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HOUSE BILL 211

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; DEFINING NEW TERMS IN THE LIQUOR CONTROL ACT; CREATING A LIMITED DISPENSER LICENSE; ADDRESSING THE REQUIREMENTS FOR CERTAIN LICENSES; CLARIFYING THE PROCESS FOR DECISIONS ON LICENSE APPLICATIONS AND TRANSFERS; CLARIFYING PROVISIONS REGARDING INTER-LOCAL OPTION DISTRICT LICENSE 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; PROVIDING PENALTIES; 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 60-3A-3 NMSA 1978 (being Laws 1981,
3 Chapter 39, Section 3, as amended) is amended to read:

4 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
5 Act:

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

13 B. "beer" means an alcoholic beverage obtained by
14 the fermentation of any infusion or decoction of barley, malt
15 and hops or other cereals in water and includes porter, beer,
16 ale and stout;

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

19 D. "club" means:

20 (1) any nonprofit group, including an
21 auxiliary or subsidiary group, organized and operated under the
22 laws of this state, with a membership of not less than fifty
23 members who pay membership dues at the rate of not less than
24 five dollars (\$5.00) per year and who, under the constitution
25 and bylaws of the club, have all voting rights and full

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1 membership privileges, and which group is the owner, lessee or
2 occupant of premises used exclusively for club purposes and
3 which group the director finds:

4 (a) is operated solely for recreation,
5 social, patriotic, political, benevolent or athletic purposes;
6 and

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

16 (2) an airline passenger membership club
17 operated by an air common carrier that maintains or operates a
18 clubroom at an international airport terminal. As used in this
19 paragraph, "air common carrier" means a person engaged in
20 regularly scheduled air transportation between fixed termini
21 under a certificate of public convenience and necessity issued
22 by the federal aviation administration;

23 E. "commission" means the secretary of public
24 safety when the term is used in reference to the enforcement
25 and investigatory provisions of the Liquor Control Act and

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1 means the superintendent of regulation and licensing when the
2 term is used in reference to the licensing provisions of the
3 Liquor Control Act;

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

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

19 H. "dispenser" means a person, licensed under the
20 provisions of the Liquor Control Act, selling, offering for
21 sale or having in the person's possession with the intent to
22 sell alcoholic beverages both by the drink for consumption on
23 the licensed premises and in unbroken packages for consumption
24 and not for resale off the licensed premises;

25 I. "distiller" means a person engaged in

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1 manufacturing spirituous liquors;

2 J. "golf course" means a tract of land, and
3 facilities used for playing golf and other recreational
4 activities, that includes tees, fairways, greens, hazards,
5 putting greens, driving ranges, recreational facilities,
6 patios, pro shops, cart paths and public and private roads that
7 are located within the tract of land;

8 K. "governing body" means the board of county
9 commissioners of a county or the city council or city
10 commissioners of a municipality;

11 L. "hotel" means an establishment or complex having
12 a resident of New Mexico as a proprietor or manager and where,
13 in consideration of payment, meals and lodging are regularly
14 furnished to the general public. The establishment or complex
15 must maintain for the use of its guests a minimum of twenty-
16 five sleeping rooms;

17 M. "inter-local option district license transfer"
18 means, as it applies to license transfers, a transfer of a
19 license issued pursuant to the Liquor Control Act that is
20 transferred from one local option district into another local
21 option district;

22 [~~M.~~] N. "licensed premises" means the contiguous
23 areas, or areas connected by indoor passageways, of a structure
24 and the outside dining, recreation and lounge areas of the
25 structure and the grounds and vineyards of a structure that is

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1 a winery that are under the direct control of the licensee and
2 from which the licensee is authorized to sell, serve or allow
3 the consumption of alcoholic beverages under the provisions of
4 its license; provided that in the case of a restaurant,
5 including a restaurant that has operated continuously in two
6 separate structures since July 1, 1987 and that is located in a
7 local option district that has voted to disapprove the transfer
8 of liquor licenses into that local option district, hotel, golf
9 course or racetrack, "licensed premises" includes all public
10 and private rooms, facilities and areas in which alcoholic
11 beverages are sold or served in the customary operating
12 procedures of the restaurant, hotel, golf course or racetrack;

13 O. "limited dispenser" means a person, licensed
14 under the provisions of the Liquor Control Act, selling,
15 offering for sale or having in the limited dispenser's
16 possession with the intent to sell alcoholic beverages by the
17 drink for consumption on the licensed premises, which licensed
18 premises are operated as a restaurant in a rural area of a
19 local option district that has approved inter-local option
20 district license transfers and has not exceeded the maximum
21 number of licenses pursuant to Section 60-6A-18 NMSA 1978;

22 [N.] P. "local option district" means a county that
23 has voted to approve the sale, serving or public consumption of
24 alcoholic beverages, or an incorporated municipality that falls
25 within a county that has voted to approve the sale, serving or

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1 public consumption of alcoholic beverages, or an incorporated
2 municipality of over five thousand population that has
3 independently voted to approve the sale, serving or public
4 consumption of alcoholic beverages under the terms of the
5 Liquor Control Act or any former act;

6 [Q-] Q. "manufacturer" means a distiller,
7 rectifier, brewer or winer;

8 [P-] R. "minor" means a person under twenty-one
9 years of age;

10 [Q-] S. "package" means an immediate container of
11 alcoholic beverages that is filled or packed by a manufacturer
12 or wine bottler for sale by the manufacturer or wine bottler to
13 wholesalers;

14 [R-] T. "person" means an individual, corporation,
15 firm, partnership, copartnership, association or other legal
16 entity;

17 U. "public nuisance" means knowingly creating,
18 allowing or maintaining an activity that is injurious to public
19 health, safety, morals or welfare; "public nuisance" includes
20 disturbing the peace; public drunkenness; drinking in public;
21 unlicensed gambling; prostitution; public urination; lewd
22 conduct; possession, distribution or trafficking in illegal
23 substances; excessive loud noise; failure to comply with the
24 provisions of the Liquor Control Act; or any other illegal
25 activity;

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

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

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

21 Y. "rural community" means an area ten or more
22 miles outside of a metropolitan statistical area, as determined
23 in New Mexico by the United States census bureau, with a
24 population of forty thousand or less;

25 [~~V-~~] Z. "spirituous liquors" means alcoholic

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1 beverages as defined in Subsection A of this section except
2 fermented beverages such as wine, beer and ale;

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

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

13 [~~Y-~~] CC. "wine bottler" means a New Mexico
14 wholesaler who is licensed to sell wine at wholesale for resale
15 only and who buys wine in bulk and bottles it for wholesale
16 resale;

17 [~~Z-~~] DD. "winegrower" means a person who owns or
18 operates a business for the manufacture of wine;

19 [~~AA-~~] EE. "winer" means a winegrower; and

20 [~~BB-~~] FF. "winery" means a facility in which a
21 winegrower manufactures and stores wine."

22 Section 2. Section 60-3A-12 NMSA 1978 (being Laws 2007,
23 Chapter 78, Section 1) is amended to read:

24 "60-3A-12. PARTIALLY CONSUMED BOTTLE OF WINE--LICENSED
25 PREMISES.--

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1 A. Notwithstanding any other provision of law, a
2 dispenser, canopy licensee [~~or~~], restaurant licensee or limited
3 dispenser may permit a customer of the licensee to remove from
4 the licensed premises one opened bottle of partially consumed
5 wine; provided that:

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

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

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

19 Section 3. Section 60-4B-4.1 NMSA 1978 (being Laws 1993,
20 Chapter 329, Section 1) is amended to read:

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

24 A. Within thirty days following the date of
25 issuance of a citation pursuant to the provisions of the Liquor
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1 Control Act, the department of public safety or the law
2 enforcement agency of a municipality or county shall report
3 alleged violations of that act to the alcohol and gaming
4 division of the regulation and licensing department. If the
5 department of public safety or a local law enforcement agency
6 fails to report a violation of the Liquor Control Act within
7 six months of the date of issuance of a citation, the alcohol
8 and gaming division of the regulation and licensing department
9 shall dismiss the citation.

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

16 Section 4. Section 60-6A-9 NMSA 1978 (being Laws 1981,
17 Chapter 39, Section 26) is amended to read:

18 "60-6A-9. PUBLIC SERVICE LICENSE.--

19 A. Every person selling alcoholic beverages to
20 travelers on trains or airplanes within the state shall secure
21 a public service license from the department on or before July
22 1 of each year.

23 B. A photostatic copy of the license shall be
24 posted in each train car from which alcoholic beverages are
25 sold in this state or on the premises at each airport in this

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1 state where alcoholic beverages are stored and issued to
2 airplanes."

3 Section 5. Section 60-6A-10 NMSA 1978 (being Laws 1981,
4 Chapter 39, Section 27, as amended) is amended to read:

5 "60-6A-10. GOVERNMENTAL LICENSE.--

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

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

25 C. A governmental entity holding a governmental

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1 license shall annually and not less than sixty days prior to
2 the date for renewal of its license submit to the director
3 documentary proof that its lessee is fully qualified to be a
4 lessee of a governmental license. If the director finds that
5 the lessee is qualified to lease a governmental license, the
6 director shall renew the license for an additional period of
7 one year. If the director determines that the proof is
8 inadequate, [~~he~~] the director shall notify the governing body
9 of [~~his~~] the decision and shall conduct a hearing as provided
10 by law. If the director finds that the lessee does not qualify
11 and the governmental entity does not change its lessee, the
12 director shall revoke the license.

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

15 E. For the purposes of this section:

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

20 (2) "governmental facility" means locations on
21 property owned or operated by a governmental entity, including
22 county fairs; state fairs held for [~~less~~] fewer than ten days
23 per year; convention centers; airports; civic centers; food
24 service facilities in state museums; auditoriums; all
25 facilities on the New Mexico state fairgrounds; facilities used

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1 for athletic competitions; golf courses, including golf courses
2 required to be used for municipal purposes notwithstanding that
3 there may be an existing club license at the same location
4 operated by the same club licensee; and other facilities used
5 for cultural or artistic performances, but "governmental
6 facility" does not include tennis facilities;

7 (3) "lessee" means an individual, corporation,
8 partnership, firm or association that fulfills the requirements
9 set forth in Subsections A through D of Section 60-6B-2 NMSA
10 1978;

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

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

23 F. The provisions of Section 60-6B-10 NMSA 1978 [~~as~~
24 ~~regards to~~] regarding golf courses owned by a governmental
25 entity and civic centers owned and operated by a governmental

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1 entity shall not apply to governmental licenses.

2 [G. ~~A governmental entity that sells alcoholic~~
3 ~~beverages directly or indirectly through a lessee at a~~
4 ~~governmental facility that is a food service facility in a~~
5 ~~state museum or a golf course required to be used for municipal~~
6 ~~purposes may only sell beer and wine.]"~~

7 Section 6. A new section of Chapter 60, Article 6A NMSA
8 1978 is enacted to read:

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

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

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

25 (2) the person shall submit evidence to the

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1 director that the person has a current valid food service
2 establishment permit;

3 (3) the person shall satisfy the director that
4 the primary source of revenue from the operation of the
5 restaurant will be derived from meals and not from the sale of
6 alcoholic beverages;

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

12 (5) upon application for renewal, the person
13 shall submit an annual report to the director indicating the
14 annual gross receipts from the sale of meals and from the sale
15 of alcoholic beverages;

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

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

24 (8) if Sunday sales have been approved in the
25 local option district, the license shall permit, subject to

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1 Section 60-7A-1 NMSA 1978, the sale, service and consumption of
2 alcoholic beverages on Sundays until the time meal sales and
3 service ceases or 11:00 p.m., whichever time is earlier; and

4 (9) the license shall not be transferable from
5 person to person or from one location to another, and whenever
6 a licensee ceases to operate a restaurant at the licensed
7 premises, the director shall cancel the license.

8 B. The provisions of Section 60-6A-18 NMSA 1978
9 do not apply to a limited dispenser license.

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

15 Section 7. Section 60-6A-15 NMSA 1978 (being Laws 1981,
16 Chapter 39, Section 32, as amended) is amended to read:

17 "60-6A-15. LICENSE FEES.--Every application for the
18 issuance or renewal of the following licenses shall be
19 accompanied by a license fee in the following specified
20 amounts:

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

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

25 C. manufacturer's license as a rectifier, one

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1 thousand fifty dollars (\$1,050);

2 D. wholesaler's license to sell all alcoholic
3 beverages for resale only, two thousand five hundred dollars
4 (\$2,500);

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

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

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

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

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

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

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

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

22 M. restaurant license, one thousand fifty dollars
23 (\$1,050);

24 N. club license, for clubs with more than two
25 hundred fifty members, one thousand two hundred fifty dollars

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1 (\$1,250), and for clubs with two hundred fifty members or
2 fewer, two hundred fifty dollars (\$250);

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

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

7 Q. nonresident licenses, for a total billing to New
8 Mexico wholesalers:

9 (1) in excess of:

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

11 1,000,000 annually 5,250;

12 500,000 annually 3,750;

13 200,000 annually 2,700;

14 100,000 annually 1,800;

15 and

16 50,000 annually 900;

17 and

18 (2) of \$50,000 or less \$300;

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

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

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

3 Section 8. Section 60-6B-2 NMSA 1978 (being Laws 1981,
4 Chapter 39, Section 38, as amended) is amended to read:

5 "60-6B-2. APPLICATIONS.--

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

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

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

20 (3) submit the name and street address of a
21 New Mexico resident who is not a felon, together with two
22 complete sets of that person's fingerprints taken under the
23 supervision of and certified to by a New Mexico law enforcement
24 officer or another person qualified to take fingerprints by
25 virtue of training or experience, who has power of attorney and

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1 authority to bind the applicant to matters related to liquor
2 sales and operations and upon whom the director may serve any
3 notice related to ownership or operation of the license,
4 including any notice of charge pursuant to Chapter 60, Article
5 6C NMSA 1978;

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

8 (a) a certified copy of its articles of
9 incorporation or, if a foreign corporation, a certified copy of
10 its certificate of authority;

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

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

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

25 (a) a certified copy of its certificate

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1 of limited partnership;

2 (b) the names and addresses of all
3 general partners and of all limited partners contributing ten
4 percent or more of the total value of contributions made to the
5 limited partnership or entitled to ten percent or more of the
6 profits earned or other income paid by the limited partnership.

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

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

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

17 (a) a copy of the articles of
18 organization, with a copy of the certificate of filing with the
19 public regulation commission;

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

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1 to hold a license; and

2 (c) such additional information
3 regarding the limited liability company as the director may
4 require to assure full disclosure of the limited liability
5 company's structure and financial responsibility;

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

8 (a) the names and addresses of the
9 trustees;

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

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

25 (8) obtain approval for the issuance from the

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1 governing body of the local option district in which the
2 proposed licensed premises are to be located [~~in accordance~~
3 ~~with the provisions of the Liquor Control Act~~] pursuant to
4 Section 60-6B-4 NMSA 1978.

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

17 (1) if the applicant is a person, for the
18 applicant;

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

24 (3) 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 general partnership, for each partner;

2 (4) if the applicant or the holder of a ten
3 percent or greater interest in the applicant entity is a
4 limited partnership, for each general partner, for each limited
5 partner holding a ten percent or greater interest in the
6 applicant entity and for any principal officers of the limited
7 partnership;

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

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

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

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1 of fingerprints from appropriate agencies. A temporary license
2 shall be surrendered immediately upon order of the director.

3 D. An applicant who files a false affidavit shall
4 be denied a license. When the director determines a false
5 affidavit has been filed, the director shall refer the matter
6 to the attorney general or district attorney for prosecution of
7 perjury.

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

12 F. Before issuing a license [~~the department shall~~
13 ~~hold a public hearing within thirty days after receipt of the~~
14 ~~application pursuant to Subsection K of this section]~~ or
15 transferring a license pursuant to the provisions of Subsection
16 G of this section, the department shall hold a public hearing
17 and provide notice pursuant to the provisions of Subsection K
18 of this section within fifty days after receipt of a completed
19 application as determined by the director.

20 G. An application for transfer of ownership shall
21 be filed with the department no later than thirty days after
22 the date a person acquired an ownership interest in a license.
23 It shall contain the actual date of sale of the license and
24 shall be accompanied by a sworn affidavit from the owner of
25 record of the license agreeing to the sale of the license to

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1 the applicant as well as attesting to the accuracy of the
2 information required by this section to be filed with the
3 department. A license shall not be transferred unless it will
4 be placed into operation in an actual location within one
5 hundred twenty days of issuance of the license, unless for good
6 cause shown the director grants an additional extension for a
7 length of time determined by the director.

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

22 I. After the deadline set in accordance with
23 Subsection H of this section, no more than ten applications per
24 available license shall be selected at random for priority of
25 qualification and approval. Within thirty days after the

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1 random selection for the ten priority positions for each
2 license, a hearing pursuant to Subsection K of this section
3 shall be held to determine the qualifications of the applicant
4 having the highest priority for each available license. If
5 necessary, such a hearing shall be held on each selected
6 application by priority until a qualified applicant for each
7 available license is approved. Further random selections for
8 priority positions shall also be held pursuant to this section
9 as necessary.

10 J. All applications submitted for a license shall
11 expire upon the director's final approval of a qualified
12 applicant for that available license.

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

19 L. In determining whether a license shall be issued
20 or transferred, the director shall take into consideration all
21 requirements of the Liquor Control Act and the decision of the
22 governing body of the local option district made pursuant to
23 the provisions of Section 60-6B-4 NMSA 1978. In the ~~[issuance~~
24 ~~of a license]~~ determination, the director shall specifically
25 consider the nature and number of prior violations of the

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1 Liquor Control Act by the applicant or of any citations issued
2 within the prior five years against a license held by the
3 applicant or in which the applicant had an ownership interest
4 required to be disclosed under the Liquor Control Act. The
5 director shall approve or disapprove the issuance [~~or give~~
6 ~~preliminary approval of the issuance~~] or transfer of the
7 license based upon a review of all documentation submitted to
8 both the governing body of the local option district and the
9 department and collected by any investigation deemed necessary
10 by the director.

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

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1 licensee, the licensee's representative or the director's
2 designee.

3 N. A license shall not be issued or transferred
4 until the posting requirements of Subsection M of this section
5 have been met.

6 O. All costs of publication and posting shall be
7 paid by the applicant.

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

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

25 Section 9. Section 60-6B-4 NMSA 1978 (being Laws 1981,
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1 Chapter 39, Section 40) is amended to read:

2 "60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF
3 APPROPRIATE GOVERNING BODY.--

4 ~~[A. Prior to the approval of the issuance of a new~~
5 ~~license, and prior to the approval of any transfer permitted by~~
6 ~~Section 39 or 113 of the Liquor Control Act, the director shall~~
7 ~~notify the governing body of his preliminary approval of the~~
8 ~~issuance or transfer of the license. Notice to the governing~~
9 ~~body shall be by certified mail.]~~

10 A. Upon receipt of a completed application, as
11 determined by the director, for the issuance of a new license
12 or transfer of a license, the director shall notify the
13 governing body of the local option district where the licensed
14 premises will be or are located of the receipt of the
15 application by certified mail.

16 B. A governing body ~~[which]~~ that has received a
17 ~~[notice of preliminary approval of]~~ completed application for
18 the issuance or transfer of a license from the department may
19 approve or disapprove the issuance or transfer of the license
20 in accordance with the provisions of this section.

21 C. Within ~~[forty-five]~~ thirty-five days after
22 receipt of a ~~[notice of preliminary approval]~~ completed
23 application from the department, the governing body shall hold
24 a public hearing on the question of whether the ~~[department]~~
25 director should approve the proposed issuance or transfer. If

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1 the governing body does not hold a hearing within the
2 prescribed time, the director shall hold a hearing in the local
3 option district to solicit community input concerning the
4 application prior to approving or disapproving the application
5 for a new license or transfer of a license based upon the
6 community input received at the hearing in the local option
7 district and the hearing held pursuant to Subsections F and K
8 of Section 60-6B-2 NMSA 1978.

9 D. Notice of the public hearing required by
10 Subsection C of this section shall be given by the governing
11 body by:

12 (1) publishing a notice of the date, time and
13 place of the hearing at least once a week for two consecutive
14 weeks, with the last publication taking place at least one week
15 prior to the hearing, in a newspaper of general circulation
16 within the territorial limits of the governing body. The
17 notice shall set forth:

- 18 (a) the name and address of the
19 licensee;
- 20 (b) the action proposed to be taken by
21 the department;
- 22 (c) the location of the licensee's
23 premises; [~~and~~]
- 24 (d) an invitation for public comment;

25 and

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1 [~~d~~] e such other information as may
2 be required by the department; and

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

5 E. The governing body may designate a hearing
6 officer to conduct the hearing. A record shall be made of the
7 hearing.

8 F. The governing body may disapprove the issuance
9 or transfer of the license if:

10 (1) the proposed location is within an area
11 where the sale of alcoholic beverages is prohibited by the laws
12 of New Mexico;

13 (2) the issuance or transfer would be in
14 violation of a zoning or other ordinance of the governing body;
15 or

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

19 G. Within [~~thirty~~] ten days after the public
20 hearing, the governing body shall notify the department as to
21 whether the governing body has approved or disapproved the
22 proposed issuance or transfer of the license and shall submit
23 with the notice a copy of the minutes of the public hearing.

24 If the governing body fails [~~to~~] either to approve or to
25 disapprove the issuance or transfer of the license within

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1 [thirty] ten days after the public hearing, the director [may
2 ~~give final approval to the issuance or transfer of the license.~~

3 H. ~~If the governing body disapproves the issuance
4 or transfer of the license, it shall notify the department
5 within the time required by Subsection G of this section
6 setting forth the reasons for the disapproval. A copy of the
7 minutes of the public hearing shall be submitted to the
8 department by the governing body with the notice of
9 disapproval. If the governing body disapproves of the issuance
10 or transfer of the license, the director shall disapprove the
11 issuance or transfer of the license.~~

12 I. ~~If the governing body approves the issuance or
13 transfer of the license, it shall notify the department within
14 the time required by Subsection G of this section of its
15 approval. If the governing body approves of the issuance or
16 transfer of the license, the director shall approve the
17 issuance or transfer of the license] shall approve or
18 disapprove the issuance or transfer based upon the hearing held
19 pursuant to Subsections F and K of Section 60-6B-2 NMSA 1978."~~

20 Section 10. Section 60-6B-5 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 41, as amended) is amended to read:

22 "60-6B-5. EXPIRATION AND RENEWAL OF LICENSES.--

23 A. All licenses provided for in the Liquor Control
24 Act, except nonresident licenses and common carrier
25 registrations, shall expire on June 30 of each year and may be

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1 renewed from year to year under the rules of the department.
2 Current nonresident licenses and common carrier registrations
3 shall expire on June 30, 1998 and may be renewed for three-year
4 periods thereafter. The director shall determine whether any
5 of the licensees under [~~his~~] the director's jurisdiction are
6 delinquent in any taxes administered by the taxation and
7 revenue department as of June 1 of each renewal period. The
8 director shall also determine whether [~~or not~~] there exists any
9 other reason why a license should not be renewed. If the
10 director determines that the license should not be renewed,
11 [~~he~~] the director shall enter an order requiring the licensee,
12 after notice, to show cause why [~~his~~] the licensee's license
13 should be renewed, and [~~he~~] the director shall conduct a
14 hearing on the matter. If, after the hearing, the director
15 finds that the licensee is qualified, [~~he~~] the director shall
16 renew the license.

17 B. A license that is not renewed for five
18 consecutive years shall expire without option to renew on June
19 30 of the fifth year after the year the license was issued or
20 last renewed."

21 Section 11. Section 60-6B-12 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 113, as amended) is amended to read:

23 "60-6B-12. INTER-LOCAL OPTION DISTRICT TRANSFERS.--

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

17 (1) the transfer of location does not lower
18 the number of dispenser's and retailer's licenses below that
19 number allowed by law in the local option district from which a
20 license will be transferred;

21 (2) beginning in calendar year 1997, no more
22 than ten dispenser's or retailer's licenses shall be
23 transferred to any local option district in any calendar year;

24 (3) the dispenser's or retailer's licenses
25 transferred under this section shall count in the computation

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1 of the limitation of the maximum number of licenses that may be
2 issued in the future in any local option district as provided
3 in Section 60-6A-18 NMSA 1978 for the purpose of determining
4 whether additional licenses may be issued in the local option
5 district [~~under the provisions of Subsection E~~] pursuant to the
6 provisions of Section 60-6B-2 NMSA 1978; and

7 (4) the dispenser's or retailer's licenses
8 shall be operated or leased by the person who transfers the
9 license to the local option district for at least a period of
10 one year from the date of the approval of the transfer by the
11 department.

12 B. [~~Transfers~~] Transfer of location of [~~each~~] a
13 liquor license pursuant to Subsection A of this section shall
14 become effective upon approval of the [~~local governing body~~]
15 director, unless within one hundred twenty days after the
16 effective date of the Liquor Control Act a petition requesting
17 an election on the question of approval of statewide transfers
18 of liquor licenses into that local option district is filed
19 with the clerk of the local option district and the petition is
20 signed by at least five percent of the number of registered
21 voters of the district. The clerk of the district shall verify
22 the petition signatures. If the petition is verified as
23 containing the required number of signatures of registered
24 voters, the governing body shall adopt a resolution calling an
25 election on the question of approving or disapproving statewide

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1 transfers of liquor licenses into that district. Notice of
2 [~~such~~] the election shall be published as provided in Section
3 3-8-35 NMSA 1978, and the election shall be held within sixty
4 days after the date the petition is verified or it may be held
5 in conjunction with a regular election of the governing body if
6 [~~such~~] the election occurs within sixty days after the date of
7 verification. If a majority of the registered voters of the
8 district voting in [~~such~~] the election votes to approve
9 statewide transfers of liquor licenses into the local option
10 district, each license proposing to be transferred shall be
11 subject to the approval of the governing body. If the voters
12 of the district voting in the election vote against the
13 approval, then all statewide transfers of liquor licenses
14 pursuant to Subsection A of this section shall be prohibited in
15 that district, unless a petition is filed requesting the
16 question be again submitted to the voters as provided in this
17 subsection. The question of approving or disapproving
18 statewide transfers of liquor licenses into the local option
19 district shall not be submitted again within two years from the
20 date of the last election on the question.

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

25 D. Rural dispenser's, rural retailer's and rural

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1 club licenses issued under any former act may be transferred to
2 any location, subject to the restrictions as to location
3 contained in the Liquor Control Act, within the unincorporated
4 area of the county in which they are currently located;
5 provided [~~they~~] that a license shall not be transferred to any
6 location within ten miles of another licensed premises; and
7 provided further that all requirements of the Liquor Control
8 Act and department regulations for the transfer of licenses are
9 fulfilled."

10 Section 12. Section 60-6C-1 NMSA 1978 (being Laws 1981,
11 Chapter 39, Section 97, as amended) is amended to read:

12 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
13 ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

14 A. The director may suspend or revoke the license
15 or permit or fine the licensee in an amount not more than ten
16 thousand dollars (\$10,000), or both, when [~~he~~] the director
17 finds that [~~any~~] a licensee has:

18 (1) violated any provision of the Liquor
19 Control Act or any [~~regulation~~] rule or order [~~promulgated~~]
20 pursuant to that act;

21 (2) been convicted of a felony pursuant to the
22 provisions of the Criminal Code, the Liquor Control Act or
23 federal law; or

24 (3) permitted [~~his~~] the licensee's licensed
25 premises to be or to remain a public nuisance [~~in the~~

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1 ~~neighborhood where it is located after written notice from the~~
2 ~~director that investigation by the department has revealed that~~
3 ~~the establishment is a public nuisance in the neighborhood]~~
4 without taking reasonable steps to prevent the licensed
5 premises and any adjacent area that is owned, leased or rented
6 by the licensee from being a public nuisance.

7 B. If the director finds that a licensee or
8 permittee or the licensee's or permittee's employee or agent
9 knew or should have known that the licensee or permittee, or
10 the employee or agent of either, sold, served or gave alcoholic
11 beverages to a minor in violation of Section 60-7B-1 NMSA 1978
12 or to an intoxicated person in violation of Section 60-7A-16
13 NMSA 1978, permitted a minor to enter and remain in a
14 prohibited area in violation of Section 60-7B-10 NMSA 1978 or
15 violated a rule adopted pursuant to those sections, the
16 director shall suspend or revoke the involved license or permit
17 and shall fine the licensee or permittee in an amount not to
18 exceed ten thousand dollars (\$10,000) subject to the following:

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

22 (2) for a second and subsequent violation
23 within any two-year period, the director shall impose a minimum
24 seven-day suspension and a minimum five-thousand-dollar
25 (\$5,000) fine; and

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

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

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

14 [~~(2) his agent~~] has made any material false
15 statement or concealed any material facts in [~~his~~] the
16 licensee's application for the license or permit granted [~~him~~]
17 the licensee pursuant to the provisions of the Liquor Control
18 Act.

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

24 [~~D. Any~~] E. A charge filed against a licensee by
25 the department and the resulting disposition of the charge

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1 shall be reported to the department of public safety and local
2 law enforcement agencies whose jurisdictions include the
3 licensed establishment."

4 Section 13. Section 60-6C-2 NMSA 1978 (being Laws 1981,
5 Chapter 39, Section 98, as amended) is amended to read:

6 "60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC [~~HEARING~~
7 ~~OFFICER~~].--

8 A. All hearings held pursuant to the provisions of
9 the Liquor Control Act shall be open to the public and
10 conducted by the director or a hearing officer appointed by the
11 director [and shall be held in the county in which the licensed
12 premises that are the subject matter of the hearing are
13 located. All such hearings shall be open to the public].

14 B. The hearing described in Subsection A of this
15 section shall be held in Santa Fe or, at the licensee's
16 request, in the county where the licensed premises that are the
17 subject of the hearing are located. If the hearing is held at
18 a location other than Santa Fe at the licensee's request, the
19 director shall assess the licensee the reasonable costs of the
20 hearing, including per diem and mileage."

21 Section 14. Section 60-6C-4 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 100, as amended) is amended to read:

23 "60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS--
24 INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

25 A. Whenever a person lodges a signed, written

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1 complaint with the department alleging that a licensee has
2 violated any of the provisions of the Liquor Control Act,
3 unless the complaint is deficient on its face, or when a law
4 enforcement agency cites a licensee for violation of the Liquor
5 Control Act, the director shall request that the department of
6 public safety investigate the complaint.

7 B. The department of public safety shall
8 investigate the complaint and make a written report to the
9 director.

10 C. If the director believes from the report that
11 probable cause exists for filing charges against the licensee
12 for the revocation or suspension of [~~his~~] the licensee's
13 license or permit or for fining [~~him~~] the licensee, or for
14 both, [~~he~~] the director or [~~his~~] the director's designee shall
15 file in the department a charge against the licensee in the
16 name of the state, stating the nature of the grounds relied
17 upon for the filing, the approximate date of the alleged
18 violation and the names and addresses of the witnesses who are
19 expected to give testimony or evidence against the licensee.

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

25 E. The director shall keep the original of the

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1 charge and the order to show cause on file in [~~his~~] the
2 director's office.

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

8 G. The director shall have a copy of the charge and
9 a copy of the order to show cause sent to the licensee or the
10 licensee's resident agent at the agent's last known address by
11 certified mail at least fourteen days before the date set for
12 the hearing on the order to show cause.

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

- 16 (1) the style of the proceedings;
- 17 (2) the nature of the proceedings, including a
18 copy of the charge and a copy of the order to show cause;
- 19 (3) the place, date and time of the hearing
20 and all continuances or recesses of the hearing;
- 21 (4) the appearance or nonappearance of the
22 licensee;
- 23 (5) if the licensee appears with an attorney,
24 the name and address of the attorney;
- 25 (6) a record of all evidence and testimony and

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1 a copy or record of all exhibits introduced in evidence;

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

5 (8) the decision of the director.

6 I. If the licensee fails to appear without good
7 cause at the time and place designated in the order to show
8 cause for the hearing, the director shall order the
9 nonappearance of the licensee to be entered in the record of
10 hearing and shall order the license revoked or suspended or the
11 licensee fined, or both, on all the grounds alleged in the
12 charge and shall cause the record of hearing to show the
13 particulars in detail. In such a case, there shall be no
14 reopening, appeal or review of the proceedings.

15 J. If the licensee admits guilt on all grounds set
16 out in the charge, the director shall order the revocation or
17 suspension of the license or the licensee fined, or both, and
18 cause a record of hearing to be made showing the facts and
19 particulars of [~~his~~] the director's order of revocation or
20 suspension of the license or fine of the licensee, or both. In
21 such a case, there shall be no review or appeal of the
22 proceedings.

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

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1 (1) the director or the hearing officer shall
2 administer oaths to all witnesses, the department shall cause
3 all testimony and evidence in support of the grounds alleged in
4 the charge to be presented in the presence of the licensee, and
5 the director shall allow the licensee or ~~[his]~~ the licensee's
6 attorney to cross-examine all witnesses;

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

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

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

15 (5) the director or the hearing officer shall
16 make a finding on each ground alleged and a finding of the
17 guilt or innocence of the licensee on each ground;

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

22 (7) the rules of evidence shall not be
23 required to be observed, but the order of suspension or
24 revocation or fine, or both, shall be based upon substantial,
25 competent and relevant evidence and testimony appearing in the

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1 record of hearing.

2 L. No admission of guilt, admission against
3 interest or transcript of testimony made or given in any
4 hearing pursuant to this section shall be received or used in
5 [any] criminal proceedings wherein the licensee is a defendant;
6 provided, however, that if the licensee commits perjury in a
7 hearing, the evidence shall be admissible in a perjury trial if
8 otherwise competent and relevant.

9 M. The director shall adopt reasonable
10 regulations setting forth uniform standards of penalties
11 concerning fines and suspensions imposed by the director."

12 Section 15. Section 60-6C-6 NMSA 1978 (being Laws 1981,
13 Chapter 39, Section 102, as amended by Laws 1999, Chapter 265,
14 Section 75 and also by Laws 1999, Chapter 277, Section 1) is
15 amended to read:

16 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

17 A. No injunction or writ of mandamus or other legal
18 or equitable process shall issue in any suit, action or
19 proceeding to prevent or enjoin any finding of guilt or order
20 of suspension or revocation or fine made by a liquor control
21 hearing officer under the provisions of Section 60-6C-4 NMSA
22 1978. A licensee aggrieved or adversely affected by an order
23 of revocation, suspension or fine shall have the right to
24 appeal to the district court pursuant to the provisions of
25 Section 39-3-1.1 NMSA 1978.

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1 B. No appeal shall have the effect of suspending
2 the operation of the order of suspension, revocation or fine,
3 but the liquor control hearing officer may, for good cause
4 shown and upon such terms and conditions as ~~[he]~~ the officer
5 may find are just, ~~[in his discretion]~~ suspend the operation of
6 the order of suspension, revocation or fine pending the appeal.
7 ~~[The court shall tax costs against the losing party.]~~

8 C. For purposes of this section, "licensee"
9 includes a person issued a server permit pursuant to Chapter
10 60, Article 6E NMSA 1978."

11 Section 16. Section 60-6C-8 NMSA 1978 (being Laws 1981,
12 Chapter 39, Section 104) is amended to read:

13 "60-6C-8. RESTRICTION ON LICENSE AFTER REVOCATION.--

14 A. A revoked license shall be delivered to the
15 director, if not already in the director's possession,
16 immediately upon notice of the revocation by the person who
17 previously owned the license, and it shall be canceled in the
18 records of the director and physically destroyed. Upon notice
19 of the revocation, the person who owned the license prior to
20 revocation shall immediately cease the sale and service of
21 alcoholic beverages at the previously licensed premises if the
22 sale and service are then ongoing.

23 B. If a license is revoked under the provisions of
24 the Liquor Control Act, the ~~[licensee]~~ person who owned the
25 license shall not be issued or be the transferee of a license

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1 within [~~two~~] ten years of the date of the revocation."

2 Section 17. Section 60-6E-3 NMSA 1978 (being Laws 1999,
3 Chapter 277, Section 4) is amended to read:

4 "60-6E-3. DEFINITIONS.--As used in Chapter 60, Article
5 [~~6D~~] 6E NMSA 1978:

6 A. "director" means the director of the division;

7 B. "division" means the alcohol and gaming division
8 of the regulation and licensing department;

9 C. "licensee" means a person issued a license
10 pursuant to the provisions of the Liquor Control Act to sell,
11 serve or dispense alcoholic beverages for consumption and not
12 for resale;

13 D. "program" means an alcohol server education
14 course and examination approved by the director to be
15 administered by providers;

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

19 F. "server" means an individual who sells, serves
20 or dispenses alcoholic beverages for consumption on or off
21 licensed premises, including persons who manage, direct or
22 control the sale or service of alcohol or who manage, direct or
23 control patrons of licensed premises. "Server" does not
24 include officers of a corporate licensee or lessee who do not
25 manage, direct or control the sale or service of alcohol; and

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

4 Section 18. Section 60-6E-7 NMSA 1978 (being Laws 1999,
5 Chapter 277, Section 8) is amended to read:

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

7 A. The director shall issue a server permit to each
8 applicant who obtains a certificate of program completion and
9 provides [~~such~~] other information [~~as may be~~] required by the
10 director. The director may [~~in the director's discretion~~]
11 issue temporary server permits if the director determines that
12 circumstances warrant [~~such~~] the issuance.

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

15 C. A server permit is the property of the server to
16 whom it is issued.

17 D. The director may charge a fee for the issuance
18 of the server permit.

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

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

24 Section 19. Section 60-6E-8 NMSA 1978 (being Laws 1999,
25 Chapter 277, Section 9) is amended to read:

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1 "60-6E-8. SERVER PERMIT--SUSPENSION--REVOCATION--
2 ADMINISTRATIVE FINES--PENALTIES.--

3 A. In addition to any other penalties available,
4 the following penalties may be imposed for sales to minors or
5 intoxicated persons in violation of the provisions of the
6 Liquor Control Act or rules of the division:

7 [~~A.~~] (1) the director may suspend a server's
8 server permit for a period of thirty days or fine the server in
9 an amount not to exceed five hundred dollars (\$500), or both,
10 when [~~he~~] the director finds that the server is guilty of a
11 first offense of selling, serving or dispensing an alcoholic
12 beverage to an intoxicated person in violation of Section
13 60-7A-16 NMSA 1978 or to a minor in violation of Section
14 60-7B-1 NMSA 1978;

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

23 [~~C.~~] (3) the director shall permanently revoke
24 a server's server permit when [~~he~~] the director finds that the
25 server is guilty of a third offense of selling, serving or

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1 dispensing alcoholic beverages to intoxicated persons in
2 violation of Section 60-7A-16 NMSA 1978 or to minors in
3 violation of Section 60-7B-1 NMSA 1978 arising separately from
4 the incidents giving rise to [~~his~~] the server's first and
5 second offenses;

6 [~~D.~~] (4) no person whose server permit is
7 suspended or revoked pursuant to the provisions of this section
8 may be a server of alcoholic beverages on a licensed premises
9 during the period of suspension or revocation; and

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

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

19 Section 20. Section 60-7A-1 NMSA 1978 (being Laws 1981,
20 Chapter 39, Section 47, as amended) is amended to read:

21 "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--
22 CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE
23 LICENSED PREMISES--ELECTIONS.--

24 A. Alcoholic beverages shall be sold, served and
25 consumed on licensed premises only during the following hours
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1 and days:

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

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

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

13 B. Alcoholic beverages shall be sold by a dispenser
14 or a retailer in unbroken packages, for consumption off the
15 licensed premises and not for resale, on Mondays through
16 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day,
17 except as provided in Subsections D and F of this section.

18 C. A dispenser, limited dispenser, restaurant
19 licensee or club may, upon payment of an additional fee of one
20 hundred dollars (\$100), obtain a permit to sell, serve or
21 permit the consumption of alcoholic beverages by the drink on
22 the licensed premises on Sundays subject to approval obtained
23 pursuant to the process set forth in Subsection E of this
24 section. Alcoholic beverages may be sold, served and consumed
25 either from 11:00 a.m. until 11:00 p.m. or from 12:00 noon

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1 until midnight [~~and~~] as set forth in the licensee's Sunday
2 sales permit, except as otherwise provided for a restaurant
3 licensee or limited dispenser in Section 60-6A-4 NMSA 1978 and
4 Section 6 of this 2010 act. In those years when December 31
5 falls on a Sunday, alcoholic beverages may be sold, served and
6 consumed on the licensed premises from 12:00 noon until 2:00
7 a.m. of the following day, except as otherwise provided in
8 Subsection E of this section. The Sunday sales permit shall
9 expire on June 30 of each year and may be renewed from year to
10 year upon application for renewal and payment of the required
11 fee. The permit fee shall not be prorated. Sales made
12 pursuant to this subsection or Subsection G of this section
13 shall be called "Sunday sales".

14 D. Retailers, dispensers, canopy licensees that
15 were replaced by dispenser's licensees pursuant to Section
16 60-6B-16 NMSA 1978, restaurant licensees, club licensees and
17 governmental licensees or their lessees shall not sell, serve,
18 deliver or allow the consumption of alcoholic beverages on the
19 licensed premises from 2:00 a.m. on Christmas day until 7:00
20 a.m. on the day after Christmas, except as permitted pursuant
21 to Subsection F of this section.

22 E. Sunday sales pursuant to the provisions of
23 Subsection C of this section are permitted in a local option
24 district that voted to permit them. If in that election a
25 majority of the voters in a local option district voted "no" on

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1 the question "Shall Sunday sales of alcoholic beverages by the
2 drink for consumption on the licensed premises of licensees be
3 allowed in this local option district?", Sunday sales are
4 unlawful in that local option district upon certification of
5 the election returns unless the provisions of Subsection J of
6 this section apply. The question shall not again be placed on
7 the ballot in that local option district until:

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

9 (2) a petition is filed with the local
10 governing body bearing the signatures of registered qualified
11 electors of the local option district equal in number to ten
12 percent of the number of votes cast and counted in the local
13 option district for governor in the last preceding general
14 election in which a governor was elected. The signatures on
15 the petition shall be verified by the clerk of the county in
16 which the local option district is situated.

17 F. On and after July 1, 2002, dispensers, limited
18 dispensers, canopy licensees that were replaced by dispenser's
19 licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant
20 licensees, club licensees and governmental licensees or lessees
21 of these licensees; provided that the licensees have current,
22 valid food service establishment permits, may sell, serve or
23 allow the consumption of alcoholic beverages by the drink on
24 licensed premises from noon until 10:00 p.m. on Christmas day,
25 except in a local option district in which, pursuant to

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1 petition and election under this subsection, a majority of the
2 voters voting on the question votes against continuing such
3 sales or consumption on Christmas day. An election shall be
4 held on the question of whether to continue to allow the sale,
5 service or consumption of alcoholic beverages by the drink on
6 licensed premises from noon until 10:00 p.m. on Christmas day
7 in a local option district if a petition requesting the
8 governing body of that district to call the election is signed
9 by at least ten percent of the registered voters of the
10 district and is filed with the clerk of the governing body of
11 the district. Upon verification by the clerk that the petition
12 contains the required number of signatures of registered
13 voters, the governing body shall adopt a resolution calling an
14 election on the question of allowing the sale, service or
15 consumption of alcoholic beverages by the drink on licensed
16 premises from noon until 10:00 p.m. on Christmas day. The
17 election shall be held within sixty days after the date the
18 petition is verified, or it may be held in conjunction with a
19 regular election of the governing body if that election occurs
20 within sixty days of such verification. The election shall be
21 called, conducted, counted and canvassed in substantially the
22 same manner as provided for general elections in the county
23 under the Election Code or for special municipal elections in a
24 municipality under the Municipal Election Code. If a majority
25 of the voters voting on the question votes against continuing

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1 the sale, service or consumption of alcoholic beverages by the
2 drink on licensed premises from noon until 10:00 p.m. on
3 Christmas day, then such sales and consumption shall be
4 prohibited. If a majority of the voters voting on the question
5 votes to allow continued sale, service and consumption of
6 alcoholic beverages by the drink on licensed premises from noon
7 until 10:00 p.m. on Christmas day, then such sales and
8 consumption shall be allowed to continue. The question then
9 shall not be submitted again to the voters within two years of
10 the date of the last election on the question.

11 G. Notwithstanding the provisions of Subsection E
12 of this section, any Indian nation, tribe or pueblo whose lands
13 are wholly situated within the state that has, by statute,
14 ordinance or resolution, elected to permit the sale, possession
15 or consumption of alcoholic beverages on lands within the
16 territorial boundaries of the Indian nation, tribe or pueblo
17 may, by statute, ordinance or resolution of the governing body
18 of the Indian nation, tribe or pueblo, permit Sunday sales by
19 the drink on the licensed premises of licensees on lands within
20 the territorial boundaries of the Indian nation, tribe or
21 pueblo; provided that a certified copy of such enactment is
22 filed with the office of the director and [~~of~~] with the
23 secretary of state.

24 H. Subject to the provisions of Subsection I of
25 this section, a dispenser or retailer, upon payment of an

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1 additional fee of one hundred dollars (\$100), may obtain a
2 permit to sell alcoholic beverages in unbroken packages for
3 consumption off the licensed premises on Sundays from 12:00
4 noon until midnight, and in those years when December 31 falls
5 on a Sunday, from 12:00 noon on December 31 until 2:00 a.m. of
6 the following day. The permit shall expire on June 30 of each
7 year and may be renewed from year to year upon application for
8 renewal and payment of the required fee. The permit fee shall
9 not be prorated. Sales made pursuant to the provisions of this
10 subsection shall be called "Sunday package sales".

11 I. If a petition requesting the governing body of a
12 local option district to call an election on the question of
13 continuing to allow sales of alcoholic beverages in unbroken
14 packages for consumption off the licensed premises on Sundays
15 is filed with the clerk of the governing body and that petition
16 is signed by at least ten percent of the number of registered
17 voters of the local option district and the clerk of the
18 governing body verifies the petition signatures, the governing
19 body shall adopt a resolution calling an election on the
20 question. The election shall be held within sixty days of the
21 date the petition is verified or it may be held in conjunction
22 with a regular election of the governing body, if the regular
23 election occurs within sixty days of the petition verification.
24 The election shall be called, conducted, counted and canvassed
25 substantially in the manner provided by law for general

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1 elections within a county or special municipal elections within
2 a municipality. If a majority of the voters of the local
3 option district voting in the election votes to allow the sale
4 of alcoholic beverages in unbroken packages for consumption off
5 the licensed premises, then those sales shall continue to be
6 allowed. If a majority of the voters of the local option
7 district voting in the election votes not to allow the Sunday
8 package sales, then those Sunday package sales shall be
9 prohibited commencing the first Sunday after the results of the
10 election are certified. Following the election, the question
11 of allowing the Sunday package sales shall not be submitted
12 again to the voters within two years of the date of the last
13 election on the question.

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

17 Section 21. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
18 Chapter 179, Section 1, as amended) is amended to read:

19 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--
20 CRIMINAL PENALTY--FORFEITURE.--

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

25 B. It is unlawful for a licensee to sell or attempt

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1 to sell or to deliver alcoholic beverages to a person in
2 violation of the provisions of the Liquor Control Act or to
3 otherwise act in violation of that act.

4 [B.—Any] C. A person who violates the provisions
5 of Subsection A or B of this section is guilty of a fourth
6 degree felony.

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

15 Section 22. Section 60-7A-12 NMSA 1978 (being Laws 1981,
16 Chapter 39, Section 78, as amended) is amended to read:

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

23 A. receive any alcoholic beverages for the purpose
24 [of], or with the intent, of reselling the same from any person
25 other than one duly licensed to sell alcoholic beverages to

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1 dispensers for resale;

2 B. sell, possess for the purpose of sale or bottle
3 any bulk wine for sale other than by the drink for immediate
4 consumption on [~~his~~] its licensed premises;

5 C. directly, indirectly or through any subterfuge
6 own, operate or control any interest in any wholesale liquor
7 establishment or liquor manufacturing or wine bottling firm;
8 provided that this section shall not prevent a dispenser from
9 owning an interest in any legal entity, directly or indirectly
10 or through an affiliate, that wholesales alcoholic beverages
11 and that operates or controls an interest in an establishment
12 operating pursuant to the provisions of Subsection B of Section
13 60-7A-10 NMSA 1978;

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

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

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

25 Section 23. Section 60-7B-1 NMSA 1978 (being Laws 1993,

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1 Chapter 68, Section 22, as amended) is amended to read:

2 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO
3 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

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

10 (1) sell, serve or give alcoholic beverages to
11 a minor or permit a minor to consume alcoholic beverages on the
12 licensed premises;

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

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

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

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

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

24 (2) alcoholic beverages are used in the
25 practice of religious beliefs.

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

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

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

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

22 (1) a fourth degree felony for an offender
23 other than a server, and the offender shall be sentenced
24 pursuant to Section 31-18-15 NMSA 1978;

25 (2) a fourth degree felony for an offender who

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1 is a server and who intentionally and willfully commits a
2 violation, and the offender shall be sentenced pursuant to
3 Section 31-18-15 NMSA 1978;

4 (3) a misdemeanor for a first or second
5 violation by an offender who is a server and who should have
6 known that the offender was committing a violation, and the
7 offender shall be sentenced pursuant to Section 31-19-1 NMSA
8 1978; and

9 (4) a fourth degree felony for a third or
10 subsequent violation by an offender who is a server and who
11 should have known that the offender was committing a violation,
12 and the offender shall be sentenced pursuant to Section
13 31-18-15 NMSA 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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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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H. A violation of the provisions of Subsection D of this section is a fourth degree felony, and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

I. As used in this section, "server" means a person defined as a "server" in Section 60-6E-3 NMSA 1978."

Section 24. REPEAL.--Section 60-7A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 92) is repealed.

Section 25. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.