

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**February 6, 2024**

**Bill:** HB-213, as amended by HHC

**Sponsor:** Representatives Micaela Lara Cadena, Derrick J. Lente, Cristina Parajón, and Joshua Hernandez

**Short Title:** Liquor Taxes & Definitions

**Description:** This bill amends the distribution of the liquor excise tax under Section 7-1-6.40 NMSA 1978 as follows:

- New distribution to the Alcohol and Substance Use Harms Alleviation Fund in an amount equal to the net receipts attributable to the liquor excise tax, less \$2,084,000 monthly and the amount made to the Drug Court Fund.
- Drug Court Fund from 5% to a flat \$250,000 monthly.
- Eliminates distribution to a municipality in a class A county (Farmington).
- Repeals the Local DWI Grant Fund and distribution.

The bill amends Section 7-9-3.5 NMSA 1978 to exclude liquor excise tax from the definition of “gross receipts.” This bill also adds definitions of “barrel” and “retailer” to Section 7-17-2 NMSA 1978, and removes the definitions of “fortified wine” and “wholesaler”. Section 4 amends the imposition of liquor excise tax to alcoholic beverages sold by a retailer and imposes rates by the serving in Section 7-17-5 NMSA 1978.

The *House Health and Human Services Committee* amends how the Alcohol and Substance Use Harms Alleviation Fund may be spent. The amendment provides that 50% of money in the fund is subject to appropriation for the state Medicaid program for the purpose of providing alcohol and substance use harms prevention, treatment and recovery services. \$500,000 is appropriated in FY2027 to the Indian Affairs Department to contract services to study the effects of tax policy on alcohol and substance use across demographics in New Mexico. 40% of the fund is appropriated to the local government division of the Department of Finance and Administration to make annual distributions to counties based on the ten-year average of alcohol-related injuries and deaths in each county. 10% of money in the fund is appropriated to the Indian Affairs Department to make annual distributions to municipalities, counties and Indian nations, tribes and pueblos for alcohol and substance use disorder services and programs for Native American populations in New Mexico. The amendment also removes from Section 1 the deduction of \$2,084,000 monthly from the distribution made to the Alcohol and Substance Use Harms Alleviation Fund.

**Effective Date:** July 1, 2025

**Taxation and Revenue Department Analyst:** Lucinda Sydow

| Estimated Revenue Impact* |   |        |        |        | R or NR** | Fund(s) Affected               |
|---------------------------|---|--------|--------|--------|-----------|--------------------------------|
| FY2024                    | FY2025  | FY2026 | FY2027 | FY2028 |           |                                |
| --                        | Indeterminate (See Methodology for Revenue Impact and Technical Issues) |        |        |        | R         | Sections 2 and 4: General Fund |
| --                        | Indeterminate (See Methodology for Revenue Impact and Technical Issues) |        |        |        | R         | Section 2: Local Governments   |

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact: [Section 4]** Based on the Technical Issues detailed below it is unclear what taxpayers will be subject to the imposition of the Liquor Excise Tax. Secondly, it is unclear how the defined tax rates per product are to be applied as the bill does not define “each serving.” Due to the numerous technical issues, Tax & Rev 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.

**[Section 2]** The bill proposes to exclude the new liquor excise tax on retailers from the definition of “gross receipts”. Without an estimate of the revised Liquor Excise Tax on retailers, the impact to Gross Receipts Tax is also indeterminable.

**Policy Issues:** The taxing nationwide of liquor products through an excise tax occurs at many different government levels: federal, state and local; and at differing points of the supply chain: manufacturer, wholesaler and retailer. Tax rates all tend to differ based on the alcohol content of the liquor category. Like other states, New Mexico taxes spirituous liquors at a higher rate than wine and beer as they contain a higher alcohol content. Similarly, wine is taxed higher than beer. And as in many other states, the tax is based on the volume of liquor sold not on the value of the product. New Mexico’s Liquor Excise Tax is imposed on wholesalers and on average currently brings in \$50 million in revenue annually with half of the revenue currently distributed to the General Fund. At the retail level, liquor sales are also subject to the Gross Receipts Tax (GRT.) This bill proposes to change the taxable base from wholesalers to retailers and from volume to the price paid for alcoholic beverages sold by the retailers. This will tie revenue to the inflation rate of alcoholic prices as their tax liability will depend on the type, quality, and price of the alcoholic beverages versus the quantity sold under the current tax base but introduces tax imposition on different taxpayers.

New Mexico’s tax code is out of line with most states in that more complex distributions are made through the tax code. As an alternate to this proposal and revenue earmarks, the liquor excise tax could be distributed to the general fund and alcohol abuse funding needs could be provided for through general fund appropriations in HB2. The more complex the tax code’s distributions are, the costlier it is for Tax & Rev to maintain the GenTax system and the more risk is involved in programming changes.

Alcohol and substance abuse are among the costliest health problems in the United States. Studies have shown that public investment reduces alcohol and substance abuse and delays abuse initiation at young ages. In that regard, the redistribution of revenue to targeted alcohol abuse funds may impact and support community programs. This would establish a consistent future fund balance for budgeting appropriations from these funds but would permanently divert gross receipts revenue from the general fund.

**Technical Issues: [Section 3]** 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. Tax & Rev suggests defining broader categories that will anticipate the vast variety of alcoholic beverages on the market.

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.

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. Tax & Rev

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.”

**[Sections 3 and 4]** 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.

**[Section 3 and 4]** 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.

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....*” (emphasis supplied). 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 Tax & Rev. Tax & Rev 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, Tax & Rev 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 Tax & Rev recommends inserting the words “or another New Mexico craft distiller” after “produced by the retailer” on page 12, line 22.

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. Tax & Rev suggests simply saying that the tax is on the price paid for the alcoholic beverage sold by the retailer.

**Other Issues: [Section 1]** Proposing fixed dollar amounts for monthly distributions may cause issues in the event liquor excise tax revenue in a given month is not sufficient to cover the fixed amounts due to amended returns or late filings. If that occurs, the general fund will need to cover the difference(s) to meet the flat amounts. That would effectively cause a negative distribution to the general fund.

The Drug Court fund and the general fund will not benefit in the future from the potential growth in liquor excise tax. While a fixed distribution amount assures the Drug Court Fund of steady revenue for budgeting, it does not allow for any growth in revenue for future needs.

**Administrative & Compliance Impact:** Tax & Rev will conduct staff training, update forms, instructions, and publications.

The change of the imposition of the Liquor Excise Tax from the wholesaler to the retailer greatly increases the number of taxpayers who will be required to file and pay this tax monthly, also increasing the number of business registrations, taxpayer inquiries, audits, and collections activities. Tax & Rev will produce communications to impacted taxpayers, including specifications of the proposed changes to tax rates. It is anticipated compliance with the tax will at least temporarily decline as all alcohol retailers statewide become aware and learn how to comply correctly.

Tax & Rev estimates that there are 1,659 wholesalers currently. The number of liquor retailers is significantly larger than wholesalers, especially given that the definition of “retailer” in the bill is unclear, so this will be a significant outreach and education effort. Information from Regulation and Licensing Department (RLD) on licensed or registered alcohol retailers would allow for pro-active communication outreach and possibly automatic registration of these entities to facilitate a smoother transition.

This bill will have a high impact on Tax & Rev’s Revenue Processing Division’s (RPD), Special Tax Program business unit. RPD will be involved with the testing of new returns in GenTax, the tax system of record, and its interface, Taxpayer Access Point (TAP), new taxpayer communications and financial statements. RPD estimates implementation will take 3-6 months and require a dedicated project management resource and 1 subject matter expert (SME) for the duration of the project at an estimated \$40,000 staff workload costs.

Tax & Rev’s Administrative Services Division (ASD) anticipates this bill will take approximately 120 hours between 2 full-time equivalent (FTE) staff for testing, creating new reports and establishing new revenue distributions. This will result in \$7,600 in staff workload costs.

This bill will have a high impact on Tax & Rev’s Information Technology Division (ITD), approximately 1,000 hours or about 6 months and \$220 thousand contractual costs.

| <b>Estimated Additional Operating Budget Impact*</b> |               |               |                          | <b>R or NR**</b> | <b>Fund(s) or Agency Affected</b> |
|--|---------------|---------------|--------------------------|------------------|-----------------------------------|
| <b>FY2024</b>  | <b>FY2025</b> | <b>FY2026</b> | <b>3 Year Total Cost</b> |                  |                                   |
| --   | \$40.0        | --            | \$40.0                   | NR               | Tax & Rev – RPD staff workload    |
| --   | \$7.6         | --            | \$7.6                    | NR               | Tax & Rev – ASD staff workload    |
| --   | \$220.0       | --            | \$220.0                  | NR               | Tax & Rev – ITD contractual costs |

\* In thousands of dollars. Parentheses ( ) indicate a cost saving. \*\* Recurring (R) or Non-Recurring (NR).

**Related Bills:** Conflicts with HB-112, HB-117, HB-212, HB-179 and SB-147