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HOUSE BILL 986

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Richard D. Vigil

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; DEFINING "LICENSED PREMISES"  
NOT TO INCLUDE FUELING STATION LOCATIONS; MAINTAINING CERTAIN  
RIGHTS IN LIQUOR LICENSES; PROVIDING A PERIOD OF TIME FOR  
LIQUOR LICENSES TO BE ASSIGNED, TRANSFERRED, SOLD OR LEASED;  
PROVIDING FOR THE SALE OF STOCKS OF ALCOHOLIC BEVERAGES.

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

Section 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
Chapter 39, Section 3, as amended) is amended to read:

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

A. "alcoholic beverages" means distilled or  
rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
and aromatic bitters bearing the federal internal revenue strip  
stamps or any similar alcoholic beverage, including blended or

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1 fermented beverages, dilutions or mixtures of one or more of  
2 the foregoing containing more than one-half percent alcohol,  
3 but excluding medicinal bitters;

4 B. "beer" means an alcoholic beverage obtained by  
5 the fermentation of any infusion or decoction of barley, malt  
6 and hops or other cereals in water, and includes porter, beer,  
7 ale and stout;

8 C. "brewer" means a person who owns or operates a  
9 business for the manufacture of beer;

10 D. "club" means:

11 (1) any nonprofit group, including an  
12 auxiliary or subsidiary group, organized and operated under the  
13 laws of this state, with a membership of not less than fifty  
14 members who pay membership dues at the rate of not less than  
15 five dollars (\$5.00) per year and who, under the constitution  
16 and bylaws of the club, have all voting rights and full  
17 membership privileges, and which group is the owner, lessee or  
18 occupant of premises used exclusively for club purposes and  
19 which group the director finds:

20 (a) is operated solely for recreation,  
21 social, patriotic, political, benevolent or athletic purposes;  
22 and

23 (b) has been granted an exemption by the  
24 United States from the payment of the federal income tax as a  
25 club under the provisions of Section 501(a) of the Internal

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1 Revenue Code of 1986, as amended, or, if the applicant has not  
2 operated as a club for a sufficient time to be eligible for the  
3 income tax exemption, it must execute and file with the  
4 director a sworn letter of intent declaring that it will, in  
5 good faith, apply for ~~such~~ an income tax exemption as soon as  
6 it is eligible; or

7 (2) an airline passenger membership club  
8 operated by an air common carrier that maintains or operates a  
9 clubroom at an international airport terminal. For the  
10 purposes of this paragraph, "air common carrier" means a person  
11 engaged in regularly scheduled air transportation between fixed  
12 termini under a certificate ~~[of public convenience and~~  
13 ~~necessity]~~ issued by the ~~[civil aeronautics board]~~ federal  
14 aviation administration;

15 E. "commission" means the secretary of public  
16 safety when the term is used in reference to the enforcement  
17 and investigatory provisions of the Liquor Control Act and  
18 means the superintendent of regulation and licensing when the  
19 term is used in reference to the licensing provisions of the  
20 Liquor Control Act;

21 F. "department" means the special investigations  
22 division of the department of public safety when the term is  
23 used in reference to the enforcement and investigatory  
24 provisions of the Liquor Control Act and means the director of  
25 the alcohol and gaming division of the regulation and licensing

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1 department when the term is used in reference to the licensing  
2 provisions of the Liquor Control Act;

3 G. "director" means the director of the special  
4 investigations division of the department of public safety  
5 when the term is used in reference to the enforcement and  
6 investigatory provisions of the Liquor Control Act and means  
7 the director of the alcohol and gaming division of the  
8 regulation and licensing department when the term is used in  
9 reference to the licensing provisions of the Liquor Control  
10 Act;

11 H. "dispenser" means a person licensed under the  
12 provisions of the Liquor Control Act selling, offering for sale  
13 or having in [~~his~~] the person's possession with the intent to  
14 sell alcoholic beverages both by the drink for consumption on  
15 the licensed premises and in unbroken packages for consumption  
16 and not for resale off the licensed premises;

17 I. "distiller" means a person engaged in  
18 manufacturing spirituous liquors;

19 J. "golf course" means a tract of land and  
20 facilities used for playing golf and other recreational  
21 activities that includes tees, fairways, greens, hazards,  
22 putting greens, driving ranges, recreational facilities,  
23 patios, pro shops, cart paths and public and private roads that  
24 are located within the tract of land;

25 K. "governing body" means the board of county

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1 commissioners of a county or the city council or city  
2 commissioners of a municipality;

3 L. "hotel" means an establishment or complex having  
4 a resident of New Mexico as a proprietor or manager and where,  
5 in consideration of payment, meals and lodging are regularly  
6 furnished to the general public. The establishment or complex  
7 must maintain for the use of its guests a minimum of twenty-  
8 five sleeping rooms;

9 M. "licensed premises" ~~[means]~~:

10 (1) includes the contiguous areas or areas  
11 connected by indoor passageways of a structure and the outside  
12 dining, recreation and lounge areas of the structure that are  
13 under the direct control of the licensee and from which the  
14 licensee is authorized to sell, serve or allow the consumption  
15 of alcoholic beverages under the provisions of its license;  
16 provided that in the case of a restaurant, including a  
17 restaurant that has operated continuously in two separate  
18 structures since July 1, 1987 and that is located in a local  
19 option district that has voted to disapprove the transfer of  
20 liquor licenses into that local option district, hotel, golf  
21 course or racetrack, "licensed premises" includes all public  
22 and private rooms, facilities and areas in which alcoholic  
23 beverages are sold or served in the customary operating  
24 procedures of the restaurant, hotel, golf course or racetrack;  
25 but

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1                   (2) does not include premises or a location  
2 where motor fuel or liquefied petroleum gases or compressed  
3 natural gases are sold for the generation of power in an  
4 internal combustion engine. For the purposes of this  
5 paragraph, "motor fuel" means any liquid product used for the  
6 generation of power in an internal combustion engine and  
7 "liquefied petroleum gases" and "compressed natural gases" have  
8 the meaning provided in the LPG and CNG Act;

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

18                   O. "manufacturer" means a distiller, rectifier,  
19 brewer or winer;

20                   P. "minor" means a person under twenty-one years of  
21 age;

22                   Q. "package" means an immediate container of  
23 alcoholic beverages that is filled or packed by a manufacturer  
24 or wine bottler for sale by the manufacturer or wine bottler to  
25 wholesalers;

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

3 S. "rectifier" means a person who blends, mixes or  
4 distills alcohol with other liquids or substances for the  
5 purpose of making an alcoholic beverage for the purpose of sale  
6 other than to the consumer by the drink, and includes all  
7 bottlers of spirituous liquors;

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

18 U. "retailer" means a person licensed under the  
19 provisions of the Liquor Control Act selling, offering for sale  
20 or having in [~~his~~] the person's possession with the intent to  
21 sell alcoholic beverages in unbroken packages for consumption  
22 and not for resale off the licensed premises;

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

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1           W. "wholesaler" means a person whose place of  
2 business is located in New Mexico and who sells, offers for  
3 sale or possesses for the purpose of sale any alcoholic  
4 beverages for resale by the purchaser;

5           X. "wine" includes the words "fruit juices" and  
6 means alcoholic beverages obtained by the fermentation of the  
7 natural sugar contained in fruit or other agricultural  
8 products, with or without the addition of sugar or other  
9 products, that do not contain less than one-half percent nor  
10 more than twenty-one percent alcohol by volume;

11           Y. "wine bottler" means a New Mexico wholesaler who  
12 is licensed to sell wine at wholesale for resale only and who  
13 buys wine in bulk and bottles it for wholesale resale;

14           Z. "winegrower" means a person who owns or operates  
15 a business for the manufacture of wine; and

16           AA. "winer" means a winegrower."

17           Section 2. A new section of the Liquor Control Act is  
18 enacted to read:

19           "[NEW MATERIAL] RENEWAL OF INACTIVE LICENSES.--

20           A. The holder of a qualified license formerly  
21 issued pursuant to the Liquor Control Act for a location that  
22 no longer meets the definition of licensed premises on and  
23 after July 1, 2007 may renew the license in an inactive status  
24 and the license shall not be subject to cancellation for  
25 failure to engage in business pursuant to Section 60-6B-7 NMSA

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1 1978 until July 1, 2009, at which time the director may  
2 exercise the discretion provided to the director in Section  
3 60-6B-7 NMSA 1978 to extend the inactive period for good cause  
4 shown.

5 B. During the inactive period provided for in  
6 Subsection A of this section:

7 (1) an inactive license shall be subject to  
8 the rights of and limitations on licenses provided in Section  
9 60-6A-19 NMSA 1978;

10 (2) the holder of an inactive license may  
11 transfer, assign, sell or lease the inactive license for use at  
12 a licensed premises pursuant to the provisions of the Liquor  
13 Control Act and directives of the director; and

14 (3) the holder of an inactive license may sell  
15 in whole or part a stock of alcoholic beverages the holder owns  
16 as of July 1, 2007 pursuant to Section 60-6B-9 NMSA 1978."

17 Section 3. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2007.