

Liquor Control Act Task Force Recommendations*

Pursuant to Senate Memorial 77 (214)

The New Mexico Alcohol & Gaming Division ("AGD") was mandated to review the New Mexico Liquor Control Act ("Act") to create a Task Force and to come up with changes to that Act. The AGD formed a Task Force made up of but not limited to hospitality, tourism, restaurants, retailers, petroleum retailers, grocers, brewers and distillers, wineries and wholesalers and others pursuant to SM-77 with the mandate to come up with the findings and recommendation of the Task Force with their suggested changes to the Act subject to SM-77. The AGD then divided the Task Force into four (4) subcommittees (1. Public Safety & Enforcement, 2. Current Quota Liquor License Holders, 3. Economic Development and 4. Trade Practices) to hold meetings and come up with the suggested changes in each of their areas of the Act as mandated by SM-77 per Senator Griego, the sponsor of that bill. The following are the final recommendation for change to the Act by the 4 subcommittees and voted on and approved by the Task Force as a whole:

Public Safety & Enforcement Subcommittee Recommendations

1. Introduce strategies to prevent/discourage discount or predatory pricing.
2. Expand definition of alcohol under the LCA to include powdered or frozen alcohol. *Current liquor law applies only to liquid alcohol.*

Current Quota Liquor License Holders Subcommittee Recommendations

1. Amend the Liquor Control Act to ease the fingerprint restrictions on corporate stockholders who do not have active participation in the operation of a liquor license.
2. Amend Section 60-6B-12 by removing 60-6B-12A(1). This would allow "stranded" licenses to transfer out of under quota LODs.
3. Amend Section 60-6B-12 by eliminating 60-6B-12A(4). This would delete the one year operation provision in the Act.
4. Allow for a Local Option Election in non-Class A counties to authorize a Rural County Lottery License for each of those counties under quota. In any calendar year, only 5 of these lottery licenses would be issued.

5. Make changes to the Special Dispenser's Permits authorized by current law, allowing them to be issued on a countywide basis. The SDPs would be subject to appropriately enhanced administrative penalties independent of the permit holder's primary license, including suspension and revocation of the permit. A third violation within the period of one year would operate as a citation against the primary license of the permit holder.

Economic Development Subcommittee Recommendations

Manufacturers Section

1. Allow for parity among craft manufacturers (brewers, winegrowers, distillers), including but not limited to such items as allowing each craft manufacturer 3 off-site tasting rooms. *For instance, current law allows winegrowers to have 3 off-site tasting rooms but brewers and distillers are limited to 2.*
2. Allow for alternating proprietorship of licensed production facilities. Alternating proprietorships are authorized by the Federal Tax & Trade Bureau as well as a majority of states. They allow bona fide craft manufacturers the ability to "rent" excess capacity (space & equipment) to small or start-up entities.
3. Adopt statutory "growler" language as approved packaging for the sale of beer and cider. Growlers must be appropriately cleaned, filled and sealed by the licensee selling the product for off-site consumption. Growlers are authorized by the Federal Tax and Trade Bureau and are approved for bottling and consumer sale purposes in virtually every state. *Currently, the AGD authorizes growler "bottling" and refills by policy so this would place it in statute instead.*

Rural Economic Development Section

1. Allow the rural dispenser liquor licenses to be able to transfer county-wide.
2. Create a new state license classified as a "rural replacement dispenser license" to replace quota dispenser licenses transferred out of a rural location. Availability would be by lottery. This license would be non-transferable.
3. Extend restaurant beer & wine license hours until midnight on Friday and Saturday nights. *Current law requires alcohol sales to cease at 11pm.*

Trade Practices Subcommittee Recommendations

1. Address when returns of purchased alcohol become consignment sales by defining “commercially reasonable” reasons for returns, including breakage issues and allowances to return product that is close to code (near spoilage).
2. Make changes to the Tasting Permit authorized by current law to be conducted on a licensed premise. The Tasting Permit would be subject to appropriately enhanced administrative penalties independent of the permit holder’s primary license, including suspension and revocation of the permit. A third violation within the period of one year would operate as a citation against the primary license of the permit holder.
3. Authorize the establishment of purchasing co-ops/ad groups/pools for independent retailers.
4. Prohibit predatory pricing/below cost sales.

* These final findings and recommendations Of the Task Force were voted on by the Task Force as a whole on June 4, 2014 at the Gaming Control Office meeting room in Albuquerque.

Liquor Control Act Task Force Recommendations Ballot

Public Safety & Enforcement Subcommittee Recommendations

- 4B-243
1. Amend NMSA section 60-6B-4 D (1) to require 30 days' notice of a license hearing in newspapers and on the LOD's website. *Current law requires 15 days' notice in a newspaper of general circulation.*

Failed Yes 13 No 18

2. Add language to NMSA section 60-6B-4 F to allow LODs to disapprove the issuance or transfer of a license based on factors such as type of license, proximity to other licenses, occupancy load/square footage of licensed premises, pricing, service of food, etc. *Current law allows LODs to disapprove license applications under LCA guidelines, but case law obligates the AGD Director to disregard LOD disapprovals that are not supported by substantial evidence.*

Failed Yes 10 No 21

3. Expand SID's scope of authority to allow SID to partner with community organizations.

Failed Yes 14 No 17

4. Introduce strategies to prevent/discourage discount or predatory pricing.

Passed Yes 28 No 3

5. Expand definition of alcohol under the LCA to include powdered or frozen alcohol. *Current liquor law applies only to liquid alcohol.*

Passed Yes 27 No 4

Current Quota Liquor License Holders Subcommittee Recommendations

1. Amend the Liquor Control Act to ease the fingerprint restrictions on corporate stockholders who do not have active participation in the operation of a liquor license.

Passed Yes 24 No 7

2. Amend Section 60-6B-12 by removing 60-6B-12A(1). This would allow "stranded" licenses to transfer out of under quota LODs.

Passed Yes 30 No 1

3. Amend Section 60-6B-12 by eliminating 60-6B-12A(4). This would allow licenses to transfer into LODs which are over quota.

Passed Yes 21 No 10

4. Allow for a Local Option Election in non-Class A counties to authorize a Rural County Lottery License for each of those counties under quota. In any calendar year, only 5 of these lottery licenses would be issued.

Passed Yes 28 No 3

5. Make changes to the Special Dispenser's Permits authorized by current law, allowing them to be issued on a county wide basis. The SDPs would be subject to appropriately enhanced administrative penalties independent of the permit holder's primary license, including suspension and revocation of the permit. A third violation within the period of one year would operate as a citation against the primary license of the permit holder.

Passed Yes 26 No 5

Economic Development Subcommittee Recommendations

Manufacturers Section

1. Allow for parity among craft manufacturers (brewers, winegrowers, distillers), including but not limited to such items as allowing each craft manufacturer 3 off-site tasting rooms. *For instance, current law allows winegrowers to have 3 off-site tasting rooms but brewers and distillers are limited to 2.*

Passed Yes 23 No 8

2. Allow for alternating proprietorship of licensed production facilities. Alternating proprietorships are authorized by the Federal Tax & Trade Bureau as well as a majority of states. They allow bona fide craft manufacturers the ability to "rent" excess capacity (space & equipment) to small or start-up entities.

Passed Yes 25 No 6

3. Adopt statutory "growler" language as approved packaging for the sale of beer and cider. Growlers must be appropriately cleaned, filled and sealed by the licensee selling the product for off-site consumption. Growlers are authorized by the Federal Tax and Trade Bureau and are approved for bottling and consumer sale purposes in virtually every state. *Currently, the AGD authorizes growler "bottling" and refills by policy so this would place it in statute instead.*

Passed Yes 26 No 5

Rural Economic Development Section

1. Allow the rural dispenser liquor licenses to be able to transfer county-wide.
Passed **Yes** 25 **No** 6

2. Create a new state license classified as a "rural replacement dispenser license" to replace quota dispenser licenses transferred out of a rural location. Availability would be by lottery. This license would be non-transferable.
Passed **Yes** 19 **No** 12

3. Extend restaurant beer & wine license hours until midnight on Friday and Saturday nights. *Current law requires alcohol sales to cease at 11pm.*
Passed **Yes** 18 **No** 13

4. Create a new state license classified as a "wine bar" that allows the license holder to serve wine only (no beer or spirits) and has an occupancy limit. This license would be non-transferable.
Failed **Yes** 13 **No** 18

5. Create a new state license classified as a "tavern license" that allows for on-site consumption and package sales of craft beer, wine & spirits. This license would be non-transferable.
Failed **Yes** 12 **No** 19

6. Create a new state license classified as a "limited spirits license", available outside of Class A counties in Historic/Cultural District so designated by the local governing body. It would allow the service of limited distilled spirits, such as any combination of 12 distilled spirits and 6 liqueurs. This license would be non-transferable, have a maximum building occupancy requirement and would require 60% of sales to be food.
Failed **Yes** 10 **No** 21

Trade Practices Subcommittee Recommendations

1. Address when returns of purchased alcohol become consignment sales by defining "commercially reasonable" reasons for returns, including breakage issues and allowances to return product that is close to code (near spoilage).

Passed **Yes** 30 **No** 1

2. Make changes to the Tasting Permit authorized by current law to be conducted on a licensed premise. The Tasting Permit would be subject to appropriately enhanced administrative penalties independent of the permit holder's primary license, including suspension and revocation of the permit. A third violation within the period of one year would operate as a citation against the primary license of the permit holder.

Passed **Yes** 24 **No** 7

3. Authorize the establishment of purchasing co-ops/ad groups/pools for independent retailers.

Passed **Yes** 23 **No** 8

4. Prohibit predatory pricing/below cost sales.

Passed **Yes** 28 **No** 3

5. Allow for home delivery of alcohol, making sure to check IDs at the time of delivery and include other specific language to deal with underage issues.

Failed **Yes** 12 **No** 19