

1 HOUSE BILL 272

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Rod Montoya

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10 AN ACT

11 RELATING TO LIQUOR LICENSES; ADDING A NEW TYPE OF RESTAURANT
12 LICENSE THAT ALLOWS SALE OF ALCOHOLIC BEVERAGES IN RESTAURANTS;
13 IMPOSING LICENSE ISSUANCE FEES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,
17 Chapter 39, Section 3, as amended by Laws 2016, Chapter 73,
18 Section 1 and by Laws 2016, Chapter 76, Section 1) is amended
19 to read:

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

22 A. "alcoholic beverages" means distilled or
23 rectified spirits, potable alcohol, powdered alcohol, frozen or
24 freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic
25 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~~ food and lodging are
15 regularly furnished to the general public. The establishment
16 or complex must maintain for the use of its guests a minimum of
17 twenty-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, ski area or racetrack and all
6 public and private rooms, facilities and areas in which
7 alcoholic beverages are sold or served in the customary
8 operating procedures of the restaurant, hotel, golf course, ski
9 area or racetrack. "Licensed premises" also includes rural
10 dispenser licenses located in the unincorporated areas of a
11 county with a population of less than thirty thousand, located
12 in buildings in existence as of January 1, 2012, that are
13 within one hundred fifty feet of one another and that are under
14 the direct control 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~~] food is prepared and
17 served primarily for on-premises consumption to the general
18 public in consideration of payment and that has a dining room,
19 a kitchen and the employees necessary for preparing, cooking
20 and serving [~~meals~~] food; provided that "restaurant" does not
21 include establishments as defined in rules promulgated by the
22 director serving only hamburgers, sandwiches, salads and other
23 fast 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. "ski area" means a tract of land and facilities
5 for the primary purpose of alpine skiing, snowboarding or other
6 snow sports with trails, parks and at least one chairlift with
7 uphill capacity and may include facilities necessary for other
8 seasonal or year-round recreational activities;

9 Y. "spirituous liquors" means alcoholic beverages
10 as defined in Subsection A of this section except fermented
11 beverages such as wine, beer and ale;

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

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

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

25 CC. "winegrower" means a person who owns or

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1 operates a business for the manufacture of wine;

2 DD. "winer" means a winegrower; and

3 EE. "winery" means a facility in which a winegrower
4 manufactures and stores wine."

5 SECTION 2. Section 60-6A-4 NMSA 1978 (being Laws 1981,
6 Chapter 39, Section 21, as amended) is amended to read:

7 "60-6A-4. RESTAURANT LICENSE.--

8 A. At any time after the effective date of the
9 Liquor Control Act, a local option district may approve the
10 issuance of restaurant licenses for the sale of beer and wine
11 by holding an election on that question pursuant to the
12 procedures set out in Section 60-5A-1 NMSA 1978. The election
13 also may be initiated by a resolution adopted by the governing
14 body of the local option district without a petition from
15 registered qualified electors having been submitted.

16 B. A local option district that has approved the
17 issuance of restaurant licenses for the sale of beer and wine
18 may approve the issuance of restaurant licenses for the sale of
19 beer, wine and alcoholic beverages in restaurants by adoption
20 of an ordinance.

21 C. A restaurant license issued or renewed after
22 July 1, 2019 that permits the sale and service of beer and wine
23 only shall be designated a type A restaurant license. The
24 license shall be issued in accordance with the provisions of
25 this section and rules adopted by the department.

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1 D. A restaurant license issued after July 1, 2019
2 that permits the sale and service of beer, wine and alcoholic
3 beverages shall be designated a type B restaurant license. The
4 license shall be issued in accordance with the provisions of
5 this section and rules adopted by the department.

6 [~~B-~~] E. After the approval of restaurant licenses
7 by the registered qualified electors of the local option
8 district for the sale of beer and wine and upon completion of
9 all requirements in the Liquor Control Act for the issuance of
10 licenses, a restaurant located or to be located within the
11 local option district may receive a type A restaurant license
12 to sell, serve or allow the consumption of beer and wine
13 subject to the following requirements and restrictions:

14 (1) the applicant shall submit evidence to the
15 department that [~~he~~] the applicant has a current valid food
16 service establishment permit;

17 (2) the applicant shall satisfy the director
18 that the primary source of revenue from the operation of the
19 restaurant will be derived from [~~meals~~] food and not from the
20 sale of beer and wine;

21 (3) the director shall condition renewal upon
22 a requirement that no less than sixty percent of gross receipts
23 from the preceding twelve months' operation of the licensed
24 restaurant was derived from the sale of [~~meals~~] food;

25 (4) upon application for renewal, the licensee

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1 shall submit an annual report to the director indicating the
2 annual gross receipts from the sale of ~~[meals]~~ food and from
3 beer and wine sales;

4 (5) ~~[restaurant]~~ licensees shall not sell beer
5 and wine for consumption off the licensed premises;

6 (6) all sales, services and consumption of
7 beer and wine authorized by a type A restaurant license shall
8 cease at the time ~~[meals]~~ food sales and services cease or at
9 11:00 p.m., whichever time is earlier;

10 (7) if Sunday sales have been approved in the
11 local option district, a ~~[restaurant]~~ licensee may serve beer
12 and wine on Sundays until the time ~~[meals]~~ food sales and
13 services cease or 11:00 p.m., whichever time is earlier; and

14 (8) a type A restaurant license shall not be
15 transferable from person to person ~~[or]~~ but shall be
16 transferable from one location to another location within the
17 same local option district.

18 F. Upon completion of all requirements in the
19 Liquor Control Act for the issuance of licenses and after July
20 1, 2019, and upon the adoption of an ordinance by the governing
21 body of the local option district, a restaurant located or to
22 be located within the local option district may receive a type
23 B restaurant license to sell, serve or allow the consumption of
24 beer, wine and alcoholic beverages subject to the following
25 requirements and restrictions:

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1 (1) the applicant shall submit evidence to the
2 department that the applicant has a current valid food service
3 establishment permit;

4 (2) the applicant shall satisfy the director
5 that the primary source of revenue from the operation of the
6 restaurant will be derived from the sale of food and not from
7 the sale of beer, wine and alcoholic beverages;

8 (3) the director shall condition renewal upon
9 a requirement that no less than sixty percent of gross receipts
10 from the preceding twelve months' operation of the licensed
11 restaurant was derived from the sale of food;

12 (4) upon application for renewal, the licensee
13 shall submit an annual report to the director indicating the
14 annual gross receipts from the sale of food and from beer, wine
15 and alcoholic beverages sales;

16 (5) licensees shall not sell beer, wine or
17 alcoholic beverages for consumption off the licensed premises;

18 (6) all sales, service and consumption of
19 beer, wine and alcoholic beverages authorized by a type B
20 restaurant license shall cease at the time food sales and
21 services cease or at 11:00 p.m., whichever time is earlier;

22 (7) if Sunday sales have been approved in the
23 local option district, a licensee may serve beer, wine and
24 alcoholic beverages on Sundays until the time food sales and
25 services cease or 11:00 p.m., whichever time is earlier; and

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1 (8) a type B restaurant license shall not be
2 transferable from person to person but shall be transferable
3 from one location to another location within the same local
4 option district.

5 ~~[G.]~~ G. The provisions of Section 60-6A-18 NMSA
6 1978 shall not apply to restaurant licenses.

7 ~~[D.]~~ H. Nothing in this section shall prevent a
8 restaurant licensee from receiving other licenses pursuant to
9 the Liquor Control Act."

10 SECTION 3. Section 60-6A-15 NMSA 1978 (being Laws 1981,
11 Chapter 39, Section 32, as amended) is amended to read:

12 "60-6A-15. LICENSE FEES.--Every application for the
13 issuance or renewal of the following licenses shall be
14 accompanied by a license fee in the following specified
15 amounts:

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

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

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

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

25 E. wholesaler's license to sell spirituous liquors

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1 and wine for resale only, one thousand seven hundred fifty
2 dollars (\$1,750);

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

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

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

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

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

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

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

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

19 N. restaurant license type B:

20 (1) issuance, twenty thousand dollars
21 (\$20,000); and

22 (2) renewal, one thousand three hundred
23 dollars (\$1,300);

24 [~~N.~~] O. 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 [~~Θ-~~] P. wine bottler's license to sell to
4 wholesalers only, five hundred dollars (\$500);

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

7 [~~Q-~~] R. nonresident licenses, for a total billing
8 to New 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-~~] S. 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-~~] T. beer bottler's license, two hundred dollars
25 (\$200)."

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SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.