

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 512

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING ENFORCEMENT DUTIES
TO LOCAL LAW ENFORCEMENT AGENCIES; ADDING DEFINITIONS TO THE
LIQUOR CONTROL ACT; ADDRESSING THE REQUIREMENTS FOR CERTAIN
LICENSES; CREATING A NEW TYPE OF LICENSE; CLARIFYING THE
PROCESS FOR DECISIONS ON LICENSE APPLICATIONS AND TRANSFERS;
CLARIFYING INTER-LOCAL OPTION DISTRICT TRANSFERS; ENHANCING
SUSPENSION, REVOCATION AND FINES FOR VIOLATIONS OF THE LIQUOR
CONTROL ACT; ADDRESSING THE LOCATION OF HEARINGS; REQUIRING
CANCELLATION AND DESTRUCTION OF REVOKED LICENSES; ADDING
PERSONS TO THE DEFINITION OF "SERVER"; CLARIFYING VIOLATIONS OF
THE LIQUOR CONTROL ACT; CLARIFYING WHEN MINORS CAN BE IN
LICENSED PREMISES; AMENDING, REPEALING AND ENACTING SECTIONS OF
THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTION OF LAW IN LAWS 1999.

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

2 Section 1. Section 3-13-2 NMSA 1978 (being Laws 1965,
3 Chapter 300, Section 14-12-2, as amended) is amended to read:

4 "3-13-2. POLICE OFFICERS.--

5 A. The police officer of a municipality shall:

6 (1) execute and return all writs and process
7 as directed by the municipal judge of the municipality
8 employing the police officer;

9 (2) execute and return all criminal process as
10 directed by the municipal judge of any incorporated
11 municipality in the state if the criminal process arises out of
12 a charge of violation of a municipal ordinance prohibiting
13 driving while under the influence of intoxicating liquor or
14 drugs;

15 (3) serve criminal writs and process specified
16 in Paragraphs (1) and (2) of this subsection in any part of the
17 county wherein the municipality is situated; and

18 (4) within the municipality:

19 (a) suppress all riots, disturbances and
20 breaches of the peace;

21 (b) apprehend all disorderly persons;

22 (c) pursue and arrest any person fleeing
23 from justice; and

24 (d) apprehend any person in the act of
25 violating the laws of the state or the ordinances of the

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1 municipality and bring ~~[him]~~ the person before competent
 2 authority for examination and trial.

3 B. The police officer of a municipality may issue
 4 citations for violations of the Liquor Control Act.

5 ~~[B.]~~ C. In the discharge of ~~[his]~~ proper duties, a
 6 police officer shall have the same powers and be subject to the
 7 same responsibilities as sheriffs in similar cases."

8 Section 2. Section 4-41-2 NMSA 1978 (being Laws 1865,
 9 Chapter 99, Section 3, as amended) is amended to read:

10 "4-41-2. DUTIES OF SHERIFF.--~~[Sec. 199.]~~

11 A. The sheriff shall be conservator of the peace
 12 within ~~[his]~~ the sheriff's county, shall suppress assaults and
 13 batteries and apprehend and commit to jail all felons and
 14 traitors and shall cause all offenders to keep the peace and to
 15 appear at the next term of the court and answer such charges as
 16 may be preferred against them.

17 B. The sheriff may issue citations for violations
 18 of the Liquor Control Act."

19 Section 3. Section 29-1-1 NMSA 1978 (being Laws 1921,
 20 Chapter 170, Section 1, as amended) is amended to read:

21 "29-1-1. INVESTIGATION OF CRIMINAL VIOLATIONS--
 22 COMMENCEMENT OF PROSECUTION--COOPERATION--REMOVAL.--It is
 23 ~~[hereby declared to be]~~ the duty of every sheriff, deputy
 24 sheriff ~~[constable]~~ and ~~[every other]~~ peace officer to
 25 investigate all violations of the criminal laws of the state,

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1 ~~[which]~~ including violations of the Liquor Control Act, that
2 are called to the attention of any such officer or of which
3 ~~[he]~~ the officer is aware ~~[and]~~. It is also ~~[declared]~~ the
4 duty of every such officer to diligently file a complaint or
5 information, if the circumstances are such as to indicate to a
6 reasonably prudent person that ~~[such]~~ the action should be
7 taken ~~[and]~~. It is also ~~[declared his]~~ the officer's duty to
8 cooperate with and assist the attorney general, district
9 attorney or other prosecutor, if any, in all reasonable ways.
10 ~~[Such]~~ The cooperation ~~[shall include]~~ includes the prompt
11 reporting of all arrests for liquor law violations at licensed
12 liquor establishments to the ~~[department of alcoholic beverage~~
13 ~~control]~~ alcohol and gaming division of the regulation and
14 licensing department. Failure to perform ~~[his]~~ the officer's
15 duty in any material way shall subject ~~[such]~~ the officer to
16 removal from office and to payment of all costs of
17 prosecution."

18 Section 4. Section 60-3A-3 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 3, as amended) is amended to read:

20 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
21 Act:

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

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

24 N. "limited dispenser" means a person licensed
25 under the provisions of the Liquor Control Act selling,

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1 offering for sale or having in the limited dispenser's
2 possession with the intent to sell alcoholic beverages by the
3 drink for consumption on the licensed premises, which licensed
4 premises is operated as a restaurant in a rural area of a local
5 option district that has approved inter-local option license
6 transfers and has not exceeded the maximum number of licenses
7 pursuant to Section 60-6A-18 NMSA 1978;

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

17 [~~Q-~~] P. "manufacturer" means a distiller,
18 rectifier, brewer or winer;

19 [~~P-~~] Q. "minor" means a person under twenty-one
20 years of age;

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

25 [~~R-~~] S. "person" means an individual, corporation,

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1 firm, partnership, copartnership, association or other legal
2 entity;

3 T. "public nuisance" means knowingly creating,
4 allowing or maintaining an activity that is injurious to public
5 health, safety, morals or welfare. "Public nuisance" includes
6 disturbing the peace; public drunkenness; drinking in public;
7 unlicensed gambling; prostitution; public urination; lewd
8 conduct; possession, distribution or trafficking in illegal
9 drugs; excessive loud noise; failure to comply with the
10 provisions of the Liquor Control Act; or any other illegal
11 activity;

12 [~~S-~~] U. "rectifier" means a person who blends,
13 mixes or distills alcohol with other liquids or substances for
14 the purpose of making an alcoholic beverage for the purpose of
15 sale other than to the consumer by the drink and includes all
16 bottlers of spirituous liquors;

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

1 foods;

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

7 X. "rural community" means an area ten or more
8 miles outside of a metropolitan statistical area, as determined
9 in New Mexico by the United States census bureau, with a
10 population of forty thousand or less;

11 [~~V.~~] Y. "spirituous liquors" means alcoholic
12 beverages as defined in Subsection A of this section except
13 fermented beverages such as wine, beer and ale;

14 [~~W.~~] Z. "wholesaler" means a person whose place of
15 business is located in New Mexico and who sells, offers for
16 sale or possesses for the purpose of sale any alcoholic
17 beverages for resale by the purchaser;

18 [~~X.~~] AA. "wine" includes the words "fruit juices"
19 and means alcoholic beverages obtained by the fermentation of
20 the natural sugar contained in fruit or other agricultural
21 products, with or without the addition of sugar or other
22 products, that do not contain less than one-half percent nor
23 more than twenty-one percent alcohol by volume;

24 [~~Y.~~] BB. "wine bottler" means a New Mexico
25 wholesaler who is licensed to sell wine at wholesale for resale

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1 only and who buys wine in bulk and bottles it for wholesale
2 resale;

3 ~~[Z-]~~ CC. "winegrower" means a person who owns or
4 operates a business for the manufacture of wine; and

5 ~~[AA-]~~ DD. "winer" means a winegrower."

6 Section 5. Section 60-3A-6 NMSA 1978 (being Laws 1987,
7 Chapter 254, Section 24, as amended) is amended to read:

8 "60-3A-6. AUTHORITY OF ~~[DEPARTMENT OF PUBLIC SAFETY]~~ LAW
9 ENFORCEMENT AGENCIES.--

10 A. The department of public safety has primary
11 authority over all investigations and enforcement activities
12 required under the Liquor Control Act except for those
13 provisions relating to the issuance, denial, suspension or
14 revocation of licenses, unless its assistance is requested by
15 the director of the alcohol and gaming division of the
16 regulation and licensing department.

17 B. Municipal and county law enforcement agencies
18 may enforce the Liquor Control Act by issuing citations when
19 violations of that act become known to them."

20 Section 6. Section 60-3A-12 NMSA 1978 (being Laws 2007,
21 Chapter 78, Section 1) is amended to read:

22 "60-3A-12. PARTIALLY CONSUMED BOTTLE OF WINE--LICENSED
23 PREMISES.--

24 A. Notwithstanding any other provision of law, a
25 dispenser, canopy licensee, ~~[or]~~ restaurant licensee or limited

1 dispenser may permit a customer of the licensee to remove from
 2 the licensed premises one opened bottle of partially consumed
 3 wine; provided that:

4 (1) the customer has purchased a full-course
 5 meal and a bottle of wine and consumed a portion of the bottle
 6 of wine with the meal on the licensed premises; and

7 (2) the dispenser, canopy licensee, [~~or~~]
 8 restaurant licensee or limited dispenser or an agent or
 9 employee of the dispenser, canopy licensee, [~~or~~] restaurant
 10 licensee or limited dispenser attaches the customer receipt
 11 issued for the bottle of wine and reseals the bottle of
 12 partially consumed wine by reinserting a cork and sealing the
 13 bottle in a tamper-proof bag.

14 B. When operating a motor vehicle, the customer
 15 shall possess and transport the partially consumed bottle of
 16 wine in accordance with Section 66-8-138 NMSA 1978."

17 Section 7. Section 60-4B-4.1 NMSA 1978 (being Laws 1993,
 18 Chapter 329, Section 1) is amended to read:

19 "60-4B-4.1. LOCAL LAW ENFORCEMENT--DEPARTMENT OF PUBLIC
 20 SAFETY--REPORTING REQUIREMENTS--AUTHORITY TO REQUEST
 21 INVESTIGATIONS.--

22 A. Within thirty days following the date of
 23 issuance of a citation pursuant to the provisions of the Liquor
 24 Control Act, the department of public safety or the law
 25 enforcement agency of a municipality or county shall report

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1 alleged violations of that act to the alcohol and gaming
2 division of the regulation and licensing department. Failure
3 of the department of public safety or a local law enforcement
4 agency to report violations of the Liquor Control Act within
5 thirty days is not grounds for dismissal of the citation.

6 B. The director of the alcohol and gaming division
7 of the regulation and licensing department may request the
8 investigators of the special investigations division of the
9 department of public safety to investigate licensees or
10 activities that the director has reasonable cause to believe
11 are in violation of the Liquor Control Act."

12 Section 8. Section 60-6A-9 NMSA 1978 (being Laws 1981,
13 Chapter 39, Section 26) is amended to read:

14 "60-6A-9. PUBLIC SERVICE LICENSE.--

15 A. Every person selling alcoholic beverages to
16 travelers on trains or airplanes within the state shall secure
17 a public service license from the department on or before July
18 1 of each year.

19 B. A photostatic copy of the license shall be
20 posted in each train car from which alcoholic beverages are
21 sold in this state or on the premises at each airport in this
22 state where alcoholic beverages are stored and issued to
23 airplanes."

24 Section 9. Section 60-6A-10 NMSA 1978 (being Laws 1981,
25 Chapter 39, Section 27, as amended) is amended to read:

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1 "60-6A-10. GOVERNMENTAL LICENSE.--

2 A. Except as provided in Subsection G of this
3 section, a governmental entity may sell alcoholic beverages
4 directly or through its lessee at a governmental facility if
5 the governing body applies to the director for a governmental
6 license. The governmental entity and its lessee shall be
7 subject to all state laws and regulations governing dispensers.

8 B. A governmental license may be leased to a
9 qualified lessee and may only be used by the lessee for its
10 operation during events authorized by the governmental entity
11 at the governmental facility designated on the governmental
12 license. The governmental entity and its lessee shall not sell
13 alcoholic beverages for consumption off the licensed premises.
14 On the licensed premises of a municipal baseball park, the sale
15 or service of alcoholic beverages in unbroken packages is
16 allowed. Alcoholic beverages shall not be removed from the
17 licensed premises of a municipal baseball park. A server as
18 defined in Section 60-6E-3 NMSA 1978 is not required to be
19 present in a skybox to serve alcoholic beverages to the person
20 leasing the skybox or [~~his~~] the person's guests.

21 C. A governmental entity holding a governmental
22 license shall annually and not less than sixty days prior to
23 the date for renewal of its license submit to the director
24 documentary proof that its lessee is fully qualified to be a
25 lessee of a governmental license. If the director finds that

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1 the lessee is qualified to lease a governmental license, the
2 director shall renew the license for an additional period of
3 one year. If the director determines that the proof is
4 inadequate, [~~he~~] the director shall notify the governing body
5 of [~~his~~] the decision and shall conduct a hearing as provided
6 by law. If the director finds that the lessee does not qualify
7 and the governmental entity does not change its lessee, the
8 director shall revoke the license.

9 D. The provisions of Section 60-6A-18 NMSA 1978
10 shall not apply to governmental licenses.

11 E. For the purposes of this section:

12 (1) "governmental entity" means a
13 municipality, a county, a state fair that is held for [~~less~~]
14 fewer than ten days per year, the state fair commission, a
15 state museum, [~~or~~] a state university or a tribal government;

16 (2) "governmental facility" means locations on
17 property owned or operated by a governmental entity, including
18 county fairs; state fairs held for [~~less~~] fewer than ten days
19 per year; convention centers; airports; civic centers; food
20 service facilities in state museums; auditoriums; all
21 facilities on the New Mexico state fairgrounds; facilities used
22 for athletic competitions; golf courses, including golf courses
23 required to be used for municipal purposes notwithstanding that
24 there may be an existing club license at the same location
25 operated by the same club licensee; and other facilities used

1 for cultural or artistic performances, but "governmental
2 facility" does not include tennis facilities;

3 (3) "lessee" means an individual, corporation,
4 partnership, firm or association that fulfills the requirements
5 set forth in Subsections A through D of Section 60-6B-2 NMSA
6 1978;

7 (4) "municipal baseball park" means a
8 governmental facility owned by a government entity in a class A
9 county having a population of three hundred fifty thousand or
10 more pursuant to the most recent federal decennial census that
11 is the home stadium of an affiliate of a professional baseball
12 team and that may be used throughout the year for baseball
13 games and other events; and

14 (5) "skybox" means a room or area of seating
15 of a municipal baseball park, separated from the general
16 seating and usually located in the upper decks of the park,
17 leased to a person for that person's exclusive use during
18 baseball games and at any other time throughout the year.

19 F. The provisions of Section 60-6B-10 NMSA 1978 as
20 regards to golf courses owned by a governmental entity and
21 civic centers owned and operated by a governmental entity shall
22 not apply to governmental licenses.

23 G. A governmental entity that sells alcoholic
24 beverages directly or indirectly through a lessee at a
25 governmental facility that is [~~a food service facility in a~~

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1 ~~state museum or~~] a golf course required to be used for
2 municipal purposes may only sell beer and wine."

3 Section 10. A new section of Chapter 60, Article 6A NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] LIMITED DISPENSER LICENSE.--

6 A. In a rural community of a local option district
7 that has approved inter-local option license transfers, a
8 person may apply for and be issued, after submitting an
9 application prescribed by the director and meeting all the
10 requirements of the Liquor Control Act, a limited dispenser
11 license to permit the sale, service and consumption of
12 alcoholic beverages in a restaurant subject to the following
13 application and license requirements, conditions and
14 restrictions:

15 (1) the maximum number of licenses that may be
16 issued in the unincorporated area of the county in which the
17 rural community sits pursuant to Section 60-6A-18 NMSA 1978 has
18 not been exceeded, but the limited dispenser license shall not
19 count in the computation of allowable licenses as provided in
20 that section;

21 (2) the person shall submit evidence to the
22 director that the person has a current valid food service
23 establishment permit;

24 (3) the person shall satisfy the director that
25 the primary source of revenue from the operation of the

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1 restaurant will be derived from meals and not from the sale of
2 alcoholic beverages;

3 (4) the person may renew the license annually
4 and the director shall condition renewal upon a requirement
5 that no less than fifty-five percent of gross receipts from the
6 preceding twelve months' operation of the restaurant was
7 derived from the sale of meals;

8 (5) upon application for renewal, the person
9 shall submit an annual report to the director indicating the
10 annual gross receipts from the sale of meals and from the sale
11 of alcoholic beverages;

12 (6) except as provided in Section 60-3A-12
13 NMSA 1978, the license does not permit the sale of alcoholic
14 beverages, whether in unbroken packages or not, for consumption
15 off the licensed premises;

16 (7) the license shall not permit the sale,
17 service and consumption of alcoholic beverages after the time
18 meal sales and service ceases or after 11:00 p.m., whichever
19 time is earlier;

20 (8) if Sunday sales have been approved in the
21 local option district, the license shall permit, subject to
22 Section 60-7A-1 NMSA 1978, the sale, service and consumption of
23 alcoholic beverages on Sundays until the time meal sales and
24 service ceases or 11:00 p.m., whichever time is earlier; and

25 (9) the license shall not be transferable from

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1 person to person or from one location to another, and whenever
2 a licensee ceases to operate a restaurant at the licensed
3 premises, the director shall cancel the license.

4 B. The provisions of Section 60-6A-18 NMSA 1978
5 shall not apply to a limited dispenser license.

6 C. Nothing in this section shall prevent a limited
7 dispenser licensee from receiving other licenses pursuant to
8 the Liquor Control Act; provided that a limited dispenser
9 license shall not be used to apply for or receive a special
10 dispenser's permit pursuant to Section 60-6A-12 NMSA 1978."

11 Section 11. Section 60-6A-15 NMSA 1978 (being Laws 1981,
12 Chapter 39, Section 32, as amended) is amended to read:

13 "60-6A-15. LICENSE FEES.--Every application for the
14 issuance or renewal of the following licenses shall be
15 accompanied by a license fee in the following specified
16 amounts:

17 A. manufacturer's license as a distiller, except a
18 brandy manufacturer, three thousand dollars (\$3,000);

19 B. manufacturer's license as a brewer, three
20 thousand dollars (\$3,000);

21 C. manufacturer's license as a rectifier, one
22 thousand fifty dollars (\$1,050);

23 D. wholesaler's license to sell all alcoholic
24 beverages for resale only, two thousand five hundred dollars
25 (\$2,500);

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1 E. wholesaler's license to sell spirituous liquors
2 and wine for resale only, one thousand seven hundred fifty
3 dollars (\$1,750);

4 F. wholesaler's license to sell spirituous liquors
5 for resale only, one thousand five hundred dollars (\$1,500);

6 G. wholesaler's license to sell beer and wine for
7 resale only, one thousand five hundred dollars (\$1,500);

8 H. wholesaler's license to sell beer for resale
9 only, one thousand dollars (\$1,000);

10 I. wholesaler's license to sell wine for resale
11 only, seven hundred fifty dollars (\$750);

12 J. retailer's license, one thousand three hundred
13 dollars (\$1,300);

14 K. dispenser's license, one thousand three hundred
15 dollars (\$1,300);

16 L. canopy license, one thousand three hundred
17 dollars (\$1,300);

18 M. restaurant license, one thousand fifty dollars
19 (\$1,050);

20 N. club license, for clubs with more than two
21 hundred fifty members, one thousand two hundred fifty dollars
22 (\$1,250), and for clubs with two hundred fifty members or
23 fewer, two hundred fifty dollars (\$250);

24 O. wine bottler's license to sell to wholesalers
25 only, five hundred dollars (\$500);

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1 P. public service license, one thousand two hundred
2 fifty dollars (\$1,250);

3 Q. nonresident licenses, for a total billing to New
4 Mexico wholesalers:

5 (1) in excess of:

6 \$3,000,000 annually \$10,500;

7 1,000,000 annually 5,250;

8 500,000 annually 3,750;

9 200,000 annually 2,700;

10 100,000 annually 1,800;

11 and

12 50,000 annually 900;

13 and

14 (2) of \$50,000 or less annually

15 \$300;

16 R. wine wholesaler's license, for persons with
17 sales of five thousand gallons of wine per year or less,
18 twenty-five dollars (\$25.00), and for persons with sales in
19 excess of five thousand gallons of wine per year, one hundred
20 dollars (\$100); [~~and~~]

21 S. beer bottler's license, two hundred dollars
22 (\$200); and

23 T. limited dispenser license, one thousand five
24 hundred dollars (\$1,500)."

25 Section 12. Section 60-6B-2 NMSA 1978 (being Laws 1981,

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1 Chapter 39, Section 38, as amended) is amended to read:

2 "60-6B-2. APPLICATIONS.--

3 A. Before a new license authorized by the Liquor
 4 Control Act may be issued by the director, or before the
 5 transfer of a license may be approved, the applicant for the
 6 license or transfer shall:

7 (1) submit to the director a written
 8 application for the license under oath, in the form prescribed
 9 by and stating the information required by the director,
 10 together with a nonrefundable application fee of two hundred
 11 dollars (\$200);

12 (2) submit to the director for approval a
 13 description, including floor plans, in a form prescribed by the
 14 director, that shows the proposed licensed premises for which
 15 the license application is submitted. The area represented by
 16 the approved description shall become the licensed premises;

17 (3) submit the name and street address of a
 18 New Mexico resident who is not a felon, together with two
 19 complete sets of that person's fingerprints taken under the
 20 supervision of and certified to by a New Mexico law enforcement
 21 officer or another person qualified to take fingerprints by
 22 virtue of training or experience, who has power of attorney and
 23 authority to bind the applicant to matters related to liquor
 24 sales and operations and upon whom the director may serve any
 25 notice related to ownership or operation of the license,

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1 including any notice of charge pursuant to Chapter 60, Article
2 6C NMSA 1978;

3 (4) if the applicant is a corporation, be
4 required to submit as part of its application the following:

5 (a) a certified copy of its articles of
6 incorporation or, if a foreign corporation, a certified copy of
7 its certificate of authority;

8 (b) the names and addresses of all
9 officers and directors and those stockholders owning ten
10 percent or more of the voting stock of the corporation and the
11 amounts of stock held by each stockholder; provided, however,
12 that a corporation may not be licensed if an officer, manager,
13 director or holder of more than a ten percent interest in the
14 applicant entity would not be eligible to hold a license
15 pursuant to the Liquor Control Act; and

16 (c) such additional information
17 regarding the corporation as the director may require to assure
18 full disclosure of the corporation's structure and financial
19 responsibility;

20 (5) if the applicant is a limited partnership,
21 submit as part of its application the following:

22 (a) a certified copy of its certificate
23 of limited partnership;

24 (b) the names and addresses of all
25 general partners and of all limited partners contributing ten

1 percent or more of the total value of contributions made to the
2 limited partnership or entitled to ten percent or more of the
3 profits earned or other income paid by the limited partnership.

4 A limited partnership shall not receive a license if a partner
5 or holder of a ten percent or greater interest in the applicant
6 entity designated in this subsection would not be eligible to
7 hold a license issued pursuant to the Liquor Control Act; and

8 (c) such additional information
9 regarding the limited partnership as the director may require
10 to assure full disclosure of the limited partnership's
11 structure and financial responsibility;

12 (6) if the applicant is a limited liability
13 company, submit as part of its application the following:

14 (a) a copy of the articles of
15 organization, with a copy of the certificate of filing with the
16 public regulation commission;

17 (b) the name and addresses of all the
18 managing members and all of the nonmanaging members that own a
19 greater than ten percent interest in the limited liability
20 company. Any direct or indirect parent entity of the limited
21 liability company with an interest of ten percent or more in
22 the applicant entity shall submit application forms and qualify
23 to hold a license; and

24 (c) such additional information
25 regarding the limited liability company as the director may

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1 require to assure full disclosure of the limited liability
2 company's structure and financial responsibility;

3 (7) if the applicant is a trust, submit as
4 part of its application:

5 (a) the names and addresses of the
6 trustees;

7 (b) the names and addresses of any
8 beneficiaries having control over the property of the trust or
9 receiving regular and substantial distributions of principal
10 and income from the trust. Any beneficiary receiving regular
11 and substantial distributions from the trust shall qualify to
12 hold a license. The director may request a copy of the trust
13 agreement for review, which trust agreement need not become
14 part of the application. Affidavits as to the operation and
15 distribution of the principal and income may be requested in
16 lieu of, or in addition to, the copy of the trust agreement
17 that is supplied for review by the department; and

18 (c) such additional information
19 regarding the trust as the director may require to assure full
20 disclosure of the trust's structure and financial
21 responsibility; and

22 (8) obtain approval for the issuance from the
23 governing body of the local option district in which the
24 proposed licensed premises are to be located [~~in accordance~~
25 ~~with the provisions of the Liquor Control Act~~] pursuant to

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1 Section 60-6B-4 NMSA 1978.

2 B. Except for individual officers, directors,
3 shareholders, members or partners of entities that are publicly
4 traded on a national stock exchange and for individuals who
5 have been fingerprinted for another New Mexico license and had
6 no prior criminal or arrest record, every applicant for a new
7 license or for a transfer of ownership of a license shall file
8 with the application two complete sets of fingerprints taken
9 under the supervision of and certified to by an officer of the
10 New Mexico state police, a county sheriff, a municipal chief of
11 police, a police officer in a foreign country or an individual
12 qualified to take fingerprints by virtue of training or
13 experience, for each of the following individuals:

14 (1) if the applicant is a person, for the
15 applicant;

16 (2) if the applicant or the holder of a ten
17 percent or greater interest in the applicant entity is a
18 corporation, for each principal officer, for each member of the
19 board of directors and for each stockholder with a ten percent
20 or greater interest in the applicant entity;

21 (3) if the applicant or the holder of a ten
22 percent or greater interest in the applicant entity is a
23 general partnership, for each partner;

24 (4) if the applicant or the holder of a ten
25 percent or greater interest in the applicant entity is a

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1 limited partnership, for each general partner, for each limited
2 partner holding a ten percent or greater interest in the
3 applicant entity and for any principal officers of the limited
4 partnership;

5 (5) if the applicant or the holder of a ten
6 percent or greater interest in the applicant entity is a
7 limited liability company, for each managing member, for each
8 member who owns a ten percent or greater interest in the
9 applicant entity and for any principal officer of the limited
10 liability company; and

11 (6) if the applicant is a trust, for each
12 trustee and for each beneficiary who has control over trust
13 property and income or who receives substantial and regular
14 distributions from the trust.

15 C. Upon submission of a sworn affidavit from each
16 person who is required to file fingerprints stating that the
17 person has not been convicted of a felony in any jurisdiction
18 and pending the results of background investigations, a
19 temporary license for ninety days may be issued. The temporary
20 license may be extended by the director for an additional
21 ninety days if the director determines there is not sufficient
22 time to complete the background investigation or obtain reviews
23 of fingerprints from appropriate agencies. A temporary license
24 shall be surrendered immediately upon order of the director.

25 D. An applicant who files a false affidavit shall

1 be denied a license. When the director determines a false
2 affidavit has been filed, the director shall refer the matter
3 to the attorney general or district attorney for prosecution of
4 perjury.

5 E. If an applicant is not a resident of New Mexico,
6 fingerprints may be taken under supervision and certification
7 of comparable officers in the state of residence of the
8 applicant.

9 F. Before issuing a license or transferring a
10 license pursuant to Subsection G of this section, the
11 department shall hold a public hearing pursuant to Subsection K
12 of this section within [~~thirty~~] fifty days after receipt of
13 [~~the application pursuant to Subsection K of this section~~] a
14 completed application as determined by the director.

15 G. An application for transfer of ownership shall
16 be filed with the department no later than thirty days after
17 the date a person acquired an ownership interest in a license.
18 It shall contain the actual date of sale of the license and
19 shall be accompanied by a sworn affidavit from the owner of
20 record of the license agreeing to the sale of the license to
21 the applicant as well as attesting to the accuracy of the
22 information required by this section to be filed with the
23 department. A license shall not be transferred unless it will
24 be placed into operation in an actual location within one
25 hundred twenty days of issuance of the license, unless for good

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1 cause shown the director grants an additional extension for a
2 length of time determined by the director.

3 H. Whenever it appears to the director that there
4 will be more applications for new licenses than the available
5 number of new licenses during any time period, a random
6 selection method for the qualification, approval and issuance
7 of new licenses shall be provided by the director. The random
8 selection method shall allow each applicant an equal
9 opportunity to obtain an available license, provided that all
10 dispenser's and retailer's licenses issued in a calendar year
11 shall be issued to residents of the state. For the purposes of
12 random selection, the director shall also set a reasonable
13 deadline by which applications for the available licenses shall
14 be filed. A person shall not file more than one application
15 for each available license and no more than three applications
16 per calendar year.

17 I. After the deadline set in accordance with
18 Subsection H of this section, no more than ten applications per
19 available license shall be selected at random for priority of
20 qualification and approval. Within thirty days after the
21 random selection for the ten priority positions for each
22 license, a hearing pursuant to Subsection K of this section
23 shall be held to determine the qualifications of the applicant
24 having the highest priority for each available license. If
25 necessary, such a hearing shall be held on each selected

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1 application by priority until a qualified applicant for each
2 available license is approved. Further random selections for
3 priority positions shall also be held pursuant to this section
4 as necessary.

5 J. All applications submitted for a license shall
6 expire upon the director's final approval of a qualified
7 applicant for that available license.

8 K. The director shall notify the applicant by
9 certified mail of the date, time and place of ~~[the]~~ a hearing.
10 The hearing shall be held in Santa Fe. The director may
11 designate a hearing officer to take evidence at the hearing.
12 The director or the hearing officer shall have the power to
13 administer oaths.

14 L. In determining whether a license shall be issued
15 or transferred, the director shall take into consideration all
16 requirements of the Liquor Control Act and the decision of the
17 governing body of the local option district pursuant to Section
18 60-6B-4 NMSA 1978. In the ~~[issuance of a license]~~
19 determination, the director shall specifically consider the
20 nature and number of prior violations of the Liquor Control Act
21 by the applicant or of any citations issued within the prior
22 five years against a license held by the applicant or in which
23 the applicant had an ownership interest required to be
24 disclosed under the Liquor Control Act. The director shall
25 approve or disapprove the issuance ~~[or give preliminary~~

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1 ~~approval of the issuance]~~ or transfer of the license based upon
2 a review of all documentation submitted, the governing body
3 hearing record and any investigation deemed necessary by the
4 director.

5 M. Before a new license is issued for or
6 transferred to a location, the director shall cause a notice of
7 the application for the license to be posted conspicuously, on
8 a sign not smaller than thirty inches by forty inches, on the
9 outside of the front wall or front entrance of the immediate
10 premises for which the license is sought, or, if no building or
11 improvements exist on the premises, the notice shall be posted
12 at the front entrance of the immediate premises for which the
13 license is sought on a billboard not smaller than five feet by
14 five feet. The contents of the notice shall be in the form
15 prescribed by the department, and such posting shall be over a
16 continuous period of twenty days prior to [~~preliminary approval~~
17 ~~of the license]~~ the hearing pursuant to Subsection F of this
18 section. The director shall prescribe the manner in which the
19 posting may be accomplished by the licensee, the licensee's
20 representative or the director's designee.

21 N. A license shall not be issued or transferred
22 until the posting requirements of Subsection M of this section
23 have been met.

24 O. All costs of publication and posting shall be
25 paid by the applicant.

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1 P. It is unlawful for a person to remove or deface
 2 a notice posted in accordance with this section. A person
 3 convicted of a violation of this subsection shall be punished
 4 by a fine of not more than three hundred dollars (\$300) or by
 5 imprisonment in the county jail for not more than one hundred
 6 twenty days or by both.

7 Q. A person aggrieved by a decision made by the
 8 director as to the approval or disapproval of the issuance or
 9 transfer of a license may appeal to the district court pursuant
 10 to the provisions of Section 39-3-1.1 NMSA 1978. If the
 11 director's disapproval is based upon [~~local option district~~]
 12 governing body disapproval pursuant to [~~Subsection H of~~]
 13 Section 60-6B-4 NMSA 1978, the [~~local option district~~]
 14 governing body shall be a necessary party to an appeal. The
 15 decision of the director shall continue in force, pending a
 16 reversal or modification by the district court, unless
 17 otherwise ordered by the court."

18 Section 13. Section 60-6B-4 NMSA 1978 (being Laws 1981,
 19 Chapter 39, Section 40) is amended to read:

20 "60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF
 21 APPROPRIATE GOVERNING BODY.--

22 A. [~~Prior to the approval of~~] Upon receipt of a
 23 completed application, as determined by the director, for the
 24 issuance of a new license [and prior to the approval of any
 25 transfer permitted by Section 39 or 113 of the Liquor Control

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1 ~~Act]~~ or transfer of a license, the director shall notify the
2 governing body of the local option district where the licensed
3 premises will be or are located of ~~[his preliminary approval of~~
4 ~~the issuance or transfer of the license. Notice to the~~
5 ~~governing body shall be]~~ the application by certified mail.

6 B. A governing body ~~[which]~~ that has received a
7 notice of ~~[preliminary approval of]~~ an application for the
8 issuance or transfer of a license from the department may
9 approve or disapprove the issuance or transfer of the license
10 in accordance with the provisions of this section.

11 C. Within ~~[forty-five]~~ thirty-five days after
12 receipt of a notice of ~~[preliminary approval]~~ an application
13 from the department, the governing body shall hold a public
14 hearing on the question of whether the ~~[department]~~ director
15 should approve the proposed issuance or transfer. If the
16 governing body does not hold a hearing within the prescribed
17 time, the director shall approve or disapprove the application
18 for a new license or transfer of a license based upon the
19 hearing held pursuant to Subsections F and K of Section 60-6B-2
20 NMSA 1978.

21 D. Notice of the public hearing required by
22 Subsection C of this section shall be given by the governing
23 body by:

24 (1) publishing a notice of the date, time and
25 place of the hearing at least once a week for two consecutive

1 weeks, with the last publication taking place at least one week
 2 prior to the hearing, in a newspaper of general circulation
 3 within the territorial limits of the governing body. The
 4 notice shall set forth:

5 (a) the name and address of the
 6 licensee;

7 (b) the action proposed to be taken by
 8 the department;

9 (c) the location of the licensee's
 10 premises; [~~and~~]

11 (d) an invitation for public comment;
 12 and

13 [~~(d)~~] (e) such other information as may
 14 be required by the department; and

15 (2) sending a notice by certified mail to the
 16 applicant of the date, time and place of the public hearing.

17 E. The governing body may designate a hearing
 18 officer to conduct the hearing. A record shall be made of the
 19 hearing.

20 F. The governing body may disapprove the issuance
 21 or transfer of the license if:

22 (1) the proposed location is within an area
 23 where the sale of alcoholic beverages is prohibited by the laws
 24 of New Mexico;

25 (2) the issuance or transfer would be in

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1 violation of a zoning or other ordinance of the governing body;
2 or

3 (3) the issuance or transfer would be
4 detrimental to the public health, safety or morals of the
5 residents of the local option district.

6 G. Within [~~thirty~~] ten days after the public
7 hearing, the governing body shall notify the department as to
8 whether the governing body has approved or disapproved the
9 proposed issuance or transfer of the license and shall submit
10 with the notice a copy of the minutes of the public hearing.

11 If the governing body fails to either approve or disapprove the
12 issuance or transfer of the license within [~~thirty~~] ten days
13 after the public hearing, the director [~~may give final approval~~
14 ~~to the issuance or transfer of the license~~] shall approve or
15 disapprove the issuance or transfer based upon the hearing held
16 pursuant to Subsections F and K of Section 60-6B-2 NMSA 1978.

17 [~~H. If the governing body disapproves the issuance~~
18 ~~or transfer of the license, it shall notify the department~~
19 ~~within the time required by Subsection G of this section~~
20 ~~setting forth the reasons for the disapproval. A copy of the~~
21 ~~minutes of the public hearing shall be submitted to the~~
22 ~~department by the governing body with the notice of~~
23 ~~disapproval. If the governing body disapproves of the issuance~~
24 ~~or transfer of the license, the director shall disapprove the~~
25 ~~issuance or transfer of the license.~~

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1 ~~I. If the governing body approves the issuance or~~
 2 ~~transfer of the license, it shall notify the department within~~
 3 ~~the time required by Subsection G of this section of its~~
 4 ~~approval. If the governing body approves of the issuance or~~
 5 ~~transfer of the license, the director shall approve the~~
 6 ~~issuance or transfer of the license.]"~~

7 Section 14. Section 60-6B-5 NMSA 1978 (being Laws 1981,
 8 Chapter 39, Section 41, as amended) is amended to read:

9 "60-6B-5. EXPIRATION AND RENEWAL OF LICENSES.--

10 A. All licenses provided for in the Liquor Control
 11 Act, except nonresident licenses and common carrier
 12 registrations, shall expire on June 30 of each year and may be
 13 renewed from year to year under the rules of the department.
 14 Current nonresident licenses and common carrier registrations
 15 shall expire on June 30, 1998 and may be renewed for three-year
 16 periods thereafter. The director shall determine whether any
 17 of the licensees under [~~his~~] the director's jurisdiction are
 18 delinquent in any taxes administered by the taxation and
 19 revenue department as of June 1 of each renewal period. The
 20 director shall also determine whether [~~or not~~] there exists any
 21 other reason why a license should not be renewed. If the
 22 director determines that the license should not be renewed,
 23 [~~he~~] the director shall enter an order requiring the licensee,
 24 after notice, to show cause why [~~his~~] the licensee's license
 25 should be renewed, and [~~he~~] the director shall conduct a

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1 hearing on the matter. If, after the hearing, the director
2 finds that the licensee is qualified, [~~he~~] the director shall
3 renew the license.

4 B. A license that is not renewed for five
5 consecutive years shall expire without option to renew on June
6 30 of the fifth year after the year the license was issued or
7 last renewed."

8 Section 15. Section 60-6B-12 NMSA 1978 (being Laws 1981,
9 Chapter 39, Section 113, as amended) is amended to read:

10 "60-6B-12. INTER-LOCAL OPTION DISTRICT TRANSFERS.--

11 A. [~~All~~] Dispenser's and retailer's licenses
12 originally issued before July 1, 1981, except rural dispenser's
13 and rural retailer's licenses and canopy licenses that were
14 replaced by dispenser's licenses pursuant to Section 60-6B-16
15 NMSA 1978, may be transferred to any location within the state,
16 except class B counties having a population of between fifty-
17 six thousand and fifty-seven thousand according to the 1980
18 federal decennial census, the municipalities located within
19 those class B counties and any municipality or county that
20 prohibits by election the transfer of a license from another
21 local option district, without regard to the limitations on the
22 maximum number of licenses provided in Section 60-6A-18 NMSA
23 1978, not otherwise contrary to law subject to the approval of
24 transferring locations of [~~such~~] those liquor licenses [~~of~~] by
25 the [~~governing body~~] director for that location and provided

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1 ~~[all]~~ the requirements of the Liquor Control Act and department
 2 regulations for the transfer of licenses are fulfilled and
 3 provided further:

4 ~~[(1) the transfer of location does not lower~~
 5 ~~the number of dispenser's and retailer's licenses below that~~
 6 ~~number allowed by law in the local option district from which a~~
 7 ~~license will be transferred;~~

8 ~~(2)~~ (1) beginning in calendar year 1997, no
 9 more than ten dispenser's or retailer's licenses shall be
 10 transferred to any local option district in any calendar year;

11 ~~[(3)]~~ (2) the dispenser's or retailer's
 12 licenses transferred under this section shall count in the
 13 computation of the limitation of the maximum number of licenses
 14 that may be issued in the future in any local option district
 15 as provided in Section 60-6A-18 NMSA 1978 for the purpose of
 16 determining whether additional licenses may be issued in the
 17 local option district ~~[under the provisions of Subsection E of]~~
 18 pursuant to Section 60-6B-2 NMSA 1978; and

19 ~~[(4)]~~ (3) the dispenser's or retailer's
 20 licenses shall be operated or leased by the person who
 21 transfers the license to the local option district for at least
 22 a period of one year from the date of the approval of the
 23 transfer by the department.

24 B. ~~[Transfers]~~ Transfer of location of ~~[each]~~ a
 25 liquor license pursuant to Subsection A of this section shall

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1 become effective upon approval of the [~~local governing body~~]
2 director, unless within one hundred twenty days after the
3 effective date of the Liquor Control Act a petition requesting
4 an election on the question of approval of statewide transfers
5 of liquor licenses into that local option district is filed
6 with the clerk of the local option district and the petition is
7 signed by at least five percent of the number of registered
8 voters of the district. The clerk of the district shall verify
9 the petition signatures. If the petition is verified as
10 containing the required number of signatures of registered
11 voters, the governing body shall adopt a resolution calling an
12 election on the question of approving or disapproving statewide
13 transfers of liquor licenses into that district. Notice of
14 [~~such~~] the election shall be published as provided in Section
15 3-8-35 NMSA 1978, and the election shall be held within sixty
16 days after the date the petition is verified, or it may be held
17 in conjunction with a regular election of the governing body if
18 [~~such~~] the election occurs within sixty days after the date of
19 verification. If a majority of the registered voters of the
20 district voting in such election votes to approve statewide
21 transfers of liquor licenses into the local option district,
22 each license proposing to be transferred shall be subject to
23 the approval of the governing body. If the voters of the
24 district voting in the election vote against the approval, then
25 all statewide transfers of liquor licenses pursuant to

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1 Subsection A of this section shall be prohibited in that
 2 district unless a petition is filed requesting the question be
 3 again submitted to the voters as provided in this subsection.
 4 The question of approving or disapproving statewide transfers
 5 of liquor licenses into the local option district shall not be
 6 submitted again within two years from the date of the last
 7 election on the question.

8 C. Any dispenser's license transferred pursuant to
 9 this section outside its local option district shall only
 10 entitle the licensee to sell, serve or permit the consumption
 11 of alcoholic beverages by the drink on the licensed premises.

12 D. Rural dispenser's, rural retailer's and rural
 13 club licenses issued under any former act may be transferred to
 14 any location, subject to the restrictions as to location
 15 contained in the Liquor Control Act, within the unincorporated
 16 area of the county in which they are currently located;
 17 provided that they shall not be transferred to any location
 18 within ten miles of another licensed premises; and provided
 19 further that all requirements of the Liquor Control Act and
 20 department regulations for the transfer of licenses are
 21 fulfilled."

22 Section 16. Section 60-6C-1 NMSA 1978 (being Laws 1981,
 23 Chapter 39, Section 97, as amended) is amended to read:

24 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
 25 ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

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1 A. The director may suspend or revoke the license
2 or permit or fine the licensee in an amount not more than ten
3 thousand dollars (\$10,000), or both, when ~~he~~ the director
4 finds that any licensee has:

5 (1) violated any provision of the Liquor
6 Control Act or ~~[any regulation]~~ a rule or order promulgated
7 pursuant to that act;

8 (2) been convicted of a felony pursuant to the
9 provisions of the Criminal Code, the Liquor Control Act or
10 federal law; or

11 (3) permitted ~~his~~ the licensee's licensed
12 premises to be or remain a public nuisance ~~[in the neighborhood~~
13 ~~where it is located after written notice from the director that~~
14 ~~investigation by the department has revealed that the~~
15 ~~establishment is a public nuisance in the neighborhood]~~ without
16 taking reasonable steps to prevent the licensed premises and
17 any adjacent area that is owned, leased or rented by the
18 licensee from being a public nuisance.

19 B. If the director finds that a licensee or
20 permittee or the licensee's or permittee's employee or agent
21 knew or should have known that the licensee or permittee or the
22 employee or agent of either sold, served or gave alcoholic
23 beverages to a minor in violation of Section 60-7B-1 NMSA 1978
24 or to an intoxicated person in violation of Section 60-7A-16
25 NMSA 1978, permitted a minor to enter and remain in a

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1 prohibited area in violation of Section 60-7B-10 NMSA 1978 or
 2 violated a rule promulgated pursuant to those sections, the
 3 director shall suspend or revoke the involved license or permit
 4 and shall fine the licensee or permittee in an amount not to
 5 exceed ten thousand dollars (\$10,000) subject to the following:

6 (1) for a first violation, the director shall
 7 impose a minimum one-day suspension and a minimum two thousand
 8 dollar (\$2,000) fine;

9 (2) for a second and subsequent violation, the
 10 director shall impose a minimum seven-day suspension and a
 11 minimum five thousand dollar (\$5,000) fine; and

12 (3) upon two separate violations within any
 13 twelve-month period, the director shall suspend or revoke the
 14 license or permit and shall fine the licensee or permittee in an
 15 amount not to exceed ten thousand dollars (\$10,000).

16 ~~[B-]~~ C. The director shall suspend or revoke the
 17 license or permit and may fine the licensee in an amount not to
 18 exceed ten thousand dollars (\$10,000), or both, when ~~[he]~~ the
 19 director finds that any licensee or

20 ~~[(1) his]~~ the licensee's employee or agent
 21 ~~[knowingly has sold, served or given any alcoholic beverage to~~
 22 ~~a minor in violation of Section 60-7B-1 NMSA 1978 or to an~~
 23 ~~intoxicated person in violation of Section 60-7A-16 NMSA 1978,~~
 24 ~~on two separate occasions within any twelve-month period; or~~

25 ~~(2) his agent]~~ has made ~~[any]~~ a material false

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1 statement or concealed [~~any~~] material facts in [~~his~~] the
2 licensee's application for the license or permit granted [~~him~~]
3 the licensee pursuant to the provisions of the Liquor Control
4 Act.

5 [~~C. Any~~] D. A licensee aggrieved by a revocation,
6 suspension or fine proposed to be imposed by the director
7 pursuant to this section shall be entitled to the hearing
8 procedures set forth in Chapter 60, Article 6C NMSA 1978 before
9 the revocation, suspension or fine shall be effective.

10 [~~D. Any~~] E. A charge filed against a licensee by
11 the department and the resulting disposition of the charge
12 shall be reported to the department of public safety and local
13 law enforcement agencies whose jurisdictions include the
14 licensed establishment."

15 Section 17. Section 60-6C-2 NMSA 1978 (being Laws 1981,
16 Chapter 39, Section 98, as amended) is amended to read:

17 "60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC--HEARING
18 OFFICER.--

19 A. All hearings held pursuant to the provisions of
20 the Liquor Control Act shall be public and conducted by the
21 director or a hearing officer appointed by the director. [~~and~~
22 ~~shall be held in the county in which the licensed premises that~~
23 ~~are the subject matter of the hearing are located. All such~~
24 ~~hearings shall be open to the public.~~]

25 B. The hearing described in Subsection A of this

1 section shall be held in the state capital or, at the
 2 licensee's request, in the county where the subject licensed
 3 premises are located. If the hearing is held at a location
 4 other than the state capital at the licensee's request, the
 5 director shall assess the licensee the reasonable costs of the
 6 hearing, including per diem and mileage."

7 Section 18. Section 60-6C-4 NMSA 1978 (being Laws 1981,
 8 Chapter 39, Section 100, as amended) is amended to read:

9 "60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS--
 10 INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

11 A. Whenever a person lodges a signed, written
 12 complaint with the department alleging that a licensee has
 13 violated any of the provisions of the Liquor Control Act,
 14 unless the complaint is deficient on its face, or when a law
 15 enforcement agency cites a licensee for violation of the Liquor
 16 Control Act, the director shall request that the department of
 17 public safety investigate the complaint.

18 B. The department of public safety shall
 19 investigate the complaint and make a written report to the
 20 director.

21 C. If the director believes from the report that
 22 probable cause exists for filing charges against the licensee
 23 for the revocation or suspension of [~~his~~] the licensee's
 24 license or permit or for fining [~~him~~] the licensee, or for
 25 both, [~~he~~] the director or [~~his~~] the director's designee shall

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1 file in the department a charge against the licensee in the
2 name of the state, stating the nature of the grounds relied
3 upon for the filing, the approximate date of the alleged
4 violation and the names and addresses of the witnesses who are
5 expected to give testimony or evidence against the licensee.

6 D. After charges have been filed, the director
7 shall issue a signed order for the licensee to appear at a
8 hearing to explain, on the basis of any ground set out in the
9 charge, why the license should not be revoked or suspended or
10 why the licensee should not be fined, or both.

11 E. The director shall keep the original of the
12 charge and the order to show cause on file in [~~his~~] the
13 director's office.

14 F. The director shall appoint a hearing officer no
15 later than ten days prior to the date set for the hearing at
16 which the licensee shall appear to explain why [~~his~~] the
17 licensee's license should not be revoked or suspended or why
18 the licensee should not be fined, or both.

19 G. The director shall have a copy of the charge and
20 a copy of the order to show cause sent to the licensee or the
21 licensee's resident agent at the agent's last known address by
22 certified mail at least fourteen days before the date set for
23 the hearing on the order to show cause.

24 H. At [~~any~~] a hearing on an order to show cause,
25 the director shall cause a record of hearing to be made, which

1 shall record:

2 (1) the style of the proceedings;

3 (2) the nature of the proceedings, including a
4 copy of the charge and a copy of the order to show cause;

5 (3) the place, date and time of the hearing
6 and all continuances or recesses of the hearing;

7 (4) the appearance or nonappearance of the
8 licensee;

9 (5) if the licensee appears with an attorney,
10 the name and address of the attorney;

11 (6) a record of all evidence and testimony and
12 a copy or record of all exhibits introduced in evidence;

13 (7) the findings of fact and law as to whether
14 [~~or not~~] the licensee has violated the Liquor Control Act as
15 set out in the charge; and

16 (8) the decision of the director.

17 I. If the licensee fails to appear without good
18 cause at the time and place designated in the order to show
19 cause for the hearing, the director shall order the
20 nonappearance of the licensee to be entered in the record of
21 hearing and shall order the license revoked or suspended or the
22 licensee fined, or both, on all the grounds alleged in the
23 charge and shall cause the record of hearing to show the
24 particulars in detail. In such a case, there shall be no
25 reopening, appeal or review of the proceedings.

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1 J. If the licensee admits guilt on all grounds set
2 out in the charge, the director shall order the revocation or
3 suspension of the license or the licensee fined, or both, and
4 cause a record of hearing to be made showing the facts and
5 particulars of [~~his~~] the director's order of revocation or
6 suspension of the license or fine of the licensee, or both. In
7 such a case, there shall be no review or appeal of the
8 proceedings.

9 K. If the licensee appears at the hearing and does
10 not testify or denies guilt of any [~~or all~~] of the grounds set
11 out in the charge, the hearing shall proceed as follows:

12 (1) the director or the hearing officer shall
13 administer oaths to all witnesses, the department shall cause
14 all testimony and evidence in support of the grounds alleged in
15 the charge to be presented in the presence of the licensee and
16 the director shall allow the licensee or [~~his~~] the licensee's
17 attorney to cross-examine all witnesses;

18 (2) the licensee shall be allowed to present
19 testimony and evidence [~~he~~] the licensee may have in denial or
20 in mitigation of the grounds set out in the charge;

21 (3) the department shall have the right to
22 cross-examine the licensee or any witness testifying in [~~his~~]
23 the licensee's favor;

24 (4) the department shall present any evidence
25 or testimony in rebuttal of that produced by the licensee;

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1 (5) the director or the hearing officer shall
2 make a finding on each ground alleged and a finding of the
3 guilt or innocence of the licensee on each ground;

4 (6) if the licensee is found guilty on any
5 ground alleged and proved, the director shall make [~~his~~] an
6 order of revocation or suspension of the license or fine of the
7 licensee, or both; and

8 (7) the rules of evidence shall not be
9 required to be observed, but the order of suspension or
10 revocation or fine, or both, shall be based upon substantial,
11 competent and relevant evidence and testimony appearing in the
12 record of hearing.

13 L. No admission of guilt, admission against
14 interest or transcript of testimony made or given in [~~any~~] a
15 hearing pursuant to this section shall be received or used in
16 [~~any~~] criminal proceedings wherein the licensee is a defendant;
17 provided, however, if the licensee commits perjury in a
18 hearing, the evidence shall be admissible in a perjury trial if
19 otherwise competent and relevant.

20 M. The director shall adopt reasonable
21 regulations setting forth uniform standards of penalties
22 concerning fines and suspensions imposed by the director."

23 Section 19. Section 60-6C-6 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 102, as amended by Laws 1999, Chapter 265,
25 Section 75 and also by Laws 1999, Chapter 277, Section 1) is

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1 amended to read:

2 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

3 A. No injunction or writ of mandamus or other legal
4 or equitable process shall issue in any suit, action or
5 proceeding to prevent or enjoin any finding of guilt or order
6 of suspension or revocation or fine made by a liquor control
7 hearing officer under the provisions of Section 60-6C-4 NMSA
8 1978. A licensee aggrieved or adversely affected by an order
9 of revocation, suspension or fine shall have the right to
10 appeal to the district court pursuant to the provisions of
11 Section 39-3-1.1 NMSA 1978.

12 B. No appeal shall have the effect of suspending
13 the operation of the order of suspension, revocation or fine,
14 but the liquor control hearing officer may, for good cause
15 shown and upon such terms and conditions as ~~[he]~~ the officer
16 may find are just, ~~[in his discretion]~~ suspend the operation of
17 the order of suspension, revocation or fine pending the appeal.
18 ~~[The court shall tax costs against the losing party.]~~

19 C. For purposes of this section, "licensee"
20 includes a person issued a server permit pursuant to the
21 Alcohol Server Education Article of the Liquor Control Act."

22 Section 20. Section 60-6C-8 NMSA 1978 (being Laws 1981,
23 Chapter 39, Section 104) is amended to read:

24 "60-6C-8. RESTRICTION ON LICENSE AFTER REVOCATION.--

25 A. A revoked license shall be delivered to the

1 director, if not already in the director's possession,
 2 immediately upon notice of the revocation by the person who
 3 previously owned the license and it shall be cancelled in the
 4 records of the director and physically destroyed. Upon notice
 5 of the revocation, the person who owned the license prior to
 6 revocation shall immediately cease the sale and service of
 7 alcoholic beverages at the previously licensed premises if the
 8 sale and service are then ongoing.

9 B. If a license is revoked under the provisions of
 10 the Liquor Control Act, the [~~licensee~~] person who owned the
 11 license shall not be issued or be the transferee of a license
 12 within two years of the date of the revocation."

13 Section 21. Section 60-6E-3 NMSA 1978 (being Laws 1999,
 14 Chapter 277, Section 4) is amended to read:

15 "60-6E-3. DEFINITIONS.--As used in Chapter 60, Article
 16 [~~6D~~] 6E NMSA 1978:

- 17 A. "director" means the director of the division;
- 18 B. "division" means the alcohol and gaming division
- 19 of the regulation and licensing department;
- 20 C. "licensee" means a person issued a license
- 21 pursuant to the provisions of the Liquor Control Act to sell,
- 22 serve or dispense alcoholic beverages for consumption and not
- 23 for resale;
- 24 D. "program" means an alcohol server education
- 25 course and examination approved by the director to be

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1 administered by providers;

2 E. "provider" means an individual, partnership,
3 corporation, public or private school or any other legal entity
4 certified by the director to provide a program;

5 F. "server" means an individual who sells, serves
6 or dispenses alcoholic beverages for consumption on or off
7 licensed premises, including persons who manage, direct or
8 control the sale or service of alcohol or who manage, direct or
9 control patrons of licensed premises. "Server" does not
10 include officers of a corporate licensee or lessee who do not
11 manage, direct or control the sale or service of alcohol; and

12 G. "server permit" means an authorization issued by
13 the director for a person to be employed or engaged to sell,
14 serve or dispense alcoholic beverages."

15 Section 22. Section 60-6E-7 NMSA 1978 (being Laws 1999,
16 Chapter 277, Section 8) is amended to read:

17 "60-6E-7. SERVER PERMITS--ISSUANCE--OWNERSHIP--FEES.--

18 A. The director shall issue a server permit to each
19 applicant who obtains a certificate of program completion and
20 provides [~~such~~] other information as may be required by the
21 director. The director may, in the director's discretion,
22 issue temporary server permits if circumstances warrant [~~such~~]
23 the issuance.

24 B. Server permits shall not be issued to graduates
25 of programs that are not approved by the director.

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1 C. A server permit is the property of the server to
2 whom it is issued.

3 D. The director may charge a fee for the issuance
4 of the server permit.

5 E. Server permits shall be valid for a period of
6 [~~five~~] three years from the date the server permit was issued.

7 F. A certificate of completion of an alcohol server
8 education program issued pursuant to previous law shall remain
9 valid until the date of its expiration."

10 Section 23. Section 60-6E-8 NMSA 1978 (being Laws 1999,
11 Chapter 277, Section 9) is amended to read:

12 "60-6E-8. SERVER PERMIT--SUSPENSION--REVOCATION--
13 ADMINISTRATIVE FINES--PENALTIES.--

14 A. In addition to any other penalties available,
15 the following penalties may be imposed for sales to minors or
16 intoxicated persons in violation of the provisions of the
17 Liquor Control Act or rules of the division:

18 [~~A.~~] (1) the director may suspend a server's
19 server permit for a period of thirty days or fine the server in
20 an amount not to exceed five hundred dollars (\$500), or both,
21 when [~~he~~] the director finds that the server is guilty of a
22 first offense of selling, serving or dispensing an alcoholic
23 beverage to an intoxicated person in violation of Section
24 60-7A-16 NMSA 1978 or to a minor in violation of Section
25 60-7B-1 NMSA 1978;

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1 ~~[B-]~~ (2) the director shall suspend a server's
2 server permit for a period of one year when ~~[he]~~ the director
3 finds that the server is guilty of a second offense of selling,
4 serving or dispensing alcoholic beverages to intoxicated
5 persons in violation of Section 60-7A-16 NMSA 1978 or to minors
6 in violation of Section 60-7B-1 NMSA 1978 arising separately
7 from the incident giving rise to ~~[his]~~ the server's first
8 offense;

9 ~~[E-]~~ (3) the director shall permanently revoke
10 a server's server permit when ~~[he]~~ the director finds that the
11 server is guilty of a third offense of selling, serving or
12 dispensing alcoholic beverages to intoxicated persons in
13 violation of Section 60-7A-16 NMSA 1978 or to minors in
14 violation of Section 60-7B-1 NMSA 1978 arising separately from
15 the incidents giving rise to ~~[his]~~ the server's first and
16 second offenses;

17 ~~[D-]~~ (4) no person whose server permit is
18 suspended or revoked pursuant to the provisions of this section
19 may be a server of alcoholic beverages on a licensed premises
20 during the period of suspension or revocation; and

21 ~~[E-]~~ (5) no person whose server permit is
22 suspended may serve alcoholic beverages on or after the date of
23 suspension unless the period of suspension is completed and the
24 person obtains a new server permit in accordance with the
25 provisions of ~~[Article 6D of]~~ Chapter 60, Article 6E NMSA 1978.

1 ~~[F-]~~ B. Nothing in this act shall be interpreted to
 2 waive ~~[any]~~ a license holder's liability that may arise
 3 pursuant to the provisions of ~~[this]~~ the Liquor Control Act."

4 Section 24. Section 60-7A-1 NMSA 1978 (being Laws 1981,
 5 Chapter 39, Section 47, as amended) is amended to read:

6 "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--
 7 CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE
 8 LICENSED PREMISES--ELECTIONS.--

9 A. Except for restaurant licenses and limited
 10 dispensers and subject to the restriction in Subsection K of
 11 this section, alcoholic beverages shall be sold, served and
 12 consumed on licensed premises only during the following hours
 13 and days:

14 (1) on Mondays from 7:00 a.m. until midnight;

15 (2) on other weekdays from after midnight of
 16 the previous day until 2:00 a.m., then from 7:00 a.m. until
 17 midnight, except as provided in Subsections D and F of this
 18 section; and

19 (3) on Sundays only after midnight of the
 20 previous day until 2:00 a.m., except as provided in Subsections
 21 C and E of this section and Section 60-7A-2 NMSA 1978;
 22 provided, however, nothing in this section shall prohibit the
 23 consumption at any time of alcoholic beverages in guest rooms
 24 of hotels.

25 B. Alcoholic beverages shall be sold by a dispenser

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1 or a retailer in unbroken packages, for consumption off the
2 licensed premises and not for resale, on Mondays through
3 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day,
4 except as provided in Subsections D and F of this section.

5 C. A dispenser, limited dispenser, restaurant
6 licensee or club may, upon payment of an additional fee of one
7 hundred dollars (\$100), obtain a permit to sell, serve or
8 permit the consumption of alcoholic beverages by the drink on
9 the licensed premises on Sundays subject to Subsection E of
10 this section either from 11:00 a.m. until 11:00 p.m. or from
11 12:00 noon until midnight and in those years when December 31
12 falls on a Sunday either from 11:00 a.m. until 1:00 a.m. of the
13 following day or from 12:00 noon until 2:00 a.m. of the
14 following day, except [as otherwise provided in Subsection E of
15 this section] that the closing time for restaurant licenses and
16 limited dispensers shall be pursuant to Section 60-6A-4 NMSA
17 1978 and Section 10 of this 2009 act. The permit shall expire
18 on June 30 of each year and may be renewed from year to year
19 upon application for renewal and payment of the required fee.
20 The permit fee shall not be prorated. Sales made pursuant to
21 this subsection or Subsection G of this section shall be called
22 "Sunday sales".

23 D. Retailers, dispensers, limited dispensers,
24 canopy licensees that were replaced by dispenser's licensees
25 pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees,

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1 club licensees and governmental licensees or their lessees
2 shall not sell, serve, deliver or allow the consumption of
3 alcoholic beverages on the licensed premises from 2:00 a.m. on
4 Christmas day until 7:00 a.m. on the day after Christmas,
5 except as permitted pursuant to Subsection F of this section.

6 E. Sunday sales pursuant to the provisions of
7 Subsection C of this section are permitted in a local option
8 district that voted to permit them. If in that election a
9 majority of the voters in a local option district voted "no" on
10 the question "Shall Sunday sales of alcoholic beverages by the
11 drink for consumption on the licensed premises of licensees be
12 allowed in this local option district?", Sunday sales are
13 unlawful in that local option district upon certification of
14 the election returns unless the provisions of Subsection J of
15 this section apply. The question shall not again be placed on
16 the ballot in that local option district until:

17 (1) at least one year has passed; and

18 (2) a petition is filed with the local
19 governing body bearing the signatures of registered qualified
20 electors of the local option district equal in number to ten
21 percent of the number of votes cast and counted in the local
22 option district for governor in the last preceding general
23 election in which a governor was elected. The signatures on
24 the petition shall be verified by the clerk of the county in
25 which the local option district is situated.

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1 F. On and after July 1, 2002, dispensers, limited
2 dispensers, canopy licensees that were replaced by dispenser's
3 licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant
4 licensees, club licensees and governmental licensees or lessees
5 of these licensees; provided that the licensees have current,
6 valid food service establishment permits, may sell, serve or
7 allow the consumption of alcoholic beverages by the drink on
8 licensed premises from noon until 10:00 p.m. on Christmas day,
9 except in a local option district in which, pursuant to
10 petition and election under this subsection, [~~a~~] the majority
11 of the voters voting on the question [~~votes~~] vote against
12 continuing such sales or consumption on Christmas day. An
13 election shall be held on the question of whether to continue
14 to allow the sale, service or consumption of alcoholic
15 beverages by the drink on licensed premises from noon until
16 10:00 p.m. on Christmas day in a local option district if a
17 petition requesting the governing body of that district to call
18 the election is signed by at least ten percent of the
19 registered voters of the district and is filed with the clerk
20 of the governing body of the district. Upon verification by
21 the clerk that the petition contains the required number of
22 signatures of registered voters, the governing body shall adopt
23 a resolution calling an election on the question of allowing
24 the sale, service or consumption of alcoholic beverages by the
25 drink on licensed premises from noon until 10:00 p.m. on

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1 Christmas day. The election shall be held within sixty days
 2 after the date the petition is verified, or it may be held in
 3 conjunction with a regular election of the governing body if
 4 that election occurs within sixty days of such verification.
 5 The election shall be called, conducted, counted and canvassed
 6 in substantially the same manner as provided for general
 7 elections in the county under the Election Code or for special
 8 municipal elections in a municipality under the Municipal
 9 Election Code. If [~~a~~] the majority of the voters voting on the
 10 question [~~votes~~] vote against continuing the sale, service or
 11 consumption of alcoholic beverages by the drink on licensed
 12 premises from noon until 10:00 p.m. on Christmas day, then such
 13 sales and consumption shall be prohibited. If [~~a~~] the majority
 14 of the voters voting on the question [~~votes~~] vote to allow
 15 continued sale, service and consumption of alcoholic beverages
 16 by the drink on licensed premises from noon until 10:00 p.m. on
 17 Christmas day, then such sales and consumption shall be allowed
 18 to continue. The question then shall not be submitted again to
 19 the voters within two years of the date of the last election on
 20 the question.

21 G. Notwithstanding the provisions of Subsection E
 22 of this section, any Indian tribe or pueblo whose lands are
 23 wholly situated within the state that has, by statute,
 24 ordinance or resolution, elected to permit the sale, possession
 25 or consumption of alcoholic beverages on lands within the

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1 territorial boundaries of the tribe or pueblo may, by statute,
2 ordinance or resolution of the governing body of the Indian
3 tribe or pueblo, permit Sunday sales by the drink on the
4 licensed premises of licensees on lands within the territorial
5 boundaries of the tribe or pueblo; provided that a certified
6 copy of such enactment is filed with the office of the director
7 and [øf] with the secretary of state.

8 H. Subject to the provisions of Subsection I of
9 this section, a dispenser or retailer, upon payment of an
10 additional fee of one hundred dollars (\$100), may obtain a
11 permit to sell alcoholic beverages in unbroken packages for
12 consumption off the licensed premises on Sundays from 12:00
13 noon until midnight, and in those years when December 31 falls
14 on a Sunday, from 12:00 noon on December 31 until 2:00 a.m. of
15 the following day. The permit shall expire on June 30 of each
16 year and may be renewed from year to year upon application for
17 renewal and payment of the required fee. The permit fee shall
18 not be prorated. Sales made pursuant to the provisions of this
19 subsection shall be called "Sunday package sales".

20 I. If a petition requesting the governing body of a
21 local option district to call an election on the question of
22 continuing to allow sales of alcoholic beverages in unbroken
23 packages for consumption off the licensed premises on Sundays
24 is filed with the clerk of the governing body and that petition
25 is signed by at least ten percent of the number of registered

1 voters of the local option district and the clerk of the
2 governing body verifies the petition signatures, the governing
3 body shall adopt a resolution calling an election on the
4 question. The election shall be held within sixty days of the
5 date the petition is verified, or it may be held in conjunction
6 with a regular election of the governing body if the regular
7 election occurs within sixty days of the petition verification.
8 The election shall be called, conducted, counted and canvassed
9 substantially in the manner provided by law for general
10 elections within a county or special municipal elections within
11 a municipality. If [~~a~~] the majority of the voters of the local
12 option district voting in the election [~~votes~~] vote to allow
13 the sale of alcoholic beverages in unbroken packages for
14 consumption off the licensed premises, then those sales shall
15 continue to be allowed. If [~~a~~] the majority of the voters of
16 the local option district voting in the election [~~votes~~] vote
17 not to allow the Sunday package sales, then those Sunday
18 package sales shall be prohibited commencing the first Sunday
19 after the results of the election are certified. Following the
20 election, the question of allowing the Sunday package sales
21 shall not be submitted again to the voters within two years of
22 the date of the last election on the question.

23 J. Sunday sales of alcoholic beverages shall be
24 permitted at resorts and at horse racetracks statewide pursuant
25 to the provisions of Section 60-7A-2 NMSA 1978.

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1 K. In a licensed premises that sells or serves
2 alcoholic beverages by the drink for consumption on the
3 licensed premises after 11:00 p.m., on Thursdays, Fridays and
4 Saturdays and on Sundays before 2:00 a.m., the sale and service
5 of alcoholic beverages shall cease at least one hour before the
6 licensed premises closes for business but no later than 2:00
7 a.m. During the period of time from the cessation of sales and
8 service of alcoholic beverages until the close of business, the
9 business at the licensed premises shall sell or serve only
10 nonalcoholic beverages and may provide food service. The
11 director may issue a rule prescribing the type of food service
12 that shall meet the requirement of this subsection."

13 Section 25. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
14 Chapter 179, Section 1, as amended) is amended to read:

15 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--
16 VIOLATIONS OF THE LIQUOR CONTROL ACT--CRIMINAL PENALTY--
17 FORFEITURE.--

18 A. It is unlawful for [~~any~~] a person to sell or
19 attempt to sell or to deliver to a purchaser alcoholic
20 beverages at any place other than a licensed premises or [~~as~~] a
21 place otherwise provided by the Liquor Control Act.

22 B. It is unlawful for a licensee to sell or attempt
23 to sell or to deliver alcoholic beverages to a person in
24 violation of the provisions of the Liquor Control Act or to
25 otherwise act in violation of that act.

1 ~~[B. Any]~~ C. A person who violates the provisions
 2 of Subsection A or B of this section is guilty of a fourth
 3 degree felony.

4 ~~[G. Any conveyance]~~ D. A means of transport,
 5 including a motor vehicle, watercraft or aircraft of any type,
 6 used or intended to be used ~~[for the purpose of unlawful sale~~
 7 ~~of alcoholic beverages]~~ in the commission of a felony described
 8 in this section or money ~~[which]~~ that is the fruit or
 9 instrumentality of the ~~[crime]~~ felony is subject to forfeiture,
 10 and the provisions of the Forfeiture Act apply to the seizure,
 11 forfeiture and disposal of ~~[such]~~ that property."

12 Section 26. Section 60-7A-12 NMSA 1978 (being Laws 1981,
 13 Chapter 39, Section 78, as amended) is amended to read:

14 "60-7A-12. OFFENSES BY DISPENSERS, LIMITED DISPENSERS,
 15 CANOPY LICENSEES, RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES
 16 OR THEIR LESSEES AND CLUBS.--It is a violation of the Liquor
 17 Control Act for ~~[any]~~ a dispenser, limited dispenser, canopy
 18 licensee, restaurant licensee, governmental licensee or its
 19 lessee or club to:

20 A. receive ~~[any]~~ alcoholic beverages for the
 21 purpose of or with the intent of reselling the same from ~~[any]~~
 22 a person other than one duly licensed to sell alcoholic
 23 beverages to dispensers for resale;

24 B. sell, possess for the purpose of sale or bottle
 25 ~~[any]~~ bulk wine for sale other than by the drink for immediate

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1 consumption on ~~his~~ its licensed premises;

2 C. directly, indirectly or through ~~any~~ subterfuge
3 own, operate or control ~~any~~ an interest in ~~any~~ a wholesale
4 liquor establishment or liquor manufacturing or wine bottling
5 firm; provided that this section shall not prevent a dispenser
6 from owning an interest in ~~any~~ a legal entity, directly or
7 indirectly or through an affiliate, that wholesales alcoholic
8 beverages and that operates or controls an interest in an
9 establishment operating pursuant to the provisions of
10 Subsection B of Section 60-7A-10 NMSA 1978;

11 D. sell or possess for the purpose of sale ~~any~~
12 alcoholic beverages at ~~any~~ a location or place except ~~his~~
13 the licensed premises to which the alcoholic beverages have
14 been invoiced or the location permitted pursuant to the
15 provisions of Section 60-6A-12 NMSA 1978;

16 E. employ or engage a person to sell, serve or
17 dispense alcoholic beverages if the person has not received
18 alcohol server training within thirty days of employment; or

19 F. employ or engage a person to sell, serve or
20 dispense alcoholic beverages during a period when the server
21 permit of that person is suspended or revoked."

22 Section 27. Section 60-7B-1 NMSA 1978 (being Laws 1993,
23 Chapter 68, Section 22, as amended) is amended to read:

24 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO
25 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

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1 A. It is a violation of the Liquor Control Act for
 2 a person, including a person licensed pursuant to the
 3 provisions of the Liquor Control Act, or an employee, agent or
 4 lessee of that person if [~~he knows or has reason to know that~~
 5 ~~he is~~] the person knew or should have known that the person was
 6 violating the provisions of this section to:

7 (1) sell, serve or give alcoholic beverages to
 8 a minor or permit a minor to consume alcoholic beverages on the
 9 licensed premises;

10 (2) buy alcoholic beverages for or procure the
 11 sale or service of alcoholic beverages to a minor;

12 (3) deliver alcoholic beverages to a minor; or

13 (4) aid or assist a minor to buy, procure or
 14 be served with alcoholic beverages.

15 B. It is not a violation of the Liquor Control Act,
 16 as provided in Subsection A or C of this section, when:

17 (1) a parent, legal guardian or adult spouse
 18 of a minor serves alcoholic beverages to that minor on real
 19 property, other than licensed premises, under the control of
 20 the parent, legal guardian or adult spouse; or

21 (2) alcoholic beverages are used in the
 22 practice of religious beliefs.

23 C. It is a violation of the Liquor Control Act for
 24 a minor to buy, attempt to buy, receive, possess or permit
 25 [~~himself~~] the minor's self to be served with alcoholic

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1 beverages.

2 D. When a person other than a minor procures
3 another person to sell, serve or deliver alcoholic beverages to
4 a minor by actual or constructive misrepresentation of facts or
5 concealment of facts calculated to cause the person selling,
6 serving or delivering the alcoholic beverages to the minor to
7 believe that the minor is legally entitled to be sold, served
8 or delivered alcoholic beverages, and actually deceives that
9 person by that misrepresentation or concealment, then the
10 procurer and not the person deceived shall have violated the
11 provisions of the Liquor Control Act.

12 E. As used in the Liquor Control Act, "minor" means
13 a person under twenty-one years of age.

14 F. In addition to the penalties provided in Section
15 60-6C-1 NMSA 1978, the penalty for a violation of the
16 provisions of Subsection A of this section is [a fourth degree
17 felony and the offender shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978]:

19 (1) a fourth degree felony for an offender
20 other than a server as "server" is defined in Section 60-6E-3
21 NMSA 1978, and the offender shall be sentenced pursuant to
22 Section 31-18-15 NMSA 1978;

23 (2) a fourth degree felony for an offender who
24 is a server as "server" is defined in Section 60-6E-3 NMSA 1978
25 and who intentionally and willfully commits a violation, and

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1 the offender shall be sentenced pursuant to Section 31-18-15
 2 NMSA 1978;

3 (3) a misdemeanor for a first or second
 4 violation by an offender who is a server as "server" is defined
 5 in Section 60-6E-3 NMSA 1978 and who should have known that the
 6 offender was committing a violation, and the offender shall be
 7 sentenced pursuant to Section 31-19-1 NMSA 1978; and

8 (4) a fourth degree felony for a third or
 9 subsequent violation by an offender who is a server as "server"
 10 is defined in Section 60-6E-3 NMSA 1978 and who should have
 11 known that the offender was committing a violation, and the
 12 offender shall be sentenced pursuant to Section 31-18-15 NMSA
 13 1978.

14 G. A violation of the provisions of Subsection C of
 15 this section is a misdemeanor and the offender shall be
 16 punished as follows:

17 (1) for a first violation, the offender shall
 18 be:

19 (a) fined an amount not more than one
 20 thousand dollars (\$1,000); and

21 (b) ordered by the sentencing court to
 22 perform thirty hours of community service related to reducing
 23 the incidence of driving while under the influence of
 24 intoxicating liquor;

25 (2) for a second violation, the offender

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underscored material = new
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1 shall:

2 (a) be fined an amount not more than one
3 thousand dollars (\$1,000);

4 (b) be ordered by the sentencing court
5 to perform forty hours of community service related to reducing
6 the incidence of driving while under the influence of
7 intoxicating liquor; and

8 (c) have [~~his~~] the offender's driver's
9 license suspended for a period of ninety days. If the minor is
10 too young to possess a driver's license at the time of the
11 violation, then ninety days shall be added to the date [~~he~~] the
12 offender would otherwise become eligible to obtain a driver's
13 license; and

14 (3) for a third or subsequent violation, the
15 offender shall:

16 (a) be fined an amount not more than one
17 thousand dollars (\$1,000);

18 (b) be ordered by the sentencing court
19 to perform sixty hours of community service related to reducing
20 the incidence of driving while under the influence of
21 intoxicating liquor; and

22 (c) have [~~his~~] the offender's driver's
23 license suspended for a period of two years or until the
24 offender reaches twenty-one years of age, whichever period of
25 time is greater.

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1 H. A violation of the provisions of Subsection D of
 2 this section is a fourth degree felony and the offender shall
 3 be sentenced pursuant to the provisions of Section 31-18-15
 4 NMSA 1978."

5 Section 28. Section 60-7B-10 NMSA 1978 (being Laws 1981,
 6 Chapter 39, Section 90, as amended) is amended to read:

7 "60-7B-10. MINORS IN LICENSED PREMISES--REGULATIONS.--

8 A. ~~[Any]~~ A person licensed pursuant to the
 9 provisions of the Liquor Control Act, or any employee, agent or
 10 lessee of that person, who permits a minor to enter and remain
 11 in ~~[any]~~ an area of a licensed premises that is prohibited to
 12 the use of minors is guilty of a violation of the Liquor
 13 Control Act.

14 B. A minor shall not enter or attempt to enter
 15 ~~[any]~~ an area of a licensed premises that is posted or
 16 otherwise identified as being prohibited to the use of minors,
 17 except as authorized by regulation or as necessitated by an
 18 emergency. A person who violates the provisions of this
 19 subsection is guilty of a petty misdemeanor and shall be
 20 punished pursuant to the provisions of Section 31-19-1 NMSA
 21 1978.

22 C. The director of the alcohol and gaming division
 23 of the regulation and licensing department shall adopt
 24 ~~[regulations]~~ rules classifying the types of licensed premises
 25 or areas of licensed premises where minors may be present. The

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underscored material = new
 [bracketed material] = delete

1 director shall require that signs issued by the division be
2 posted by licensees to inform the public, including minors, of
3 the areas in licensed premises that are open to minors. [~~The~~
4 ~~regulations~~]

5 D. The rules authorized in Subsection C of this
6 section may allow minors in those areas of licensed premises
7 where [~~(1)~~] the consumption of alcoholic beverages is the
8 primary business activity, when a minor is accompanied by a
9 parent, adult spouse or legal guardian or [~~(2) there is no~~
10 ~~consumption of alcoholic beverages~~] during the course of a
11 minor's employment or official duties."

12 Section 29. REPEAL.--Section 60-7A-15 NMSA 1978 (being
13 Laws 1981, Chapter 39, Section 92) is repealed.

14 Section 30. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2009.