SB 18-243

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 18-0180	**Date:**	August 7, 2018
Prime Sponsors:	Sen. Holbert; Guzman Rep. Esgar; McKean	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Anna Gerstle | 303-866-4375 Anna.Gerstle@state.co.us

Bill Topic: RETAIL SALES ALCOHOL BEVERAGES

Summary of Fiscal Impact:

☒ State Revenue *(potential, minimal)*
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund *(potential, minimal)*
☒ Local Government
☐ Statutory Public Entity

The bill makes changes to state law related to retail sales of alcohol beverages. The bill impacts state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill requires and includes an appropriation of $91,092 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 18-243

		FY 2018-19	FY 2019-20
Revenue		-	-
Expenditures	Cash Funds	$91,092	$73,296
	Centrally Appropriated	$19,153	$19,103
	Total	**$110,245**	**$92,399**
	Total FTE	**1.1 FTE**	**1.0 FTE**
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Current law. Under current law, prior to January 1, 2019, "malt liquor" is defined as full-strength beer and "fermented malt beverages" are defined as beer that does not exceed 3.2 percent alcohol by weight (3.2 beer). Beginning January 1, 2019, pursuant to Senate Bill 16-197, both malt liquor and fermented malt beverage are defined as full-strength beer.

Currently, licensed retail liquor stores and liquor-licensed drugstores may sell full-strength beer, wine, and spirits for consumption off the licensed premises. Fermented malt beverage (FMB) retailers may sell 3.2 beer for consumption on, off, or on/off the licensed premises until January 1, 2019, and full-strength beer after that date.

FMB on- and on/off premises licenses. The bill eliminates the FMB on/off premises license and requires that current licensees convert their license to either an FMB on-premises or off-premises license when their current license is up for renewal. The bill makes no changes to the FMB on-premises consumption license.

FMB off-premises licenses. Under the bill, new FMB off-premises licensees issued on or after January 1, 2019, must receive at least 20 percent of gross annual revenues, excluding fuel, cigarette, nicotine, tobacco, and lottery products, from food items to be consumed off the premises. This food sales requirement does not apply to prospective FMB retailers who own or lease proposed premises, or have obtained a building permit or certificate of occupancy by January 1, 2019.

Beginning January 1, 2019, all FMB off-premises retailers must:

- verify that a customer is at least 21 years old by requiring valid identification;
- not allow consumers to purchase beer at a self-checkout that does not require assistance from an employee who is at least 21 years old; and
- not sell beer to customers at a price below the retailer's cost, unless part of a close-out sale. This price requirement also applies to alcohol sold by retail liquor stores under the bill, and does not prohibit retailers from operating a loyalty or rewards program.

The bill also allows FMB licensees to have open containers if the product was provided by wholesalers for sampling by the licensee, and aligns other requirements for FMB licensees with requirements that are currently in place for other licensees that sell full-strength beer.

Employee age requirements. Under current law, employees must be 18 years old to sell or handle alcohol at FMB retailers and 21 years old at retail liquor stores and liquor-licensed drugstores. Under the bill, employees of FMB retailers, retail liquor stores, and liquor-licensed drugstores must be 18 years old to sell or handle alcohol and 21 years old to deliver alcohol.

Radius requirements. Under current law, no new retail liquor store or liquor-licensed drugstore license may be issued for locations within 1,500 feet of a liquor store, or within 3,000 feet of a liquor store in a municipality with a population of 10,000 or fewer. The bill specifies that:

- the 1,500 foot radius requirement applies in municipalities with a population of 10,000 or fewer if the municipality is adjacent to the City and County of Denver; and

- local licensing authorities may not approve a request by an FMB off-premises retailer or retail liquor store to move to a new location if the new location does not meet radius requirements.

The bill sets the radius requirement for new FMB off-premises licenses at 500 feet from a retail liquor store. This new radius requirement does not apply to prospective FMB retailers who own or lease proposed premises, and have obtained a building permit or certificate of occupancy as of January 1, 2019.

School distance requirement. No new or relocated FMB off-premises license may be issued if the location is within 500 feet of a school, with certain exceptions. Local governments may eliminate or modify the distance requirement and must make a specific finding of fact as to whether the location is within the distance requirement, subject to judicial review.

Public consumption. Current law prohibits public consumption of full-strength beer, wine, and spirits, with certain exceptions. The bill extends the prohibition to include fermented malt beverages, and establishes that public consumption is legal if specifically authorized by local government entities or by the Colorado Parks and Wildlife Commission for state recreational properties.

Deliveries. Under current law, retail liquor stores and liquor-licensed drugstores may deliver alcohol. The bill authorizes FMB off-premises licensees to deliver beer and establishes the same delivery requirements for FMB retailers, retail liquor stores, and liquor-licensed drugstores. Requirements include that the person delivering the alcohol must be at least 21 years of age, use a vehicle owned or leased by the licensee, and verify that the customer is also over 21; and that no more than 50 percent of gross annual revenues from the sale of alcohol may come from delivered alcohol. The bill allows the Liquor Enforcement Division (LED) in the Department of Revenue to establish a delivery permit for FMB retailers, as is currently allowed for retail liquor stores and liquor-licensed drugstores.

Additional liquor-licensed drugstore licenses. Under current law, liquor-licensed drugstore licensees who were licensed on or before January 1, 2016, may obtain additional licenses based on a phased-in schedule in statute. The bill also allows the following liquor-licensed drugstore licensees to obtain licenses based on that schedule:

- licensees that were licensed on February 21, 2016, converted their licensed to a retail liquor store license after February 21, 2016, and applied on or before May 1, 2017 to convert their license back to a retail liquor store license; and

- licensees that applied for a new liquor-licensed drugstore license before October 1, 2016.

Those licensees must meet certain conditions to obtain additional licenses, including purchasing two retail liquor store licenses and converting them to the new liquor-licensed drugstore license.

Penalties. Under current law, when the state or local licensing authority suspends a liquor license, the licensee may petition to pay a fine instead of serving the suspension. The bill specifies that the licensing authority may not take into account violations related to sale to minors or the visibly intoxicated that occurred more than five years ago when considering a fine or suspension.

Entities with multiple licenses. Individuals who hold multiple retail liquor store, liquor-licensed drugstore, and FMB off-premises licenses may operate under a single or consolidated corporate entity, but may not commingle purchases or credit extensions, or have wholesale prices based on more than one licensed premises.

Tastings and other provisions. Tastings held at a retail liquor store or liquor-licensed drugstore may be conducted by an employee or representative of a wholesaler or manufacturer, not later than 9 p.m. (currently 7 p.m.), and up to 156 days per year (currently 104 days, with restrictions). Alcohol for tastings may be stored on the licensed premises. In addition, the bill allows retail liquor stores, liquor-licensed drugstores, and FMB off-premises retailers to have open containers on the premises if it is a damaged or defective product.

Background

Senate Bill 16-197. Senate Bill 16-197 significantly changed the licensing of off-premises retail liquor sales, including removing the distinction between 3.2 and full-strength beer, beginning January 1, 2019, allowing retail liquor stores and liquor-licensed drugstores to obtain additional licensed locations, and establishing radius requirements for any new off-premises retail licensee.

Current retail liquor licensees. As of April 2018, there are 1,586 FMB retail licensees, of which 1,473 are licensed for off-premises consumption, 40 for on-premises consumption, and 73 for on/off premises consumption. There are 1,614 retail liquor store licensees and 16 liquor-licensed drugstore licenses.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill aligns FMB off-premises retailers with current unlawful acts for retail liquor stores and liquor-licensed drugstores, and makes minor changes to the unlawful acts for retail liquor stores and liquor-licensed drugstores related to tastings. The fiscal note assumes that liquor licensees will abide by the requirements of their license and that any increase in criminal cases will be minimal. As a result, the fiscal note assumes that there will be no tangible impact to the court and criminal system.

State Revenue

The bill may impact state General Fund and LED Cash Fund revenue by a minimal amount beginning in FY 2018-19, as discussed below.

Potential fine revenue reduction. Under current law, fines for serving alcohol to an underage or visibly intoxicated person must range from $200 to $5,000, but the LED has the discretion to deny petitions for a fine instead of a license suspension, and to set the fine amount within that range. The bill prohibits LED from basing a fine or suspension on a violation from more than five years ago. To the extent that this decreases fines, revenue to the General Fund will decrease. Any decrease is expected to be minimal.

Potential fee impacts. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Fee revenue from liquor license application and licensing fees, which is split between the General Fund and LED Cash Fund, may be impacted in the following ways:

- To the extent that the bill increases applications for additional liquor-licensed drugstore licenses, who must buy out two retail liquor store licenses, revenue from liquor-licensed drugstore application fees will increase and revenue from retail liquor store licensing renewal fees will decrease. These changes will be minimal and spread out over multiple years.

- The current FMB on/off-premises licensees that must convert their license to either an FMB on or off premises license do not have to pay the application fee in order to convert their license, and there is no change in revenue from the $75 license fee that must be paid for either a new license or a renewal.

- The bill does not significantly impact revenue from application fees, but the current $1,550 application fee may be adjusted administratively by the LED based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee.

TABOR Refund

The bill may impact state General Fund and cash fund revenue from fines and fees beginning in FY 2018-19. To the extent that the bill increases state revenue subject to TABOR, the bill increases the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. To the extent that the bill decreases state revenue subject to TABOR, the bill decreases the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

The bill increases state expenditures by $110,245 and 1.1 FTE in FY 2018-19 and $92,399 and 1.0 FTE in FY 2019-20 from the LED Cash Fund in the Department of Revenue. Costs are listed in Table 2 and discussed below. The bill may also increase one-time workload for the Department of Natural Resources.

Table 2
Expenditures Under SB 18-243

	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	$65,506	$64,965
Operating Expenses and Capital Outlay Costs	$11,430	$1,937
Computer Modifications	$3,500	-
Legal Services	$10,656	$6,394
Centrally Appropriated Costs*	$19,153	$19,103
FTE – Personal Services	1.0 FTE	1.0 FTE
FTE – Legal Services	0.1 FTE	-
Total Cost	**$110,245**	**$92,399**
Total FTE	**1.1 FTE**	**1.0 FTE**

** Centrally appropriated costs are not included in the bill's appropriation.*

Department of Revenue. The LED requires 1.0 FTE beginning in FY 2018-19 to process FMB on/off premises license conversions; adjust enforcement procedures; and conduct additional enforcement related to employee age, tastings, delivery, and public consumption of alcohol. Associated operating costs include the required law enforcement equipment for a criminal investigator. The resources required to enforce the changes related to public consumption will depend heavily on the local ordinances adopted; should additional resources be required, the LED will request them through the annual budget process. In addition, the bill is expected to increase the number of applications for liquor-licensed drugstores by a minimal amount; the associated workload can be accomplished within current appropriations.

Assumptions. The fiscal note assumes that allowing employees between the ages of 18 and 21 to sell full-strength alcohol will not result in additional underage sales violations, and that enforcement procedures may be adjusted to accommodate the employee age change.

Computer modifications. In FY 2018-19 only, LED requires $3,500 to modify the MyLicense Office licensing system to include a delivery permit for FMB retailers, retail liquor stores, and liquor-licensed drugstores. LED is currently authorized to, but does not, issue delivery permits to retail liquor stores and liquor-licensed drugstores; however, allowing an additional 1,473 FMB retailers to deliver and establishing specific requirements for the delivery of alcohol by all three license types will require LED to begin issuing delivery permits. The workload associated with issuing delivery permits can be accomplished within current appropriations.

Legal services. The LED requires an increase of 100 hours in FY 2018-19 and 60 hours in FY 2019-20 for legal services, provided by the Department of Law. Legal services hours are required to conduct rulemaking and handle an assumed one additional administrative action per year. The Department of Law requires 0.1 FTE in FY 2018-19 to provide those services.

Department of Natural Resources. The bill may increase the workload for the Parks and Wildlife Commission to adopt policies regarding the consumption of alcohol at state parks. Under current law, 3.2 beer may be consumed in state parks; under the bill, any public consumption will be illegal in state parks unless the commission adopts a policy or rule allowing it. No change in appropriations is required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and leased space, are estimated to be $19,153 in FY 2018-19 and $19,103 in FY 2019-20.

Local Government Impact

The bill impacts the revenue and expenditures of local governments, as discussed below.

Revenue. The bill may impact local revenue in several ways. First, fine revenue from sales to underage or visibly intoxicated people may be impacted, depending on fines assessed based on violations from more than five years ago. To the extent that the bill increases applications for additional liquor-licensed drugstore licenses, who must buy out two retail liquor store licenses, revenue from liquor-licensed drugstore application fees will increase and revenue from retail liquor store licensing renewal fees will decrease. The fiscal note assumes that changes will be minimal and spread out over multiple years.

Expenditures. The bill increases the workload for local licensing authorities in several ways. First, to the extent that local licensing authorities adopt ordinances related to public consumption or the distance requirements from schools, workload will increase. In addition, workload will increase for local licensing authorities and law enforcement to adjust enforcement procedures, including procedures related to verification of the food sales requirement, tastings, delivery, and public consumption, and to process additional liquor-licensed drugstore applications.

Effective Date

The bill was signed into law by the Governor on June 4, 2018, and took effect on that date, with the following exceptions:

- the provision eliminating the FMB on/off premises manager requirement takes effect July 1, 2019; and
- the provisions related to employee age, delivery, single entity licensing, and below-cost purchasing by FMB, retail liquor store and liquor-licensed drugstore licensees, public consumption, and other unlawful acts takes effect January 1, 2019.

State Appropriations

For FY 2018-19, the bill requires and includes an appropriation of $91,092 from the LED Cash Fund to the Department of Revenue and an allocation of 1.0 FTE. Of that, $10,656 is reappropriated to the Department of Law, with an allocation of 0.1 FTE.

Departmental Difference

The Department of Revenue estimates that $399,933 and 4.8 FTE are required to implement the bill's provisions. This estimate is based on the assumption that additional enforcement staff is required to enforce the public consumption changes, to handle enforcement at an increased number of tastings, and to conduct approximately 2,000 additional compliance checks at off-premises retail locations due to the provision allowing employees to be 18 years told to sell full-strength alcohol.

The fiscal note estimate of 1.0 FTE is based on the following assumptions:

- less staff time will initially be required to enforce changes to public consumption, as the impact depends on the number of local jurisdictions that adopt policies, the requirements in and timing of those policies, and the local enforcement resources available for enforcement;
- less staff time is required to handle enforcement at additional tastings, as the number of licensees that can offer tastings does not change; and
- allowing employees between the ages of 18 and 21 to sell full-strength alcohol does not necessarily mean that additional underage sales violations will occur and that more enforcement is required. In addition, the total number of FMB, retail liquor store, and liquor-licensed drugstore licensees is not expected to change. The least cost alternative is for the LED to include underage sales violations in its current enforcement structure.

State and Local Government Contacts

Counties	Judicial	Law
Municipalities	Natural Resources	Public Safety
Revenue		