SB 18-243

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 18-0180	**Date:**	April 18, 2018
Prime Sponsors:	Sen. Holbert; Guzman Rep. Esgar; McKean	**Bill Status:**	Senate SVMA
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Bill Topic: RETAIL SALES ALCOHOL BEVERAGES

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☒ TABOR Refund
- ☒ 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 an appropriation of $87,592 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under SB 18-243

		FY 2018-19	FY 2019-20
Revenue	General Fund	($20,000)	($20,000)
	Total	**($20,000)**	**($20,000)**
Expenditures	Cash Funds	$87,592	$73,296
	Centrally Appropriated	$19,153	$19,103
	Total	**$106,745**	**$92,399**
	Total FTE	**1.1 FTE**	**1.0 FTE**
Transfers		-	-
TABOR Refund	General Fund	($20,000)	($20,000)

Summary of Legislation

Current definitions. 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.

Current law. 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, employees of FMB retailers who are under 21 years old may not sell or have any contact with alcohol. In addition, new FMB off-premises licensees or licenses renewed 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;
- limit the shelf space dedicated to beer to 100 linear feet for locations with 10,000 square feet or less of retail space and 300 linear feet for locations with more than 10,000 square feet of retail space.
- 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 or loyalty program. This price requirement also applies to alcohol sold by retail liquor stores under the bill.

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.

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;
- the radius requirements will apply to new FMB off-premises licenses; 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.

No new or relocated FMB off-premises licenses 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.

Local licensing authorities. Under the bill, local jurisdictions may adopt a temporary moratorium on new FMB off-premises licenses, as long as the moratorium is not in effect after December 31, 2018. Local licensing authorities may also deny a new FMB off-premises license if the new license would result in an undue concentration of licenses or would require additional law enforcement resources.

Public consumption. Current law prohibits public consumption of full-strength beer, wine, and spirits, with certain exceptions. The bill specifies that the prohibition extends to fermented malt beverages. In addition, the bill specifies that public consumption of alcohol may occur as authorized by local jurisdictions and by the Parks and Wildlife Commission at recreational properties.

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 allows a liquor-licensed drugstore licensee that was licensed on February 21, 2016, who converted their licensed to a retail liquor store license after February 21, 2016, and that applied on or before May 1, 2017, to convert their license back to a retail liquor store license, to obtain additional licenses based on the schedule in statute.

Under the bill, liquor-licensed drugstores that applied for their license on or after July 1, 2016, may obtain additional licenses as follows:

- January 1, 2019, through December 31, 2021, one additional license (two total);
- January 1, 2022, through December 31, 2026, two additional licenses (three total); and
- beginning January 1, 2027, three additional licenses (four total).

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. This fine amount ranges from $200 to $5,000 per violation. The bill specifies that if the licensing authority grants the petition to pay a fine for violations related to serving a minor or someone visibly intoxicated, the fine is $1,000 per offense and the licensing authority may not take into account violations 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 open containers. 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 customer return.

Deliveries. Deliveries made by retail liquor stores or liquor-licensed drugstores must meet certain requirements, including that the person delivering the alcohol must be at least 21 years of age 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.

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 decreases state General Fund revenue by about $20,000 annually beginning in FY 2018-19. Fee revenue to the Liquor Enforcement Division (LED) Cash Fund may also be impacted by a minimal amount, as discussed below. The fiscal note assumes that any revenue impact in the current FY 2017-18 will be minimal.

Fine revenue. The bill decreases revenue from fines by about $20,000 annually beginning in FY 2018-19. 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 sets the fine at $1,000 per violation, should the LED grant a petition for a fine.

In 2017, there were approximately 155 violations issued by the LED for service to an underage or visibly intoxicated person that resulted in a fine. Based on estimated average fine amounts and the assumptions that the same number of violations will occur in future years and some violators will no longer petition for a fine instead of a suspension, fine revenue will decrease by approximately $20,000. This decrease is driven by the decrease in revenue from the approximately 25 percent of violators who receive fines in excess of $2,000 that will receive a lower fine as a result of the bill.

Fee impact on licensees. 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 may be impacted in the following ways:

- To the extent that local licensing authorities adopt temporary moratoriums on new FMB off-premises licenses, state revenue to the General Fund and LED Cash Fund will decrease in FY 2018-19 only. Any decrease will be minimal and will depend on the number and size of the jurisdictions that adopt a moratorium.

- 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

This bill reduces state General Fund revenue from fines, which will reduce the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. A TABOR refund obligation is not expected for the current FY 2017-18. Since the bill reduces revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money for the General Fund budget in the future during years when the state does not collect revenue above the TABOR limit. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

The bill increases state expenditures by $106,745 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.

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
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	**$106,745**	**$92,399**
Total FTE	**1.1 FTE**	**1.0 FTE**

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

Personal services. 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 tastings, delivery, and public consumption of alcohol. Associated operating costs include the required law enforcement equipment for a criminal investigator. 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.

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.

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 impacts local revenue in several ways. First, fine revenue from sales to underage or visibly intoxicated people may be impacted, depending on current fine amounts. Next, to the extent that local licensing authorities adopt temporary moratoriums on new FMB off-premises licenses, fee revenue will decrease in FY 2018-19 only. 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 temporary moratoria on new FMB off-premises licenses or adopt public consumption-related ordinances, workload will increase. In addition, workload will increase for local licensing authorities and law enforcement to adjust enforcement procedures, including procedures related to tastings, delivery, and public consumption, and to process additional liquor-licensed drugstore applications.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, with the following exceptions:

- the provision eliminating the FMB on/off premises license takes effect July 1, 2019; and
- the provisions related to new requirements for FMB retailers, delivery, single entity, and below-cost purchasing by retail liquor store and liquor-licensed drugstores, and other unlawful acts takes effect January 1, 2019.

State Appropriations

For FY 2018-19, the bill requires an appropriation of $87,592 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 $225,853 and 2.1 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, and to handle enforcement at an increased number of tastings. The department's estimate also includes $3,500 to update the MyLo computer system with a delivery permit for retail liquor store and liquor-licensed drugstores.

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;
- the department has the authority to issue delivery permits under current law, and the bill does not require that such permits be issued; and
- less staff time is required to handle enforcement at additional tastings, as the number of licensees that can offer tastings does not change.

State and Local Government Contacts

Counties	Judicial	Law
Municipalities	Natural Resources	Public Safety
Revenue		