

LFC Requester:	Ginger Anderson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

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 January 24, 2024

Bill No: SB 163

Sponsor: William F. Burt
Short Title: Direct Liquor Shipments

Agency Name and Code Number: Regulation and Licensing Department - 420

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NA	NA		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
	56	56	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 163 amends the Liquor Control Act (“the Act”), expanding direct-to-New Mexico consumer shipments of alcoholic beverages in two ways. SB 163 expands direct shipment permit abilities to in-state manufacturers and out-of-state manufacturers of beer and spiritous liquors. It also expands the ability of individuals, and non-manufacturing licensees, in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege, to ship not only wine but to ship beer and spiritous liquors, as well.

- The Act currently allows for New Mexico winegrower’s licensees, as well as wineries licensed outside of the state, to apply for a direct wine shipment permit.
 - This permit allows the permit holder to ship wine directly to New Mexico consumers’ residences.
 - These shipments can be made either as “wine club” memberships or individual purchases.
- SB 163 would allow New Mexico small brewer’s licensees, as well as breweries licensed outside of the state, to apply for a direct beer shipment permit.
 - The permit would allow permit holders to ship beer directly to New Mexico consumers’ residences.
 - Permit holders would also be able to ship up to two twelve-quart cases (equal to sixty-four 12oz cans) of beer per month to a New Mexico resident.
- Additionally, SB 163 would allow New Mexico craft distiller’s licensees, as well as distilleries licensed outside of the state, to apply for a direct spiritous liquor shipment permit.
 - The permit would allow permit holders to ship spiritous liquors directly to New Mexico consumers’ residences.
 - Permit holders would be able to ship up to one ten-and-one half-liter case (equal to fourteen 750ml bottles) of spiritous liquors per month to a New Mexico resident.
- Currently, the Act also allows for individuals and non-winery licensees to ship wine directly to New Mexico residences homes, when the individual or non-winery licensees are in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege.
 - An example of a non-winery licensee, or licensee who is not a winery, would be a licensee holding a type of license issued to retail stores.
 - These shipments can be either as part of a store’s “wine club” membership or individual purchases.

- These shipments are not deemed to constitute a sale in New Mexico, pursuant to the Liquor Control Act, and there is no requirement that the individual or out of state licensee obtain any permit or license from New Mexico to lawfully carry out this conduct.
- SB 163 would expand the reciprocal shipping privileges to include not only wine but beer and spiritous liquors, as well.
 - The applicable individuals and licensees will be able to ship two twelve-quart cases of beer or one ten-and-one-half-liter case of spiritous liquors to a person living in New Mexico, per month.
 - These shipments will not be deemed to constitute a sale in New Mexico and will not require a permit or license issued by the New Mexico Alcoholic Beverage Control Division of the Regulation and Licensing Department (“ABC”).

SB 163 carries an effective date of July 1, 2024.

FISCAL IMPLICATIONS

- The fifty-dollar (\$50.00) fee, per direct beer shipment permit or direct spiritous liquor shipment permit, collected will have minimal impact on the general fund.
 - As of 2023, there are approximately 11,691 wineries located in the United States. There are currently 1,105 active direct wine shipment permits by ABC, approximately 9.45% of the number of wineries in the U.S. 11 New Mexico Winegrower’s Licensees have a direct wine shipment permit.
 - As of 2022, there were approximately 9,709 breweries located in the United States. If that number is the same and 9.45% of those breweries obtain a direct beer shipment permit, it would generate approximately \$45,850 for the general fund.
 - As of 2022, there were approximately 2,230 distilleries in the United States. If that number is the same and 9.45% of those distilleries obtain a direct spiritous liquor shipment permit, it would generate approximately \$10,550 for the general fund.
- It is difficult to predict the impact direct-to-consumer beer shipment will have on licensing fees for Nonresident licensees. The Nonresident license fee is currently set up based on the licensees total billing to New Mexico wholesalers, in the following manner:
 - If the Nonresident bills in excess of \$3,000,000 annually: the fee is \$10,500;
 - If the Nonresident bills in excess of \$1,000,000 annually: the fee is \$5,250;
 - If the Nonresident bills in excess of \$500,000 annually: the fee is \$3,750;
 - If the Nonresident bills in excess of \$200,000 annually: the fee is \$2,700;
 - If the Nonresident bills in excess of \$100,000 annually: the fee is \$1,800;
 - If the Nonresident bills in excess of \$50,000 annually: the fee is \$900; and
 - If the Nonresident bills in excess of \$1 annually: the fee is \$300.
- By providing an additional avenue for Nonresident licensees to get their products to New Mexico consumers, there may be a drop in how much they bill their New Mexico wholesaler.

SIGNIFICANT ISSUES

- When the twenty-first amendment was ratified ending the prohibition of alcoholic beverages it also granted the rights concerning privileges regarding alcoholic beverages to the states.

- As of 2023, forty-eight states allow for direct-to-consumer shipment of wine, in one form or another. Only Utah and Mississippi prohibit direct to consumer shipment completely.
- As of March 2023, eleven states and Washington D.C. permit direct to consumer shipment of beer.
- Currently, there are only eight states and Washington D.C. where direct-to-consumer shipment of spiritous liquors is allowed.
- In utilizing its rights concerning alcoholic beverages, New Mexico has adopted a three-tier system.
 - The three-tier system establishes a general flow of alcoholic beverages from manufacturers to distributors, to retailers, and lastly to consumers.
 - SB 163 facilitates a way for manufacturers to by-pass the other two tiers (distributors and retailers) and sell directly to consumers.
 - SB 163 creates an environment where out-of-state breweries and distilleries need not obtain a Nonresident License, allowing them to leave the three-tier system and still get their products to New Mexico consumers.
 - The requirement for New Mexico breweries and distilleries to obtain a license remains.
 - SB 163 also creates an environment where beer and spiritous liquor will be readily available to and obtainable by New Mexico residents at an increased rate.
- Two major concerns regarding the licensed or permitted sell and service of alcoholic beverages are the sell or service of alcoholic beverages to intoxicated persons and the sell or service of alcoholic beverages to minors.
 - By increasing the number of products that are available for direct-to-consumer shipment, there is a natural increase in the possibility of occurrences where shipments are being made to either a person who is already intoxicated or a minor.
 - Minors purchasing alcoholic beverages have, traditionally, taken the form of beer or spiritous liquors due to the lower price point and increased effect of intoxication per dollar spent or by volume consumed.
 - SB 163 creates an additional route for minors to attempt, and potentially succeed, in purchasing alcoholic beverages.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

- Any increase in direct shipment permits applied for can be processed by existing staff.
- The two additional permit options will need to be added to the licensing and modernization project currently underway within the Alcohol Beverage Control Division of the Regulation and Licensing Department.
- Administrative rules concerning direct shipment permits and internet sales will need to be updated. For example, Rule 15.10.55 NMAC, Alcoholic Beverage Licensing, Internet Sales, currently permits winegrower licensees who hold a direct wine shipment permit to sell and ship wine through third-party internet websites directly to customers. The rule would likely require expansion to allow similar permissions for breweries and distilleries.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

- Accessibility of beer and spiritous liquor will continue to be at locations licensed to sell those products by the Alcoholic Beverage Control Division of the Regulation and Licensing Department.

AMENDMENTS