SB 18-198

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 18-0789	**Date:**	June 8, 2018
Prime Sponsors:	Sen. Scott	**Bill Status:**	Postponed Indefinitely
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Bill Topic: FERMENTED MALT BEVERAGE EXPANDED MALT LIQUOR

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

The bill establishes the difference between 3.2 and full-strength beer and creates a new expanded retailer's license to allow for the sale of 3.2 and full-strength beer for off-premises consumption. The bill increases state and local revenue and state expenditures beginning in FY 2018-19.

Appropriation Summary: For FY 2018-19, the bill requires an appropriation of $119,274 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the introduced bill, and has been updated with new information. The bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 18-198

		FY 2018-19	FY 2019-20
Revenue	General Fund	$29,878	$2,560
	Cash Funds	$528,350	$125,163
	Total	**$558,228**	**$127,723**
Expenditures	Cash Funds	$119,274	$3,727
	Centrally Appropriated	$38,120	$1,657
	Total	**$157,394**	**$5,384**
	Total FTE	**2.3 FTE**	**0.1 FTE**
Transfers		-	-
TABOR Refund	General Fund	$558,228	$127,723

Summary of Legislation

The bill makes changes to state law related to the regulation of 3.2 and full-strength beer.

Definitions. Under current law, fermented malt beverages (3.2 beer) may not exceed 3.2 percent alcohol by weight or 4 percent by volume and malt liquor (full-strength beer) only includes beer exceeding 3.2 percent by weight. Beginning January 1, 2019, there is no longer a distinction between 3.2 and full-strength beer under current law. The bill continues the current distinction between 3.2 and full-strength beer.

New expanded retailer's license. Under current law, there are three license types available that allow the sale of 3.2 beer: on-premises consumption, off-premises consumption, and on/off premises consumption licenses. The bill creates a new expanded retailer's license to permit the sale of 3.2 and full-strength beer at retail. The annual state licensing fee for an expanded retailer's license is $75, and the state licensing authority may set application fees for the license. A local licensing authority may not accept applications for a new expanded retailer license prior to January 1, 2019, and may not issue a new license:

- if it would add an undue concentration of licenses or require use of additional law enforcement resources; or
- if the location is located within 1,500 feet of a licensed 3.2 beer off-premises retailer, retail liquor store, or liquor-licensed drugstore, or within 3,000 feet of those licensees in a municipality with a population of 10,000 or less.

Expanded retailer's licensees may not:

- sell full-strength beer in single-serve containers;
- allow employees under the age of 21 to sell beer, check age identification, make deliveries beyond the parking area, or have contact with alcohol; and
- sell beer between midnight and 8 a.m., or without checking the identification of the customer.

License conversion. The bill allows licensees who hold a 3.2 off-premises license prior to January 1, 2019, to convert their license to an expanded retailer's license. Licensees must:

- notify state and local licensing authorities between July 1, 2018, and January 1, 2019, of their intent to convert the license; and
- not expand the floor or cooler space and number of stock keeping units, or SKUs, dedicated to 3.2 beer as of July 1, 2018, in order to accommodate both 3.2 beer and full-strength beer.

If a licensee fails to meet these conditions, the retailer may not convert their license to an expanded retailer's license and must meet the radius and undue concentration requirements listed above for a new expanded retailer's license.

On/off premises license*.* The bill eliminates the 3.2 beer on/off premises consumption license beginning January 1, 2019, and allows current licensees to convert their license to either a 3.2 on-premises, off-premises, or expanded retailer's license when their license is up for renewal.

Identification requirements. Under current law, retail licensees selling 3.2 beer are not required to verify that consumers are at least 21 years of age by checking a valid identification. The bill specifies that retail licensees selling any alcohol beverage must require age verification, as long as the person reasonably looks to be under 50 years old.

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, and establishing radius requirements for any new off-premises retail licensee.

Current licensees. Under current law, 3.2 beer retail licenses authorize a licensee to sell 3.2 beer for either on-premises consumption, off-premises consumption, or on and off premises consumption. As of March 2018, there are 1,549 3.2 beer retail licensees, of which 1,477 are licensed for off-premises consumption and 72 for on and off premises consumption.

Fee breakdown. For a new 3.2 beer retail license or to process a license conversion, applicants must pay a one-time state application fee of $1,550 and a state license fee of $75. The local licensing fee is $25 in a city and $50 in a county, plus any application fee, not to exceed $1,000, assessed by the local licensing authority. For a license renewal, only the licensing fees are required. State liquor license fees are split between the General Fund and the Liquor Enforcement Division (LED) Cash Fund. In addition, the state receives 85 percent of local licensing fees, which are deposited into the Old Age Pension Fund.

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 the unlawful acts associated with the new expanded retailer's license with the unlawful acts for the current 3.2 retail licenses. A majority of licensees that hold the new license are currently licensed and subject to the same provisions. In addition, the bill specifies that 3.2 licensees must verify the age and identification of consumers who reasonably appear to be under 50. The fiscal note assumes that licensees will follow state law and the requirements of their license or risk their license. As a result, the fiscal note assumes that any increase in cases as a result of the bill will be negligible and there will be no tangible impact to the judicial or court system.

Assumptions

3.2 off-premises licenses. Of the 1,477 entities licensed for 3.2 off-premises consumption, the fiscal note assumes that:

- 75 percent (1,108) will convert their existing 3.2 off-premises license to the new expanded retailer's license, which allows them to sell 3.2 and full-strength beer, prior to January 1, 2019;
- 20 percent (295) will obtain a new expanded retailer's license after January 1, 2019; and
- 5 percent (74) will keep their current license.

3.2 on/off premises licenses. Of the 72 entities licensed for 3.2 on/off-premises consumption, the fiscal note assumes that:

- 30 percent (22) will convert their license to a 3.2 off-premises license;
- 30 percent (22) will convert their license to a 3.2 on-premises license; and
- 40 percent (28) will obtain a new expanded retailer's license after January 1, 2019.

Timing. The fiscal note assumes that all conversions to an expanded retailer's license (1,108), half the 3.2 on/off conversions (22), and 75 percent of new expanded retailer's license applications (242) will occur in FY 2018-19. The fiscal note assumes that half the 3.2 on/off conversions (22), and 25 percent of new expanded retailer's license applications from currently licensed 3.2 retailers (81) will occur in FY 2019-20.

New expanded retailer's license. The fiscal note assumes that the number of applicants for a new expanded retailer's license who do not hold currently a liquor license will be minimal and can be accomplished within LED's regular workload.

State Revenue

In FY 2018-19, the bill increases revenue to the LED Cash Fund by $528,350, to the General Fund by $15,130, and to the Old Age Pension Fund by $14,748. In FY 2019-20, the bill increases revenue to the LED Cash Fund by $125,163 and to the General Fund by $2,560. The revenue increase is from fines and fees, as discussed below.

Fine revenue. The bill increases fine revenue from 3.2 licensees who commit violations related to checking a customer's identification to verify his or her age. Such a violation is typically assessed in conjunction with violations for sale to minors; in FY 2016-17, there were 32 violations by 3.2 licensees. Based on the bill's effective date, the fiscal note assumes 16 violations will occur in FY 2018-19 and 32 in FY 2019-20. Assuming the average $80 fine, the bill increases fine revenue to the General Fund by $1,280 in FY 2018-19 and $2,560 in FY 2019-20.

Fee impact on licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The application fee amounts are estimates only, actual fees will be set administratively by LED based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee. Licensing fees are set in statute.

Licensees are required to pay both the application fee and state license fee to obtain a new license. Only license fees are required to renew a current license; the $75 license fee is the same for all 3.2 licenses. Because all 3.2 licensees would pay the $75 fee to renew their license under current law, license fee revenue only increases from those 3.2 off-premises licensees who have already renewed their license in 2018 and would thus be paying a second licensing fee in order to convert their license to an expanded retailer's license before January 1, 2019. The table below identifies the fee impact of this bill.

Table 2
Fee Impact on 3.2 Beer Licensees

Fiscal Year	License Type	Fee	Number Affected	Total Fee Impact
FY 2018-19	Application Fee	$1,550.00	323	$500,650
	State License Fee	$75.00	554	$41,550
	Local License Fee - city (state portion)	$21.25	416	$8,840
	Local License Fee - county (state portion)	$42.50	139	$5,908
			TOTAL	**$556,948**
			LED Cash Fund	*$528,350*
			General Fund	*$13,850*
			Old Age Pension Fund (General Fund)	*$14,748*
FY 2019-20	Application Fee	$1,550.00	81	$125,550
			TOTAL	**$125,550**
			LED Cash Fund	*$125,550*

TABOR Refund

The bill increases state cash fund and General Fund revenue subject to TABOR by $558,228 in FY 2018-19 and $127,723 in FY 2019-20, which will increase 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 in the Department of Revenue by $157,394 and 2.3 FTE in FY 2018-19 and $5,384 and 0.1 FTE in FY 2019-20 from the LED Cash Fund. Costs are listed in Table 3 and discussed below.

Table 3
Expenditures Under SB 18-198

	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	$85,721	$3,727
Operating Expenses and Capital Outlay Costs	$12,553	-
Computer Programming	$21,000	-
Centrally Appropriated Costs*	$38,120	$1,657
FTE – Personal Services	2.3 FTE	0.1 FTE
Total Cost	**$157,394**	**$5,384**
Total FTE	**2.3 FTE**	**0.1 FTE**

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

Personal services. The LED requires 2.3 FTE in FY 2018-19 and 0.1 FTE in FY 2019-20 to implement the new license; process license conversions and applications; and respond to questions regarding the licensing changes. The FTE amounts are based on the license assumptions above and the assumption that LED requires four hours per license conversion and two hours per new license application. The fiscal note assumes a July 1, 2018, start date for the staffing requirement, in advance of the expanded retailer's license being effective January 1, 2018. Capital outlay and operating expenses include costs to update signage provided to 3.2 retailers related to identification requirements.

Computer programming. In FY 2018-19 only, LED requires $21,000 to update the MyLicense Office licensing system to include the new license types.

Legal services. In FY 2018-19 only, the bill increases workload for LED by a minimal amount to conduct rulemaking. Legal services are provided by the Department of Law. The rulemaking is expected to be accomplished with DOR's current allotment of legal services.

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 and supplemental employee retirement payments, and leased space are estimated to be $38,120 in FY 2018-19, and $1,657 in FY 2019-20.

Local Government

The bill increases revenue and expenditures for local licensing authorities, as discussed below.

Revenue. The bill increases revenue to local licensing authorities from fees assessed for new or converted licenses under the bill. Application fees are set by each local licensing authority, and the statutorily-set local licensing fee for a 3.2 retail license is $25 in a city and $50 in a county, of which $3.75 in a city and $7.50 in a county is retained by the local licensing authority. The revenue increase will vary based on application fees assessed by the local licensing authority and the number of license applications or conversions.

Expenditures. The bill increases workload and expenditures for local licensing authorities to update rules and materials to include the new expanded retailer's license, process license conversions, and adjust enforcement procedures. The increase varies among local licensing authority and depends on the number of retailers in the area.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on May 7, 2018.

State Appropriations

For FY 2018-19, the bill requires an appropriation of $119,274 from the Liquor Enforcement Division Cash Fund to the Department of Revenue, and an allocation of 2.3 FTE.

State and Local Government Contacts

Counties	Judicial	Law
Municipalities	Public Safety	Revenue