

1 SENATE BILL 211

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Ron Griggs

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10 AN ACT

11 RELATING TO ALCOHOLIC BEVERAGES; ENACTING A NEW SECTION OF THE
12 LIQUOR CONTROL ACT TO ALLOW CERTAIN DISPENSER LICENSEES TO
13 LEASE A PRIVILEGE GRANTED BY THEIR LICENSES; ADDRESSING LESSOR
14 AND LESSEE LIABILITY; AMENDING SECTIONS OF THE LIQUOR CONTROL
15 ACT; REQUIRING RULES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 60-6A-1 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 18, as amended) is amended to read:

20 "60-6A-1. WHOLESALER'S LICENSE.--

21 A. In any local option district, a person qualified
22 under the provisions of the Liquor Control Act may apply for
23 and be issued a license as a wholesaler of alcoholic beverages.

24 B. No wholesaler shall sell, offer for sale or ship
25 alcoholic beverages not received at and shipped from the

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1 premises specified in the wholesaler's license. As used in
2 this section, "received at and shipped from" means that all
3 alcoholic beverages shall be unloaded at the wholesaler's
4 licensed premises and placed into inventory before being sold
5 and shipped to a licensed retailer.

6 C. No wholesaler shall sell or offer for sale
7 alcoholic beverages to any person other than the holder of a
8 New Mexico wholesaler's, retailer's, dispenser's, canopy,
9 restaurant or club license, a governmental licensee or its
10 lessee, the lessee or partial lessee of a license as otherwise
11 provided by the Liquor Control Act or an enterprise owned,
12 operated or licensed by an Indian nation, tribe or pueblo
13 within the state in conformity with an ordinance duly adopted
14 by the Indian nation, tribe or pueblo having jurisdiction over
15 the situs of the transaction within the area of Indian country,
16 certified by the secretary of the interior, published in the
17 federal register, according to the laws of the United States."

18 SECTION 2. Section 60-6A-3 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 20) is amended to read:

20 "60-6A-3. DISPENSER'S LICENSE.--

21 A. In any local option district, a person qualified
22 [~~under the provisions of~~] pursuant to the Liquor Control Act
23 may apply for and be issued a dispenser's license for the sale
24 of alcoholic beverages.

25 B. Except as provided in Section 60-6A-3.1 NMSA

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1 1978, a dispenser's license [~~when issued~~] shall only be used by
2 the person to whom the license is issued and shall only be used
3 within the licensed premises, pursuant to [~~provisions of~~] the
4 Liquor Control Act."

5 SECTION 3. A new section of the Liquor Control Act,
6 Section 60-6A-3.1 NMSA 1978, is enacted to read:

7 "60-6A-3.1. [NEW MATERIAL] DISPENSER'S LICENSE--PARTIAL
8 LEASE OF LICENSE PRIVILEGES--LIABILITY--RULES.--

9 A. Except as provided in Subsection B of this
10 section, a dispenser who exercises the privileges conferred by
11 a dispenser's license only to:

12 (1) sell alcoholic beverages by the drink for
13 consumption on the licensed premises may lease to one other
14 person the privilege to sell alcoholic beverages in unbroken
15 packages for consumption, but not for resale, off the licensed
16 premises; provided that the location of the lessee's premises,
17 which shall be considered licensed premises, is at a site
18 approved by the director outside the local option district
19 where the dispenser-lessor's licensed premises are located; or

20 (2) sell alcoholic beverages in unbroken
21 packages for consumption, but not for resale, off the licensed
22 premises may lease to one other person the privilege to sell
23 alcoholic beverages by the drink for consumption on the
24 licensed premises; provided that the location of the lessee's
25 premises, which shall be considered licensed premises, is at a

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1 site approved by the director outside the local option district
2 where the dispenser-lessor's licensed premises are located.

3 B. The provisions of Subsection A of this section
4 do not apply to a dispenser's license that has been transferred
5 outside of its local option district pursuant to Section
6 60-6B-12 NMSA 1978.

7 C. A partial lease made pursuant to Subsection A of
8 this section is subject to approval by the governing body where
9 the lessee's licensed premises are to be located pursuant to
10 Section 60-6B-4 NMSA 1978. The licensed premises may be in any
11 location in this state except in class B counties having a
12 population of between seventy-one thousand and seventy-two
13 thousand according to the 2010 federal decennial census, the
14 municipalities located within those class B counties and any
15 municipality or county that prohibits by election the transfer
16 of a license from another local option district.

17 D. The lessee and the lessee's privilege to sell and
18 serve alcoholic beverages pursuant to this section are subject
19 to the Liquor Control Act and applicable rules to the same
20 extent as they apply to Liquor Control Act licensees and
21 licenses; provided that the privilege to sell and serve
22 alcoholic beverages shall have no impact on the maximum number
23 of licenses that may be issued pursuant to Section 60-6A-18
24 NMSA 1978.

25 E. No later than November 1, 2017, the director

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1 shall promulgate rules the director deems necessary to
2 implement the provisions of this section. These rules shall
3 include a form to be acknowledged by the dispenser-lessor and
4 lessee that sets out the terms of the relationship between the
5 dispenser-lessor, lessee and department as provided by the
6 provisions of this section and the rules.

7 F. Notwithstanding any other provision or
8 interpretation of law, unless a preponderance of the evidence
9 for civil suits or substantial evidence for administrative
10 sanctions reveals that a dispenser-lessor had actual knowledge
11 of the violation and took no reasonable action to prevent or
12 mitigate the violation, a violation of the Liquor Control Act
13 or applicable rules by the lessee or at the lessee's licensed
14 premises shall not subject the dispenser-lessor or the
15 dispenser-lessor's license to civil damages or sanctions or to
16 administrative sanctions."

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

19 "60-6B-4. ISSUANCE, [~~OR~~] TRANSFER OR PARTIAL LEASE OF
20 LICENSE--APPROVAL OF APPROPRIATE GOVERNING BODY.--

21 A. Prior to the approval of the issuance of a new
22 license, and prior to the approval of a transfer permitted by
23 Section 60-6B-3 or 60-6B-12 NMSA 1978 or the partial lease of a
24 dispenser license pursuant to Section 60-6A-3.1 NMSA 1978, the
25 director shall notify the governing body of the director's

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1 preliminary approval of the issuance, [~~or~~] transfer or partial
2 lease of the license. Notice to the governing body shall be by
3 certified mail.

4 B. A governing body that has received a notice of
5 preliminary approval of the issuance, [~~or~~] transfer or partial
6 lease of a license from the department may approve or
7 disapprove the issuance, [~~or~~] transfer or partial lease of the
8 license in accordance with the provisions of this section.

9 C. Within forty-five days after receipt of a notice
10 of preliminary approval from the department, the governing body
11 shall hold a public hearing on the question of whether the
12 department should approve the proposed issuance, [~~or~~] transfer
13 or partial lease.

14 D. The governing body shall give notice of the
15 public hearing, as required by Subsection C of this section,
16 and the notice shall:

17 (1) be published at least twice, with the
18 initial notice published at least thirty days before the
19 hearing, in a newspaper of general circulation within the
20 territorial limits of the governing body;

21 (2) in addition to required print publication,
22 be published on a local option district's [~~web site~~] website,
23 if the district has a [~~web site~~] website;

24 (3) set forth:

25 (a) the date, time and place of the

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1 hearing;

2 (b) the name and address of the
3 licensee;

4 (c) the action proposed to be taken by
5 the department;

6 (d) the location of the licensee's
7 premises; and

8 (e) such other information as may be
9 required by the department; and

10 (4) be sent by certified mail to the
11 applicant.

12 E. The governing body may designate a hearing
13 officer to conduct the hearing. A record shall be made of the
14 hearing.

15 F. The governing body may disapprove the issuance,
16 [~~or~~] transfer or partial lease of the license if:

17 (1) the proposed location is within an area
18 where the sale of alcoholic beverages is prohibited by the laws
19 of New Mexico;

20 (2) the issuance or transfer would be in
21 violation of a zoning or other ordinance of the governing body;
22 or

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

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1 G. Within thirty days after the public hearing, the
2 governing body shall notify the department as to whether the
3 governing body has approved or disapproved the proposed
4 issuance, [~~or~~] transfer or partial lease of the license. If
5 the governing body fails to either approve or disapprove the
6 issuance, [~~or~~] transfer or partial lease of the license within
7 thirty days after the public hearing, the director may give
8 final approval to the issuance, [~~or~~] transfer or partial lease
9 of the license.

10 H. If the governing body disapproves the issuance,
11 [~~or~~] transfer or partial lease of the license, it shall notify
12 the department within the time required by Subsection G of this
13 section setting forth the reasons for the disapproval. A copy
14 of the minutes of the public hearing shall be submitted to the
15 department by the governing body with the notice of
16 disapproval. If the governing body disapproves of the
17 issuance, [~~or~~] transfer or partial lease of the license, the
18 director shall disapprove the issuance, [~~or~~] transfer or
19 partial lease of the license.

20 I. If the governing body approves the issuance,
21 [~~or~~] transfer or partial lease of the license, it shall notify
22 the department within the time required by Subsection G of this
23 section of its approval. If the governing body approves of the
24 issuance, [~~or~~] transfer or partial lease of the license, the
25 director shall approve the issuance, [~~or~~] transfer or partial

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1 lease of the license."

2 SECTION 5. Section 60-7A-12 NMSA 1978 (being Laws 1981,
3 Chapter 39, Section 78, as amended) is amended to read:

4 "60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES,
5 RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR LESSEES
6 AND CLUBS.--It is a violation of the Liquor Control Act for any
7 dispenser, canopy licensee, restaurant licensee, governmental
8 licensee or its lessee or club to:

9 A. receive any alcoholic beverages for the purpose
10 or with the intent of reselling the alcoholic beverages from
11 any person unless the person is duly licensed to sell alcoholic
12 beverages to dispensers for resale;

13 B. sell; possess for the purpose of sale; or bottle
14 bulk wine for sale other than by the drink for immediate
15 consumption on its licensed premises;

16 C. directly, indirectly or through subterfuge, own,
17 operate or control any interest in a wholesale liquor
18 establishment or liquor manufacturing or wine bottling firm;
19 provided that this section shall not prevent:

20 (1) a dispenser from owning an interest in a
21 legal entity, directly or indirectly or through an affiliate,
22 that wholesales alcoholic beverages and that operates or
23 controls an interest in an establishment operating pursuant to
24 the provisions of Subsection B of Section 60-7A-10 NMSA 1978;
25 or

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1 (2) a small brewer or winegrower licensed
2 pursuant to the Domestic Winery, Small Brewery and Craft
3 Distillery Act from holding an interest in a legal entity,
4 directly or indirectly or through an affiliate, that holds a
5 restaurant or a dispenser's license and a small brewer and
6 winegrower limited wholesaler's license issued pursuant to the
7 Liquor Control Act;

8 D. sell or possess for the purpose of sale any
9 alcoholic beverages at any location or place except:

10 (1) its licensed premises; [~~or~~]

11 (2) the location permitted pursuant to the
12 provisions of Section 60-6A-12 NMSA 1978; or

13 (3) the premises used under a partial lease
14 pursuant to Section 60-6A-3.1 NMSA 1978;

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

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

21 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2017.