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SENATE BILL 163

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO LIQUOR CONTROL; REQUIRING RULEMAKING TO ALLOW
SEGREGATED SALES OF BEER, WINE OR CIDER PACKAGED IN GROWLERS
AND TO ESTABLISH PROCEDURES RELATED TO REFILLING GROWLERS.

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

SECTION 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,
Chapter 39, Section 3, as amended by Laws 2015, Chapter 3,
Section 28 and by Laws 2015, Chapter 102, Section 2) is amended
to read:

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

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, powdered alcohol, frozen or
freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic
bitters bearing the federal internal revenue strip stamps or

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1 any similar alcoholic beverage, including blended or fermented
2 beverages, dilutions or mixtures of one or more of the
3 foregoing containing more than one-half percent alcohol, but
4 excluding medicinal bitters;

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

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

11 D. "cider" means an alcoholic beverage made from
12 the normal alcoholic fermentation of the juice of sound, ripe
13 apples that contains not less than one-half of one percent
14 alcohol by volume and not more than seven percent alcohol by
15 volume;

16 E. "club" means:

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

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1 (a) is operated solely for recreation,
2 social, patriotic, political, benevolent or athletic purposes;
3 and

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

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

20 F. "commission" means the secretary of public
21 safety when the term is used in reference to the enforcement
22 and investigatory provisions of the Liquor Control Act and
23 means the superintendent of regulation and licensing when the
24 term is used in reference to the licensing provisions of the
25 Liquor Control Act;

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1 G. "department" means the New Mexico state police
2 division of the department of public safety when the term is
3 used in reference to the enforcement and investigatory
4 provisions of the Liquor Control Act and means the director of
5 the alcohol and gaming division of the regulation and licensing
6 department when the term is used in reference to the licensing
7 provisions of the Liquor Control Act;

8 H. "director" means the chief of the New Mexico
9 state police division of the department of public safety when
10 the term is used in reference to the enforcement and
11 investigatory provisions of the Liquor Control Act and means
12 the director of the alcohol and gaming division of the
13 regulation and licensing department when the term is used in
14 reference to the licensing provisions of the Liquor Control
15 Act;

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

22 J. "distiller" means a person engaged in
23 manufacturing spirituous liquors;

24 K. "golf course" means a tract of land and
25 facilities used for playing golf and other recreational

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1 activities that includes tees, fairways, greens, hazards,
2 putting greens, driving ranges, recreational facilities,
3 patios, pro shops, cart paths and public and private roads that
4 are located within the tract of land;

5 L. "governing body" means the board of county
6 commissioners of a county or the city council or city
7 commissioners of a municipality;

8 M. "growler" means a clean, refillable, resealable
9 container that has a liquid capacity that does not exceed one
10 gallon and that is intended and used for the sale of beer, wine
11 or cider for consumption off premises;

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

18 O. "licensed premises" means the contiguous areas
19 or areas connected by indoor passageways of a structure and the
20 outside dining, recreation and lounge areas of the structure
21 and the grounds and vineyards of a structure that is a winery
22 that are under the direct control of the licensee and from
23 which the licensee is authorized to sell, serve or allow the
24 consumption of alcoholic beverages under the provisions of its
25 license; provided that in the case of a restaurant, "licensed

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1 premises" includes a restaurant that has operated continuously
2 in two separate structures since July 1, 1987 and that is
3 located in a local option district that has voted to disapprove
4 the transfer of liquor licenses into that local option
5 district, hotel, golf course or racetrack and all public and
6 private rooms, facilities and areas in which alcoholic
7 beverages are sold or served in the customary operating
8 procedures of the restaurant, hotel, golf course or racetrack.
9 "Licensed premises" also includes rural dispenser licenses
10 located in the unincorporated areas of a county with a
11 population of less than thirty thousand, located in buildings
12 in existence as of January 1, 2012, that are within one hundred
13 fifty feet of one another and that are under the direct control
14 of the license holder;

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

24 Q. "manufacturer" means a distiller, rectifier,
25 brewer or winer;

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1 R. "minor" means a person under twenty-one years of
2 age;

3 S. "package" means an immediate container of
4 alcoholic beverages that is filled or packed by a manufacturer
5 or wine bottler for sale by the manufacturer or wine bottler to
6 wholesalers;

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

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

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

24 W. "retailer" means a person licensed under the
25 provisions of the Liquor Control Act selling, offering for sale

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1 or having in the person's possession with the intent to sell
2 alcoholic beverages in unbroken packages, including growlers,
3 for consumption and not for resale off the licensed premises;

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

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

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

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

20 BB. "winegrower" means a person who owns or
21 operates a business for the manufacture of wine;

22 CC. "winer" means a winegrower; and

23 DD. "winery" means a facility in which a winegrower
24 manufactures and stores wine."

25 SECTION 2. Section 60-6B-19 NMSA 1978 (being Laws 1993,

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1 Chapter 68, Section 36, as amended) is amended to read:

2 "60-6B-19. RETAILERS AND DISPENSERS--SEGREGATED
3 SALES--TABLE WINES EXCEPTED.--

4 A. Except as provided in Subsection B of this
5 section, the director shall by [~~regulation~~] rule develop
6 procedures for segregated alcohol sales by every retailer or
7 dispenser who sells alcoholic beverages in unbroken packages
8 for consumption and not for resale off the licensed premises
9 and whose sales are less than sixty percent of their total
10 sales, giving serious consideration [~~in the regulation process~~]
11 to the potentially adverse impact of segregated sales on
12 different sizes of the establishments of the retailer or
13 dispenser. The rules shall include:

14 (1) a provision to allow segregated sales of
15 beer, wine or cider that is packaged in a growler;

16 (2) a procedure by which a retailer or
17 dispenser may fill or refill a growler and allow the growler to
18 be removed from the licensed premises after the growler is
19 sealed with a tamper-proof seal and the customer's sales
20 receipt is attached to the growler; and

21 (3) a requirement that a retailer or dispenser
22 shall sterilize a growler provided by a customer before the
23 growler is refilled and sealed.

24 B. There shall not be segregated sales of table
25 wine by retailers or dispensers who sell alcoholic beverages in

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1 the manner described in Subsection A of this section.

2 C. For purposes of this section, "table wine" means
3 wine containing fourteen percent or less alcohol by volume when
4 bottled or packaged by the manufacturer, but may also include:

5 (1) wine that is sealed or capped by cork
6 closure and aged two years or more;

7 (2) wine that contains more than fourteen
8 percent alcohol by volume produced solely as a result of the
9 natural fermentation process and not produced with the addition
10 of wine spirits, brandy or alcohol; or

11 (3) vermouth and sherry."

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2016.

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