

1 SENATE BILL 395

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

3 INTRODUCED BY

4 Ron Griggs and Cliff R. Pirtle

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10 AN ACT

11 RELATING TO EXECUTIVE REORGANIZATION; RENAMING THE ALCOHOL AND
12 GAMING DIVISION; UPDATING STATUTORY REFERENCES; PROVIDING FOR
13 TRANSFERS.

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

16 SECTION 1. Section 9-16-4 NMSA 1978 (being Laws 1983,
17 Chapter 297, Section 20, as amended) is amended to read:

18 "9-16-4. DEPARTMENT ESTABLISHED.--~~[There is created in~~
19 ~~the executive branch]~~ The "regulation and licensing department"
20 is created in the executive branch. The department shall not
21 be a cabinet department. The department shall consist of but
22 not be limited to [~~six~~] the following divisions [~~as follows~~]:

- 23 A. the administrative services division;
24 B. the construction industries division;
25 C. the financial institutions division;

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- 1 D. the securities division;
2 E. the manufactured housing division; and
3 F. the [~~alcohol and gaming~~] alcoholic beverage
4 control division."

5 SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,
6 Chapter 39, Section 3, as amended by Laws 2016, Chapter 73,
7 Section 1 and by Laws 2016, Chapter 76, Section 1) is amended
8 to read:

9 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
10 Act:

11 A. "alcoholic beverages" means distilled or
12 rectified spirits, potable alcohol, powdered alcohol, frozen or
13 freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic
14 bitters bearing the federal internal revenue strip stamps or
15 any similar alcoholic beverage, including blended or fermented
16 beverages, dilutions or mixtures of one or more of the
17 foregoing containing more than one-half percent alcohol, but
18 excluding medicinal bitters;

19 B. "beer" means an alcoholic beverage obtained by
20 the fermentation of any infusion or decoction of barley, malt
21 and hops or other cereals in water, and includes porter, beer,
22 ale and stout;

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

25 D. "cider" means an alcoholic beverage made from

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1 the normal alcoholic fermentation of the juice of sound, ripe
2 apples that contains not less than one-half of one percent
3 alcohol by volume and not more than seven percent alcohol by
4 volume;

5 E. "club" means:

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

15 (a) is operated solely for recreation,
16 social, patriotic, political, benevolent or athletic purposes;
17 and

18 (b) has been granted an exemption by the
19 United States from the payment of the federal income tax as a
20 club under the provisions of Section 501(a) of the Internal
21 Revenue Code of 1986, as amended, or, if the applicant has not
22 operated as a club for a sufficient time to be eligible for the
23 income tax exemption, it must execute and file with the
24 director a sworn letter of intent declaring that it will, in
25 good faith, apply for an income tax exemption as soon as it is

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1 eligible; or

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

9 F. "commission" means the secretary of public
10 safety when the term is used in reference to the enforcement
11 and investigatory provisions of the Liquor Control Act and
12 means the superintendent of regulation and licensing when the
13 term is used in reference to the licensing provisions of the
14 Liquor Control Act;

15 G. "department" means the New Mexico state police
16 division of the department of public safety when the term is
17 used in reference to the enforcement and investigatory
18 provisions of the Liquor Control Act and means the director of
19 the [~~alcohol and gaming~~] alcoholic beverage control division of
20 the regulation and licensing department when the term is used
21 in reference to the licensing provisions of the Liquor Control
22 Act;

23 H. "director" means the chief of the New Mexico
24 state police division of the department of public safety when
25 the term is used in reference to the enforcement and

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1 investigatory provisions of the Liquor Control Act and means
2 the director of the [~~alcohol and gaming~~] alcoholic beverage
3 control division of the regulation and licensing department
4 when the term is used in reference to the licensing provisions
5 of the Liquor Control Act;

6 I. "dispenser" means a person licensed under the
7 provisions of the Liquor Control Act selling, offering for sale
8 or having in the person's possession with the intent to sell
9 alcoholic beverages both by the drink for consumption on the
10 licensed premises and in unbroken packages, including growlers,
11 for consumption and not for resale off the licensed premises;

12 J. "distiller" means a person engaged in
13 manufacturing spirituous liquors;

14 K. "golf course" means a tract of land and
15 facilities used for playing golf and other recreational
16 activities that includes tees, fairways, greens, hazards,
17 putting greens, driving ranges, recreational facilities,
18 patios, pro shops, cart paths and public and private roads that
19 are located within the tract of land;

20 L. "governing body" means the board of county
21 commissioners of a county or the city council or city
22 commissioners of a municipality;

23 M. "growler" means a clean, refillable, resealable
24 container that has a liquid capacity that does not exceed one
25 gallon and that is intended and used for the sale of beer, wine

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1 or cider for consumption off premises;

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

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

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1 county with a population of less than thirty thousand, located
2 in buildings in existence as of January 1, 2012, that are
3 within one hundred fifty feet of one another and that are under
4 the direct control of the license holder;

5 P. "local option district" means a county that has
6 voted to approve the sale, serving or public consumption of
7 alcoholic beverages, or an incorporated municipality that falls
8 within a county that has voted to approve the sale, serving or
9 public consumption of alcoholic beverages, or an incorporated
10 municipality of over five thousand population that has
11 independently voted to approve the sale, serving or public
12 consumption of alcoholic beverages under the terms of the
13 Liquor Control Act or any former act;

14 Q. "manufacturer" means a distiller, rectifier,
15 brewer or winer;

16 R. "minor" means a person under twenty-one years of
17 age;

18 S. "package" means an immediate container of
19 alcoholic beverages that is filled or packed by a manufacturer
20 or wine bottler for sale by the manufacturer or wine bottler to
21 wholesalers;

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

24 U. "rectifier" means a person who blends, mixes or
25 distills alcohol with other liquids or substances for the

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1 purpose of making an alcoholic beverage for the purpose of sale
2 other than to the consumer by the drink, and includes all
3 bottlers of spirituous liquors;

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

14 W. "retailer" means a person licensed under the
15 provisions of the Liquor Control Act selling, offering for sale
16 or having in the person's possession with the intent to sell
17 alcoholic beverages in unbroken packages, including growlers,
18 for consumption and not for resale off the licensed premises;

19 X. "ski area" means a tract of land and facilities
20 for the primary purpose of alpine skiing, snowboarding or other
21 snow sports with trails, parks and at least one chairlift with
22 uphill capacity and may include facilities necessary for other
23 seasonal or year-round recreational activities;

24 Y. "spirituous liquors" means alcoholic beverages
25 as defined in Subsection A of this section except fermented

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1 beverages such as wine, beer and ale;

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

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

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

15 CC. "winegrower" means a person who owns or
16 operates a business for the manufacture of wine;

17 DD. "winer" means a winegrower; and

18 EE. "winery" means a facility in which a winegrower
19 manufactures and stores wine."

20 SECTION 3. Section 60-3A-7 NMSA 1978 (being Laws 1987,
21 Chapter 254, Section 25, as amended) is amended to read:

22 "60-3A-7. AUTHORITY OF THE ~~[ALCOHOL AND GAMING]~~ ALCOHOLIC
23 BEVERAGE CONTROL DIVISION.--The ~~[alcohol and gaming]~~ alcoholic
24 beverage control division of the regulation and licensing
25 department has the authority over all matters relating to the

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1 issuance, denial, suspension or revocation of licenses under
2 the Liquor Control Act. The director of the [~~alcohol and~~
3 ~~gaming~~] division [~~of the regulation and licensing department~~]
4 may request the department of public safety to provide
5 investigatory and enforcement support as deemed necessary."

6 SECTION 4. Section 60-3A-8 NMSA 1978 (being Laws 2001,
7 Chapter 86, Section 5) is amended to read:

8 "60-3A-8. POWERS AND DUTIES OF THE DIRECTOR OF THE
9 [~~ALCOHOL AND GAMING~~] ALCOHOLIC BEVERAGE CONTROL DIVISION.--The
10 director of the [~~alcohol and gaming~~] alcoholic beverage control
11 division of the regulation and licensing department is
12 responsible for the operation of the division. It is [~~his~~] the
13 director's duty to supervise all operations of the division and
14 to:

15 A. administer the laws that the division
16 administers, including the Liquor Control Act. The director
17 shall request the department of public safety to enforce the
18 provisions of the Liquor Control Act as deemed necessary;

19 B. exercise general supervisory authority over all
20 employees of the division;

21 C. organize the division into units to enable it to
22 function most effectively;

23 D. confer authority and delegate responsibility as
24 is necessary and appropriate;

25 E. employ, within the limitations of current

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1 appropriations and personnel laws, persons as are required to
2 discharge [~~his~~] the director's duties;

3 F. undertake studies and conduct courses of
4 instruction for division employees that will improve the
5 operations of the division and advance its purposes; and

6 G. require compliance by employees of the division
7 with [~~his~~] the director's verbal and written instructions by
8 whatever disciplinary means appropriate."

9 SECTION 5. TEMPORARY PROVISION--TRANSFERS OF PROPERTY,
10 CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--

11 A. On the effective date of this act, all
12 functions, personnel, appropriations, money, records,
13 furniture, equipment and other property of the alcohol and
14 gaming division are transferred to the alcoholic beverage
15 control division of the regulation and licensing department.

16 B. On the effective date of this act, all
17 contractual obligations of the alcohol and gaming division
18 shall be deemed to be references to the alcoholic beverage
19 control division of the regulation and licensing department.

20 C. On the effective date of this act, all
21 references in law to the alcohol and gaming division of the
22 regulation and licensing department shall be deemed to be
23 references to the alcoholic beverage control division of that
24 department.