-6.1 NMSA 1978.”

Similarly, TRD notes that the Liquor Control Act permits craft distillers to sell spirituous liquors “produced and bottled by or for another New Mexico craft distiller...” Section 60-6A-6.1(B)(9). But, for a craft distiller to be eligible for the exemption in Section 4 of the bill, the alcoholic beverage being sold must be “manufactured or produced by the retailer.” This difference between the bill and Section 60-6A-6.1(B)(9) creates the same issues as above, and TRD recommends inserting the words “or another New Mexico craft distiller” after “produced by the retailer” on page 12, line 22.

Retailer’s Premises. In addition, on page 12, line 25 the language "sold on the retailer's premises" needs clarification. All alcoholic beverages are sold on a retailer's premises; it is unclear if this is referring to sold and consumed. This may require a supporting regulation or an update to this section.

Section 4

The changes as written appear to create an error where Liquor Excise Tax is not imposed on any sales of alcoholic beverages. The definition of alcoholic beverages under 7-17-2(A) NMSA 1978 makes no distinction between beverages for consumption on site, open containers, or closed containers for consumption off premises. The tax imposition on page 9 of the bill, in the amended Section 7-17-5(A) NMSA 1978 of the liquor excise tax on the “price paid” makes it clear what the various tax rates are to apply to however, the inclusion of the words “each serving” under sub-section (A) (1) through (3) on page 12, is not clear for the taxpayers or the administration of the Tax, as “serving” is not defined. TRD suggests simply saying that the tax is on the price paid for the alcoholic beverage sold by the retailer.

Attachments

1. Sample of August 2023 LFC progress report *Addressing Substance Use Disorders* recommendations.
2. Alcohol-Related Deaths by County, 2021

BG/rg/ss/al/rl/hg/ne

Attachment 1

Sample of August 2023 LFC progress report *Addressing Substance Use Disorders* recommendations.

The 2023 LFC progress report recommended several actions related to AUD. HB212 does nothing to change state law that would ensure any of these recommendations are implemented.

The **Department of Health** should consider reporting to the Legislature about its plans, scope of responsibility, and timeline for the creation of the Office of Alcohol Prevention.

The **Human Services Department** should consider:

- Reporting to the Legislature and public annually about the number of patients receiving substance use treatment, the forms of evidence-based treatment they receive, and expenditures for these programs;
- Moving forward with its proposed plan to create additional billing codes and differentials for evidence-based forms of psychotherapy;
- Studying pilots contained within New Mexico's and other state's 1115 Medicaid waivers that address social determinants of health to determine the most effective models and services;
- Ensuring that the MCO contracts for Turquoise Care require the MCOs to maintain an adequate Behavioral Health network and ensure that access to those providers is readily available;
- Ensuring that the Medicaid incentive programs reward and sanction, as appropriate, the MCOs who perform well in delivery of SUD services;
- Reporting back to the Legislature about the outcomes associated with Medicaid provider rate increases, including impact to the state's number of behavioral health providers and access to patient care;
- Reporting to the Legislature about the plans, scope of responsibility, and timeline for the BHSD coordinator role focused on alcohol use disorders (AUD);
- Reporting to the Legislature about the plans, timeline, and outcomes of the statewide substance use treatment plan.

The **medical licensing boards** should consider expanding existing continuing medical education requirements related to opioid use disorders to include treatment of AUD for all providers.

Attachment 2

Alcohol-Related Deaths by County, 2021

Decedent's County of Residence	Deaths per 100,000 Population, Age-adjusted	Number of Deaths	Population Estimate (years combined)
McKinley	335.7	226	71,780
Cibola	179.4	51	27,184
Rio Arriba	176.6	75	40,179
San Juan	169.3	199	121,237
Socorro	156.2	25	16,346
Mora	144.3	6	4,196
Taos	118.6	41	34,623
Sierra	115.1	18	11,523
Colfax	108.8	14	12,369
San Miguel	106.4	32	27,150
Quay	102.7	9	8,709
Luna	101.9	27	25,429
Union	98.4	4	4,036
Valencia	98	78	77,190
Bernalillo	96.8	709	676,626
Otero	94	68	68,549
Torrance	91.8	16	15,041
Guadalupe	91.2	5	4,439
Chaves	87.8	60	64,454
Sandoval	87.3	137	151,369
Lincoln	84.5	20	20,557
Grant	81.8	29	27,889
Santa Fe	81.5	143	155,201
Eddy	74.8	48	61,939
Curry	66.4	31	49,230
Lea	63.8	43	72,637
Dona Ana	57.2	126	221,508
Roosevelt	52.7	10	19,232
Los Alamos	35.2	9	19,391
NM Resident, County Unknown	.	6	.
Catron	**	**	3,731
De Baca	**	**	1,685
Harding	**	**	659
Hidalgo	**	**	4,102
Overall	102.7	2,274	2,120,188

Source: DOH IBIS