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## FISCAL IMPACT REPORT

**SPONSOR** Ortiz y Pino                      **ORIGINAL DATE** 2/12/19  
**LAST UPDATED** 3/10/19                      **HB** \_\_\_\_\_  
**SHORT TITLE** Beer & Wine Delivery Licenses                      **SB** 494/aSJC  
**ANALYST** Gaussoin

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
		Indeterminate	Recurring	General Fund
		Indeterminate	Recurring	Local DWI Grant Fund
		Indeterminate	Recurring	Drug Court Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$80.0	\$80.0	\$160.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB0267 (2016), SB503 (2015), SB19, SB78, SB79, SB210, SB301, SB306, HB72, HB271, HB273, and HB482.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Regulation and Licensing Department (RLD)  
 Department of Health (DOH)

#### No Responses Received

New Mexico Association of Counties (NMAC)  
 New Mexico Municipal League (NMML)

## SUMMARY

### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 494 adds liquor dispensers to those entities that could deliver beer and wine with food if approved by local voters and makes numerous changes throughout to include dispensers and clarify conditions for storing liquor that reflect that change.

### Synopsis of Bill

Senate Bill 494 would make it possible to deliver some alcoholic drinks with food under specific conditions. The bill amends the Liquor Control Act to allow local option districts to vote on whether to allow beer, wine, and cider to be delivered with groceries or lunch or dinner entrees. If approved by voters, a beer and wine delivery license would enable some restaurants, grocery stores, or food delivery companies within the local option district to include up to 144 ounces of beer or cider (equal to two six-packs of 12-ounce containers) or up to 1.5 liters of wine (equal to two standard bottles) with food deliveries.

An applicant for the license would be required to have a retailer's license and a current business license or permit as a food service establishment, grocery store, or food delivery service business. The delivery service would be required to have employees with alcohol-server and food handler certificates and at least six contracts to deliver food. Under the bill, delivery vehicles must be covered by a commercial vehicle liability insurance policy and must be clearly marked with the name of the business, contact information, and a number assigned to that specific vehicle. All licensees would be required to maintain alcoholic beverage liability insurance of at least \$ 1 million.

A license holder would be required to demonstrate the primary source of revenue for the delivery service was derived from the sale of food. To renew a license, the license holder would have to demonstrate, with evidence from the prior 12 months, that 70 percent of the gross receipts related to the license was derived from the sale and delivery of meals or groceries.

Deliveries would be restricted by hours and the boundaries of the local option district, and a local option district would be required to maintain a database of "do not deliver" addresses. Deliveries would be restricted to a person at least age 21 at a residential address or a commercial or private lodging facility and would be prohibited to other commercially zoned property, public property, and locations within 300 feet of schools, youth centers, academic campuses and dormitories.

The initial license and annual renewal fees would be \$1,300.

## FISCAL IMPLICATIONS

The bill provides for a \$200 application fee, \$1,300 license fee, and \$1,300 annual renewal fee. RLD reports about 650 businesses have restaurant (beer and wine) licenses, but it is difficult to project how many of those deliver food and would apply for this license or how many restaurants or grocery stores that do not have liquor licenses now would apply for a liquor delivery license. While some restaurants and grocery stores have their own delivery services – pizza restaurants being a prime example – and some restaurants work with food-specific delivery services, the

growing availability of delivered meals and groceries relies on the “gig economy” of independent drivers, such as those who work for GrubHub, UberEats, and InstaCart, and would not qualify for a license under the bill.

In addition to numerous restaurant trade publications noting an uptick in delivered meals, *Restaurant Business* reports alcohol delivery with food is being “embraced” by casual-dining chains. In “Boosting Sales with Beer Delivery,” published in January 2018, the magazine quotes a senior analyst with industry consultant Technomic as calling alcohol delivery, when possible, a “no brainer.” Buffalo Wild Wings found the check for delivery orders increased by an average of \$10 when beer was added and overall take-out sales increased. Pizza Hut experimented with beer deliveries in Arizona and now seems poised to roll out the option nationally.

Should HB494 boost restaurant sales, the bill could result in both additional gross receipts and liquor excise tax revenues. LFC, in the analysis of a similar bill from 2016 (SB264), reviewed 2015 figures on New Mexico restaurant sales and national figures on the proportion of restaurant sales from food delivery and the share of restaurant sales spent on alcohol and concluded, if half the restaurants in New Mexico urban areas added food and alcohol delivery, alcohol sales could increase by \$6 million, generating \$428 thousand in state and local gross receipts tax revenue. The same analysis concluded liquor excise taxes could increase by \$72 thousand.

According to RLD, administration of the program, including the audit of licensee sales records to ensure that at least 70 percent of gross receipts came from the sale of food and to determine whether each order had at least a \$20 restaurant menu value as required by the bill, would require at least 1.25 FTE at a cost of \$80 thousand.

Both RLD and the Department of Public Safety would be required to promulgate rules under the bill, although this task could likely be accomplished with existing staff.

## **SIGNIFICANT ISSUES**

SB494 allows a sale of alcohol without an assessment of the buyer’s age or level of intoxication until delivery, a concern for RLD, which also notes the bill provides no safeguards ensuring the person accepting delivery is the person placing the order. An additional concern for RLD is the bill’s failure to require applicants to already have liquor licenses.

RLD argues the bill creates difficult-to-implement and -enforce conditions on restaurants, grocery stores, and delivery companies, including those concerning the percentage of delivery-related sales attributable to food and prohibiting deliveries to certain locations.

DOH reports home delivery of alcohol in other states and countries has increased youth consumption in some cases. Citing “Compliance with legal age restrictions on adolescent alcohol sales for alcohol home delivery services,” from the *Journal of Child & Adolescent Substance Abuse* (<https://www.tandfonline.com/doi/abs/10.1080/1067828X.2012.730119>), the department says one study measuring compliance with underage drinking laws found that, of 21 underage mystery shoppers, all 21 were able to purchase alcohol from alcohol home delivery.

DOH reports underage drinking is a major problem in New Mexico, with a quarter of high school students reporting drinking in the last 30 days, and enhanced enforcement of laws prohibiting sales to minors is an effective and evidence-based method for communities to

prevent underage. Enforcement could become more difficult under the bill.

According to DOH, the Liquor Control Act Task Force, established pursuant to Senate Memorial 77 (2013), reviewed home liquor delivery and could not reach a consensus.

### **ADMINISTRATIVE IMPLICATIONS**

RLD reports the workload created by the bill would exceed the capacity of the existing staff at the Alcohol and Gaming Division. The division would be required to audit records from restaurant and food delivery companies to ensure that at least 70 percent of gross receipts came from the sale of food and to determine whether each order had at least a \$20 restaurant menu value.

The division would also be required to promulgate rules to guide licensees in best practices and in health and safety information, mobile document and identification verification, and delivery vehicle tracking.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

In 2015, SB503 proposed similar provisions, although applicants for a delivery license were required to have an existing liquor license, and was vetoed. The proposal was again introduced in 2016 (SB267) and was found germane but received no further action.

SB19 amends Section 60-6B-12 NMSA 1978 to allow the holder of a full dispenser license to choose which privilege the liquor license would retain if the license is transferred from one local option district to another.

SB78 and HB273 amend various sections of the Liquor Control Act to allow local option districts to hold an election that, if passed by the voters, creates a new level of restaurant license that allows the sale of spirits distilled and bottled in New Mexico.

SB79 and HB271 create a new “municipal dispenser’s license.”

SB210 expands the types of alcoholic beverages that a properly licensed restaurant may serve with food to include spirits.

SB301 amends Section 60-6A-4 NMSA 1978 to require sales, service and consumption of beer and wine authorized by a restaurant license shall only be in conjunction with a meal purchase.

SB306 extends the ability of winegrowers and small brewers to serve at celebrations to include serving at private parties.

HB72 creates a restaurant license for other alcoholic beverages in addition to the existing license for beer and wine.

HB482 increases the number of dispensers’ licenses.

## TECHNICAL ISSUES

In the Liquor Control Act, “department” is defined as either RLD “when the term is used in reference to the licensing provisions” or the Department of Public Safety “when the term is used in reference to the enforcement and investigatory provisions.” It is not clear in HB494 which responsibilities are considered regulatory and which are considered enforcement.

RLD notes the following technical issues:

- On Page 6, lines 5-14, the bill allows a delivery licensee to maintain two separate “inventories” of alcohol, but the bill does not include a process by which such business locations are permitted by the division.
- The bill uses the term “retailer” to identify establishments that sell alcohol to the general public, however, in the Liquor Control Act, “retailer” is used to denote a specific license type.
- In the bill, cider is treated as a beer, however, cider is classified as a wine in both federal and state law.

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