

HOUSE BILL 213

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

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and Joshua N. Hernandez

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; AMENDING THE LIQUOR EXCISE TAX ACT;  
IMPOSING THE TAX ON RETAILERS; PROVIDING AN EXEMPTION; CHANGING  
THE RATES OF THE TAX TO A PERCENTAGE BASIS; AMENDING  
DEFINITIONS IN THE LIQUOR EXCISE TAX ACT; ELIMINATING FORTIFIED  
WINE AS A SPECIFIC TYPE OF ALCOHOLIC BEVERAGE; CHANGING THE  
DISTRIBUTIONS OF THE TAX; EXCLUDING THE LIQUOR EXCISE TAX FROM  
THE DEFINITION OF "GROSS RECEIPTS" IN THE GROSS RECEIPTS AND  
COMPENSATING TAX ACT; REPEALING THE LOCAL DWI GRANT PROGRAM ACT  
AND SECTIONS OF THE LIQUOR EXCISE TAX ACT HHC→; **MAKING**

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**APPROPRIATIONS** ← HHHC .

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-6.40 NMSA 1978 (being Laws 1997, Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--~~[LOCAL DWI GRANT FUND—CERTAIN MUNICIPALITIES]~~ DRUG COURT FUND--ALCOHOL AND SUBSTANCE USE HARMS ALLEVIATION FUND.--

~~[A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to forty-five percent of the net receipts attributable to the liquor excise tax shall be made to the local DWI grant fund.~~

~~B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 of twenty thousand seven hundred fifty dollars (\$20,750) monthly from the net receipts attributable to the liquor excise tax shall be made to a municipality that is located in a class A county and that has a population according to the most recent federal decennial census of more than thirty thousand but less than sixty thousand and shall be used by the municipality only for the provision of alcohol treatment and rehabilitation services for street inebriates.]~~

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the alcohol and substance use harms alleviation fund in an amount equal to the net receipts attributable to the liquor excise tax, less HHHC → ~~two million~~ eighty-four thousand dollars (\$2,084,000) monthly and ← HHHC the

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amount distributed pursuant to Subsection B of this section.

[~~G. Beginning July 1, 2019~~] B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to [~~five percent of~~] two hundred fifty thousand dollars (\$250,000) monthly from the net receipts attributable to the liquor excise tax shall be made to the drug court fund."

SECTION 2. Section 7-9-3.5 NMSA 1978 (being Laws 2003, Chapter 272, Section 3, as amended) is amended to read:

"7-9-3.5. DEFINITION--GROSS RECEIPTS.--

A. As used in the Gross Receipts and Compensating Tax Act:

(1) "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

(2) "gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

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(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist;

(f) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in New Mexico if: 1) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and 2) the charges for mobile telecommunications services are billed by or for a customer's

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home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

(g) receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are sourced to this state and are facilitated by the marketplace provider on behalf of marketplace sellers, regardless of whether the marketplace sellers are engaging in business in the state; and

(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax, leased vehicle gross receipts tax, ~~and~~ cannabis excise tax and liquor excise tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or

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regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential."

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SECTION 3. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol by volume, but "alcoholic beverages" does not include medicinal bitters;

B. "barrel" means the equivalent of thirty-one gallons;

~~[B-]~~ C. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

~~[G-]~~ D. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent of alcohol by volume and not more than eight and one-half percent of alcohol by volume;

~~[D-]~~ E. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully

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delegated to that employee by the secretary;

~~[E. "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but "fortified wine" does not include:~~

~~(1) wine that is sealed or capped by cork closure and aged two years or more;~~

~~(2) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that has not been produced with the addition of wine spirits, brandy or alcohol; or~~

~~(3) vermouth and sherry;]~~

F. "microbrewer" means a person who produces less than two hundred thousand barrels of beer per year;

G. "person" includes, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof;

H. "retailer" means a person having a place of business in New Mexico who sells, offers for sale or possesses for the purpose of selling alcoholic beverages in New Mexico;

~~[H.]~~ I. "small winegrower" means a winegrower who produces less than one million five hundred thousand liters of wine in a year;

~~[I.]~~ J. "spirituous liquors" means alcoholic

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beverages, except fermented beverages such as wine, beer, cider and ale;

~~[J. "wholesaler" means a person holding a license issued under Section 60-6A-1 NMSA 1978 or a person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978;]~~

K. "wine" means an alcoholic beverage other than cider that is obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, and that does not contain more than twenty-one percent alcohol by volume; and

L. "winegrower" means a person licensed pursuant to Section 60-6A-11 NMSA 1978."

SECTION 4. Section 7-17-5 NMSA 1978 (being Laws 1993, Chapter 65, Section 8, as amended) is amended to read:

"7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX--  
EXEMPTION.--

A. There is imposed on a [~~wholesaler~~] retailer who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates [~~on~~] of the price paid for alcoholic beverages sold by the retailer:

~~[(1) on spirituous liquors, except as provided in Paragraph (9) of this subsection, one dollar sixty cents (\$1.60) per liter;~~

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~~(2) on beer, except as provided in Paragraph (5) of this subsection, forty-one cents (\$.41) per gallon;~~

~~(3) on wine, except as provided in Paragraphs (4) and (6) of this subsection, forty-five cents (\$.45) per liter;~~

~~(4) on fortified wine, one dollar fifty cents (\$1.50) per liter;~~

~~(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents (\$.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents (\$.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold;~~

~~(6) on wine manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:~~

~~(a) ten cents (\$.10) per liter on the first eighty thousand liters sold;~~

~~(b) twenty cents (\$.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters; and~~

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~~(c) thirty cents (\$.30) per liter on each liter sold over nine hundred fifty thousand liters but not over one million five hundred thousand liters;~~

~~(7) on cider, except as provided in Paragraph (8) of this subsection, forty-one cents (\$.41) per gallon;~~

~~(8) on cider manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the cider was manufactured or produced by a small winegrower, eight cents (\$.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents (\$.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents (\$.41) per gallon for sixty thousand or more barrels sold; and~~

~~(9) on spirituous liquors manufactured or produced by a craft distiller licensed pursuant to Section 60-6A-6.1 NMSA 1978, provided that proof is provided to the department that the spirituous liquors were manufactured or produced by a craft distiller, for products up to ten percent alcohol by volume, eight cents (\$.08) per liter for the first two hundred fifty thousand liters sold and twenty-eight cents (\$.28) per liter for the next two hundred fifty thousand liters sold and for products over ten percent alcohol by volume, thirty-two cents (\$.32) per liter on the first one hundred seventy-five thousand liters sold and sixty-five cents (\$.65)~~

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~~per liter on the next two hundred thousand liters sold.~~

~~B. The volume of wine transferred from one winegrower to another winegrower for processing, bottling or storage and subsequent return to the transferor shall be excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable volume of wine of the transferee. Wine transferred from an initial winegrower to a second winegrower remains a tax liability of the transferor, provided that if the wine is transferred to the transferee for the transferee's use or for resale, the transferee then assumes the liability for the tax due pursuant to this section.~~

~~C. A transfer of wine from a winegrower to a wholesaler for distribution of the wine transfers the liability for payment of the liquor excise tax to the wholesaler upon the sale of the wine by the wholesaler.]~~

(1) on each serving of spirituous liquors, four percent;

(2) on each serving of wine, three percent;  
and

(3) on each serving of beer or cider, two percent.

B. The liquor excise tax shall not be imposed on alcoholic beverages sold by a retailer if:

(1) the retailer is a microbrewer, a small winegrower or a craft distiller licensed pursuant to Section

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60-6A-6.1 NMSA 1978;

(2) the alcoholic beverage is manufactured or produced by the retailer; and

(3) the alcoholic beverage is sold on the retailer's premises."

SECTION 5. [NEW MATERIAL] ALCOHOL AND SUBSTANCE USE HARMS ALLEVIATION FUND.--

A. The "alcohol and substance use harms alleviation fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, distributions, gifts, grants, donations and bequests made to the fund and income from investment of the fund. The department of finance and administration shall administer the fund, and money in the fund HHHC→~~is subject to appropriation by the legislature for alcohol and substance use harms prevention, treatment and recovery services to individuals throughout New Mexico, including on lands of Indian nations, tribes and pueblos.~~←HHHC HHHC→may be expended only as provided in this section.

B. Fifty percent of money in the fund is subject to appropriation by the legislature to support, and match federal funds for, the state medicaid program for the purpose of providing alcohol and substance use harms prevention, treatment and recovery services to individuals throughout New Mexico, including on lands of Indian nations, tribes and pueblos; provided that, for fiscal year 2027, five hundred thousand

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dollars (\$500,000) is appropriated to the Indian affairs department for expenditure in fiscal years 2027 through 2032 to contract for services with an entity with expertise in equity-based research to study the effects of tax policy on alcohol and substance use across demographics in New Mexico, including race, gender, sexuality, age and socioeconomic background. The department shall report its progress to the appropriate interim legislative committees by November 1 of 2028 through 2031 and its final findings by November 1, 2032.

C. Forty percent of money in 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. The division shall determine the amount of each distribution as of the end of each fiscal year and shall make the distributions on or before November 1 of each year. Any unexpended or unencumbered balance of a distribution to a county shall not revert to any fund.

D. Ten percent 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 culturally relevant alcohol and substance use disorder services and programs for Native American populations

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in New Mexico. The department shall determine the amount of each distribution as of the end of each fiscal year and shall make the distributions on or before November 1 of each year.←HHHC

HHHC→B.←HHHC HHHC→E.←HHHC Money in the fund shall be expended by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

SECTION 6. TEMPORARY PROVISION--TRANSFER OF FUNDS.--Any unexpended and unencumbered balance in the local DWI grant fund shall be transferred to the alcohol and substance use harms alleviation fund.

SECTION 7. REPEAL.--Sections 7-17-6, 7-17-9, 7-17-11 and 11-6A-1 through 11-6A-6 NMSA 1978 (being Laws 1984, Chapter 85, Section 4, Laws 1966, Chapter 49, Section 7, Laws 1969, Chapter 80, Section 1, Laws 1993, Chapter 65, Sections 1 through 5 and Laws 1997, Chapter 182, Section 2, as amended) are repealed.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.