

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 223

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO STATE AGENCIES; CLARIFYING THE POWERS AND DUTIES OF
THE ALCOHOL AND GAMING DIVISION OF THE REGULATION AND LICENSING
DEPARTMENT AND THE DIRECTOR OF THAT DIVISION; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-16-4 NMSA 1978 (being Laws 1983,
Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED. -- There is created in the
executive branch the "regulation and licensing department".

The department shall not be a cabinet department. The
department shall consist of but not be limited to ~~five~~ six
divisions as follows:

A. the administrative services division;

- 1 B. the construction industries division;
- 2 C. the financial institutions division;
- 3 D. the securities division; [~~and~~]
- 4 E. the manufactured housing division; and
- 5 F. the alcohol and gaming division. "

6 Section 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,
7 Chapter 39, Section 3, as amended) is amended to read:

8 "60-3A-3. DEFINITIONS. -- As used in the Liquor Control
9 Act:

10 A. "alcoholic beverages" means distilled or
11 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
12 and aromatic bitters bearing the federal internal revenue strip
13 stamps or any similar alcoholic beverage, including blended or
14 fermented beverages, dilutions or mixtures of one or more of
15 the foregoing containing more than one-half of one percent
16 alcohol, but excluding medicinal bitters;

17 B. "beer" means [~~any~~] an alcoholic beverage
18 obtained by the fermentation of any infusion or decoction of
19 barley, malt and hops or other cereals in water, and includes
20 porter, beer, ale and stout;

21 C. "brewer" means [~~any~~] a person who owns or
22 operates a business for the manufacture of beer;

23 D. "club" means:

- 24 (1) any nonprofit group, including an

1 auxiliary or subsidiary group, organized and operated under the
 2 laws of this state with a membership of not less than fifty
 3 members who pay membership dues at the rate of not less than
 4 five dollars (\$5.00) per year and who, under the constitution
 5 and bylaws of the club, have all voting rights and full
 6 membership privileges and which group is the owner, lessee or
 7 occupant of premises used exclusively for club purposes and
 8 which group the director finds:

9 (a) is operated solely for recreation,
 10 social, patriotic, political, benevolent or athletic purposes;
 11 and

12 (b) the proposed licensee has been
 13 granted an exemption by the United States from the payment of
 14 the federal income tax as a club under the provisions of
 15 Section 501(a) of the Internal Revenue Code of 1986, as amended
 16 or, if the applicant has not operated as a club for a
 17 sufficient time to be eligible for the income tax exemption, it
 18 must execute and file with the director a sworn letter of
 19 intent declaring that it will, in good faith, apply for such
 20 exemption as soon as it is eligible; or

21 (2) an airline passenger membership club
 22 operated by an air common carrier [~~which~~] that maintains or
 23 operates a clubroom at an international airport terminal. For
 24 the purposes of this paragraph, "air common carrier" means a
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1 person engaged in regularly scheduled air transportation
2 between fixed termini under a certificate of public convenience
3 and necessity issued by the civil aeronautics board;

4 E. "commission" means the secretary of public
5 safety when the term is used in reference to the enforcement
6 and investigatory provisions of the Liquor Control Act and
7 means the superintendent of regulation and licensing when the
8 term is used in reference to the licensing provisions of the
9 Liquor Control Act;

10 F. "department" means the special investigations
11 division of the department of public safety when the term is
12 used in reference to the enforcement and investigatory
13 provisions of the Liquor Control Act and means the
14 [~~superintendent~~] director of the alcohol and gaming division of
15 the regulation and licensing department when the term is used
16 in reference to the licensing provisions of the Liquor Control
17 Act;

18 G. "director" means the director of the special
19 investigations division of the department of public safety
20 when the term is used in reference to the enforcement and
21 investigatory provisions of the Liquor Control Act and means
22 the [~~superintendent~~] director of the alcohol and gaming
23 division of the regulation and licensing department when the
24 term is used in reference to the licensing provisions of the
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1 Liquor Control Act;

2 H. "dispenser" means [~~any~~] a person licensed under
3 the provisions of the Liquor Control Act selling, offering for
4 sale or having in his possession with the intent to sell
5 alcoholic beverages both by the drink for consumption on the
6 licensed premises and in unbroken packages for consumption and
7 not for resale off the licensed premises;

8 I. "distiller" means [~~any~~] a person engaged in
9 manufacturing spirituous liquors;

10 J. "golf course" means a tract of land and
11 facilities used for playing golf and other recreational
12 activities that includes tees, fairways, greens, hazards,
13 putting greens, driving ranges, recreational facilities,
14 patios, pro shops, cart paths and public and private roads that
15 are located within the tract of land;

16 K. "governing body" means the board of county
17 commissioners of a county or the city council or city
18 commissioners of a municipality;

19 L. "hotel" means [~~any~~] an establishment or complex
20 having a resident of New Mexico as a proprietor or manager and
21 where, in consideration of payment, meals and lodging are
22 regularly furnished to the general public. The establishment
23 or complex must maintain for the use of its guests a minimum of
24 twenty-five sleeping rooms;

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1 M "licensed premises" means the contiguous areas
2 or areas connected by indoor passageways of a structure and the
3 outside dining, recreation and lounge areas of the structure
4 that are under the direct control of the licensee and from
5 which the licensee is authorized to sell, serve or allow the
6 consumption of alcoholic beverages under the provisions of its
7 license; provided that in the case of a restaurant, hotel, golf
8 course or racetrack, "licensed premises" includes all public
9 and private rooms, facilities and areas in which alcoholic
10 beverages are sold or served in the customary operating
11 procedures of the restaurant, hotel, golf course or racetrack;

12 N. "local option district" means ~~[any]~~ a county
13 ~~[which]~~ that has voted to approve the sale, serving or public
14 consumption of alcoholic beverages, or any incorporated
15 municipality ~~[which]~~ that falls within a county ~~[which]~~ that
16 has voted to approve the sale, serving or public consumption of
17 alcoholic beverages, or any incorporated municipality of over
18 five thousand population ~~[which]~~ that has independently voted
19 to approve the sale, serving or public consumption of alcoholic
20 beverages under the terms of the Liquor Control Act or any
21 former act;

22 O. "manufacturer" means a distiller, rectifier,
23 brewer or winer;

24 P. "minor" means ~~[any]~~ a person under twenty-one
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1 years of age;

2 Q. "package" means [~~any~~] an immediate container of
3 alcoholic beverages [~~which~~] that is filled or packed by a
4 manufacturer or wine bottler for sale by the manufacturer or
5 wine bottler to wholesalers;

6 R. "person" means an individual, corporation, firm,
7 partnership, copartnership, association or other legal entity;

8 S. "rectifier" means [~~any~~] a person who blends,
9 mixes or distills alcohol with other liquids or substances for
10 the purpose of making an alcoholic beverage for the purpose of
11 sale other than to the consumer by the drink, and includes all
12 bottlers of spirituous liquors;

13 T. "restaurant" means [~~any~~] an establishment having
14 a New Mexico resident as a proprietor or manager [~~which~~] that
15 is held out to the public as a place where meals are prepared
16 and served primarily for on-premises consumption to the general
17 public in consideration of payment and [~~which~~] that has a
18 dining room, a kitchen and the employees necessary for
19 preparing, cooking and serving meals; provided that
20 "restaurant" does not include establishments as defined in
21 [~~regulations~~] rules promulgated by the director serving only
22 hamburgers, sandwiches, salads and other fast foods;

23 U. "retailer" means [~~any~~] a person licensed under
24 the provisions of the Liquor Control Act selling, offering for
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1 sale or having in his possession with the intent to sell [any]
2 alcoholic beverages in unbroken packages for consumption and
3 not for resale off the licensed premises;

4 V. "spirituous liquors" means alcoholic beverages
5 as defined in Subsection A of this section except fermented
6 beverages such as wine, beer and ale;

7 W. "wholesaler" means [any] a person whose place of
8 business is located in New Mexico and who sells, offers for
9 sale or possesses for the purpose of sale any alcoholic
10 beverages for resale by the purchaser;

11 X. "wine" includes the words "fruit juices" and
12 means alcoholic beverages obtained by the fermentation of the
13 natural sugar contained in fruit or other agricultural
14 products, with or without the addition of sugar or other
15 products, [which] that do not contain less than one-half of one
16 percent nor more than twenty-one percent alcohol by volume;

17 Y. "wine bottler" means [any] a New Mexico
18 wholesaler who is licensed to sell wine at wholesale for resale
19 only and who buys wine in bulk and bottles it for wholesale
20 resale;

21 Z. "winegrower" means [any] a person who owns or
22 operates a business for the manufacture of wine; and

23 AA. "winer" means a winegrower. "

24 Section 3. Section 60-3A-6 NMSA 1978 (being Laws 1987,
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1 Chapter 254, Section 24) is amended to read:

2 "60-3A-6. AUTHORITY OF [PUBLIC SAFETY] DEPARTMENT OF
 3 PUBLIC SAFETY. -- The [~~public safety~~] department of public safety
 4 has authority over all investigations and enforcement
 5 activities required under the Liquor Control Act except for
 6 those provisions relating to the issuance, denial, suspension
 7 or revocation of licenses, unless its assistance is requested
 8 by the [~~superintendent~~] director of the alcohol and gaming
 9 division of the regulation and licensing department. "

10 Section 4. Section 60-3A-7 NMSA 1978 (being Laws 1987,
 11 Chapter 254, Section 25) is amended to read:

12 "60-3A-7. AUTHORITY OF THE ALCOHOL AND GAMING DIVISION. --
 13 The alcohol and gaming division of the regulation and licensing
 14 department has the authority over all matters relating to the
 15 issuance, denial, suspension or revocation of licenses under
 16 the Liquor Control Act. The [~~superintendent~~] director of the
 17 alcohol and gaming division of the regulation and licensing
 18 department may request the [~~public safety~~] department of public
 19 safety to provide investigatory and enforcement support as
 20 deemed necessary. "

21 Section 5. A new section of Chapter 60, Article 3A NMSA
 22 1978 is enacted to read:

23 "[NEW MATERIAL] POWERS AND DUTIES OF THE DIRECTOR OF THE
 24 ALCOHOL AND GAMING DIVISION. -- The director of the alcohol and
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1 gaming division of the regulation and licensing department is
2 responsible for the operation of the division. It is his duty
3 to supervise all operations of the division and to:

4 A. administer the laws that the division
5 administers, including the Liquor Control Act. The director
6 shall request the department of public safety to enforce the
7 provisions of the Liquor Control Act as deemed necessary;

8 B. exercise general supervisory authority over all
9 employees of the division;

10 C. organize the division into units to enable it to
11 function most effectively;

12 D. confer authority and delegate responsibility as
13 is necessary and appropriate;

14 E. employ, within the limitations of current
15 appropriations and personnel laws, persons as are required to
16 discharge his duties;

17 F. undertake studies and conduct courses of
18 instruction for division employees that will improve the
19 operations of the division and advance its purposes; and

20 G. require compliance by employees of the division
21 with his verbal and written instructions by whatever
22 disciplinary means appropriate. "

23 Section 6. A new section of Chapter 60, Article 3A NMSA
24 1978 is enacted to read:

1 " [NEW MATERIAL] ADMINISTRATIVE AUTHORITY AND POWERS. --

2 A. For the purpose of administering the licensing
3 provisions of the Liquor Control Act, the director is
4 authorized to examine and to require the production of any
5 pertinent records, books, information or evidence, to require
6 the presence of any person and to require him to testify under
7 oath concerning the subject matter of the inquiry and to make a
8 permanent record of the proceedings.

9 B. The director, through the legal counsel for the
10 alcohol and gaming division of the regulation and licensing
11 department, is vested with the power to issue subpoenas. In no
12 case shall a subpoena be made returnable less than five days
13 from the date of service.

14 C. A subpoena issued by the legal counsel for the
15 alcohol and gaming division of the regulation and licensing
16 department shall state with reasonable certainty the nature of
17 the evidence required to be produced, the time and place of the
18 hearing, the nature of the inquiry or investigation and the
19 consequences of failure to obey the subpoena, and shall bear
20 the seal of the department and be attested to by the director.

21 D. After service of a subpoena upon him, if a
22 person neglects or refuses to appear or produce records or
23 other evidence in response to the subpoena or neglects or
24 refuses to give testimony, as required, the director may invoke
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1 the aid of the New Mexico district courts in the enforcement of
2 the subpoena. In appropriate cases, the court shall issue its
3 order requiring the person to appear and testify or produce his
4 books or records and may, upon failure of the person to comply
5 with the order, punish the person for contempt.

6 E. The director shall request that the department
7 of public safety conduct an investigation and prepare a report
8 regarding confidential records and other information necessary
9 to administer the Liquor Control Act. When the director deems
10 it necessary, legal counsel for the alcohol and gaming division
11 of the regulation and licensing department may subpoena
12 confidential documents from the department of public safety
13 that are necessary to administer the Liquor Control Act. Any
14 identification records the department of public safety may
15 receive from the United States department of justice, including
16 identification records based on fingerprints, shall remain in
17 the possession of the department of public safety until such
18 time as they may subpoenaed and shall be used only to
19 effectuate the licensing purposes and provisions of the Liquor
20 Control Act. The alcohol and gaming division shall not
21 disseminate confidential information, except to law enforcement
22 agencies for official use only. The director shall establish
23 procedures within the alcohol and gaming division to maintain
24 the confidentiality of information subpoenaed for use by the
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1 division. "

2 Section 7. A new section of Chapter 60, Article 3A NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] ADMINISTRATIVE RULES AND ORDERS--
5 PRESUMPTION OF CORRECTNESS. --

6 A. The director shall issue and file as required by
7 law all rules and orders necessary to administer the licensing
8 provisions of the Liquor Control Act.

9 B. Directives issued by the director shall be in
10 form substantially as follows:

11 (1) rules are written statements of the
12 director, of general application to licensees, interpreting and
13 exemplifying the statutes to which they relate;

14 (2) rulings are written statements of the
15 director interpreting the statutes to which they relate and are
16 of limited application to one or a small number of licensees;
17 and

18 (3) orders are written statements of the
19 director to implement his decision after a hearing.

20 C. To be effective, a rule shall first be issued as
21 a proposed rule and filed for public inspection in the office
22 of the director. Distribution of the rule shall be made to
23 interested persons and their comments shall be invited. After
24 the proposed rule has been on file for thirty days and a public
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1 hearing has been held, the director may issue it as a final
2 rule by filing as required by law.

3 D. The director shall furnish a copy of the rules
4 to all licensees and other interested persons at a nominal
5 cost.

6 E. A rule or order issued by the director is
7 presumed to be a proper implementation of the licensing
8 provisions of the Liquor Control Act.

9 F. All rules and orders shall be applied
10 prospectively only. "

11 Section 8. A new section of Chapter 60, Article 3A NMSA
12 1978 is enacted to read:

13 " [NEW MATERIAL] WRITTEN DECISIONS BY DIRECTOR. -- Every
14 decision by the director relating to the granting or denial of
15 a license, the transfer of a license or the revocation or
16 suspension of a license, or other disposition of a charge
17 against a licensee, shall be accompanied by a written order
18 containing findings of fact and the specific grounds relied
19 upon for the decision. "

20 Section 9. REPEAL. -- Sections 60-4B-5 and 60-4B-6 NMSA
21 1978 (being Laws 1981, Chapter 39, Sections 8 and 9) are
22 repealed.

23 Section 10. EFFECTIVE DATE. -- The effective date of the
24 provisions of this act is July 1, 2001.

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