

NMRA Analysis of HB 255 – **Disclaimer: The following is our first reading of the liquor bill. The Alcohol Beverage Division will be promulgating rules for this new law that may not follow this analysis. Please DO NOT make business decisions using this analysis. We are paraphrasing what the law actually says and only looking for the major changes.**

Section 1: Deduction – Income from Leasing a Liquor License

Section 1: Prior to January 1, 2026, a taxpayer who is a **liquor license lessor** and who held the license on June 30, 2021 may claim a deduction from **net income** in an amount equal to the gross receipts from sales of alcoholic beverages made by each liquor license lessee in an amount if the liquor license is a dispenser's license and sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars(\$50,000) four taxable years.

A “dispenser’s license” means a license allowing the licensee to sell, b the drink for consumption on the premises and not for resale off the premises.

Section 2: Deduction – Income from Leasing a Liquor License

Prior to January 1, 2026, a taxpayer that is a **liquor license lessor** and that held the license on June 30, 2021 may claim a deduction from **taxable income** in an amount equal to the gross receipts from sales of alcoholic beverages made by each liquor license lessee in an amount if the liquor license is a dispenser's license and sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars(\$50,000) for four taxable years.

A “dispenser’s license” means a license allowing the licensee to sell, b the drink for consumption on the premises and not for resale off the premises.

Section 3: Deduction – Sales Made By Dispenser’s License Holder

Prior to January 1, 2026, a **liquor license holder** who held the license on June 30, 2021 **may deduct from gross receipts** the following receipts, for each dispenser's license for which sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars (\$50,000) for each of four taxable years.

A “dispenser’s license” means a license allowing the licensee to sell, b the drink for consumption on the premises and not for resale off the premises.

Double Disclaimer!!!You will have to ask your CPA what this means for your business if you have an ILD or other dispenser’s or retail license. This will also become clearer when the rules are promulgated and the Taxation and Revenue Department come up with a method to take this deduction.

Section 4: Alcoholic Beverage Delivery Permit – third Party Delivery License

If you have a liquor license including: a valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant license; you can apply to get a delivery license. If you are a restaurant you can only deliver alcohol with a \$10 food order. The delivered beverages can't be more than seven hundred

fifty milliliters of wine, six twelve-ounce containers of prepackaged wine, beer, cider or spirituous liquors or one locally produced growler, in unbroken packages or growlers.

Unless you are in a class A county and over 10,000 square feet of retail space. Then there are a few additional requirements including: a license Identification system, no spirituous liquors, you have \$5,000,000 liability insurance, and you can't use a 3rd party service.

Payment for the alcohol shall be received only at the licensed premise although you can take payment electronically via the internet as well. The licensee shall not change the price for delivered alcohol but they can charge a delivery fee disclosed to the customer. You may not deliver to a school, business, commercial establishment college or university campus or a school. You must obtain proof of the recipient's age and you can't sell to an intoxicated person.

You may use an employee who is 21 with a server permit to deliver or you can use a 3rd party delivery service that also has a delivery license. The 3rd party delivery service may not share in the profits and may only charge a delivery fee.

The 3rd party is independently liable for the delivery of alcohol to an intoxicated person or to a minor for any violation of the Liquor Control Act. They can only deliver alcohol from licensed premises.

Section 5: Definitions:

"Licensed Premise" means contiguous areas of the structure and grounds that are under the direct control of the licensee. It is our understanding that this changed to allow an entire premise to be licensed. We will have to see what the ABC director does with this one.

Section 6: Prohibited Sales of Certain Spirituous Liquors

This provision gets rid of miniature sales throughout NM.

Section 7: Retailer's License

This section prohibits spirituous liquor sales in convenience stores in McKinley County for retailer's licenses.

Section 8: Dispenser' License

This section prohibits spirituous liquor sales in convenience stores in McKinley County for dispenser licenses.

Section 9: Restaurant License

A beer and wine only restaurant license is called a Restaurant A license and a beer, wine and spirituous liquor license is called a Restaurant B license. For these licenses one must have a current valid food service license, the primary source of revenue must be from food and not from liquor with a 60/40 split, sales shall cease at 11:00 pm.

A Restaurant B License shall not serve more than three, 1 ½ ounce drinks to any person during one visit to a restaurant. For these licenses one must have a current valid food service license, the primary source of revenue must be from food and not from liquor with a 60/40 split, sales shall cease at 11:00 pm.

A Restaurant A Licensee (beer and wine only), that has had the license for more than 12 months can get a license to sell NM Spirituous liquor for a fee of \$500.

Section 10: Craft Distillers

Lowers the manufacturing gallons from 1000 to 500. Includes a small brewers license or a winegrower's license in the list of reciprocal sales.

Section 11: Governmental License

Municipal Baseball Park changed to governmental facility and skybox to suite.

Section 12: Winegrower's License

Adds small brewer and craft distillers to the list of reciprocal businesses

Section 13: License and Permit Fees

For license holders who purchased their licenses from 2017 through 2021 shall be charged no fee, shall not pay a fee for license renewal from 2022 through 2031.

A Restaurant B License will be \$10,000.

A Delivery License will cost \$300 for licensees and \$1,000 for 3rd Party delivery services.

If a retailer, dispenser's or canopy licensees purchased before June 2021 there shall be no renewal fee for applications filed by the licensee or successor licensees on or before June 30, 2026.

Section 14: Small Brewer's License

Adds craft distillers or winegrower's to the list of reciprocal sales.

Section 15: Interstate Wine Tastings – Competitions – Permits (No significant changes)

Section 16: Inter-Local Option District and Inter-County Transfers

The change in this section allows all dispenser and retailer licenses to be transferred anywhere in the state except McKinley County.

This section allows for a petition of 5% of registered voters to trigger an election to keep liquor licenses from being transferred to that LOD.

Section 17: Grounds for Suspension, Revocation or Administrative Fine

Adds delivery permits to those who can be fined, suspended and revoked.

Section 18: Hearings – Locations - Open to Public – Hearing Officer

Adds delivery permit

Section 19: Administrative Proceedings – Complaints-Investigation

Adds delivery permit

Section 20: Appeal

Removes writ of mandamus and injunction language. A writ of mandamus is where you file to force the revocation of a license to say that the director is not doing their administrative duty. No injunction means that they cannot file in district court to stop the behavior and they must use this process.

Section 21: Definitions

Adds delivery permit

Section 22: Server Permit – Suspension- Revocation – Fines – Penalties

Adds delivery permit

Section 23: Alcohol Server Education – Required for License Renewal

Adds delivery people to those required to get servers licenses.

Section 24: Administrative Proceedings – Hearings

Adds delivery permits

Section 25: Hours and Days of Business

Sunday sales for dispenser and retailer licensees for off premise sales change to 7:00 am until Midnight. And 7:00 am until 2:00 am for on premise sales. Sunday Sales Yay!

Section 26: Sale, Shipment and Delivery Unlawful

You can deliver but only if you follow the law.

Section 27: Offences by Licensees

Adds delivery to prohibition of sales to an intoxicated person

Section 28: Sales by Clubs

Looks like new material for clubs but we are unfamiliar with this section of the law so if you are a club we can help you look this up.

Section 29: Sale to Intoxicated Persons

Adds delivery people to the section

Section 30: Documentary Evidence of Age and Identity

An identity document is valid for the purposes of the Liquor Control Act even if it is expired.

Except for deliveries it is unnecessary to ask for an identity document if the person clearly looks older than thirty-five years of age.

Section 31: Refusal to Sell, Serve or Deliver Alcoholic Beverages to Person Unable to Produce Identity Card

An identity document is valid for the purposes of the Liquor Control Act even if it is expired.

It is unnecessary to ask for an identity document if the person clearly looks older than thirty-five years of age.

Section 32: Demanding and seeing Identity Card before Furnishing Alcoholic Beverages

Adds delivery and delivery permit to this section

Section 33: Employment of Minors

A person holding a dispenser's, restaurant or club license **may employ persons eighteen (18) years of age or older to sell or serve alcoholic beverages** in an establishment that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food and where the sale or consumption of alcoholic beverages is not the primary activity, except that a person under 21 years of age shall not be employed as a bartender or deliverer.

Section 34: Locations Near Church or School – Restrictions on Licensing

This section was repealed and then reinstated with this change: a license may be granted for a proposed licensed premise if a person has obtained a waiver from a local option district governing body for the proposed licensed premises if a person has obtains a restaurant A or B license.

Section 35: Study the Effects of Delivery of Alcohol

After 5 years the department of health will study the impacts of delivery of alcohol.

Section 36: Repeal –

60-6A-25. Brandy manufacturer's license.

60-6B-1.1. Licenses held by noncitizens.

60-6B-11. Locations near military installations; restrictions on licensing.

60-6B-15. Purpose.

Section 33: Effective Date is July 1, 2021