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AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING AND ENACTING
SECTIONS OF THE LIQUOR CONTROL ACT TO PROVIDE BEER AND WINE
DELIVERY LICENSES FOR THE DELIVERY OF BEER, CIDER OR WINE
TOGETHER WITH MEALS OR GROCERIES TO ADULT PURCHASERS;
PROVIDING FOR LOCAL OPTION DISTRICT AUTHORIZATION.

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

SECTION 1. A new section of the Liquor Control Act is
enacted to read:

"BEER AND WINE DELIVERY LICENSE.--

A. On and after July 1, 2019, a local option
district may approve of the use of beer and wine delivery
licenses for the sale and delivery of beer, cider or wine,
along with the concurrent sale and delivery of meals or
groceries, by holding an election on the question pursuant to
the procedures in Section 60-5A-1 NMSA 1978. Alternatively,
the election may be initiated by a resolution adopted by the
governing body of the local option district without the
submission of a petition from registered qualified electors.
As used in this section, "meals" means lunch or dinner
entrees and does not include only an appetizer, snack or
dessert.

B. After the approval by the registered qualified
electors of a local option district of the use of beer and

1 wine delivery licenses, a retailer, dispenser, restaurant,
2 grocery store or food delivery company located or to be
3 located within the local option district may apply for a beer
4 and wine delivery license that, concurrent with the delivery
5 of meals or groceries, confers the ability to sell and
6 transport to a person at least twenty-one years of age, up to
7 one hundred forty-four ounces of beer or up to one and one-
8 half liters of wine or cider, subject to the requirements and
9 restrictions of this section.

10 C. An applicant for a beer and wine delivery
11 license shall submit evidence to the department that the
12 applicant has either:

13 (1) a current business license or permit as
14 a food service establishment or a grocery store;

15 (2) a retailer's license or dispenser's
16 license; or

17 (3) a current business license or permit as
18 a food delivery service business with delivery employees and
19 delivery vehicles and contracts with a minimum of six legally
20 recognized food service establishments or grocery stores to
21 deliver meals or groceries on their behalf.

22 D. The applicant shall satisfy the director that
23 the primary source of revenue from the operation of the
24 restaurant, grocery store or food delivery service business
25 pursuant to the beer and wine delivery license will be

1 derived from the sale and delivery of meals or groceries and
2 not from the sale and delivery of beer, cider or wine. The
3 director shall condition renewal of the license upon a
4 requirement that no less than seventy percent of gross
5 receipts from the preceding twelve months' operation of the
6 licensee was derived from the sale of meals or groceries.
7 Upon application for renewal, the licensee shall submit an
8 annual report to the director indicating:

9 (1) the annual gross receipts from the sale
10 and delivery of meals or groceries and from the sale and
11 delivery of beer, cider or wine; and

12 (2) that meals or groceries ordered for each
13 delivery concurrent with beer, cider or wine had a minimum
14 retail value of twenty dollars (\$20.00).

15 E. All sales and delivery of beer, cider or wine
16 authorized by a beer and wine delivery license shall cease no
17 later than 10:00 p.m. If Sunday sales have been approved in
18 the local option district, a beer and wine delivery licensee
19 may sell and deliver beer, cider or wine on Sundays until no
20 later than 9:00 p.m.

21 F. A beer and wine delivery license shall not be
22 transferable from person to person or from one location to
23 another.

24 G. A beer and wine delivery license shall provide
25 only for deliveries within a single local option district. A

1 separate license shall be issued to a retailer, dispenser,
2 restaurant, grocery store or food delivery service business
3 for each local option district in which the licensee desires
4 to operate. A beer and wine delivery licensee shall have a
5 physical business location in each local option district in
6 which it operates. Inter-local option district deliveries of
7 beer and wine are prohibited.

8 H. Deliveries of beer, cider or wine by a beer and
9 wine delivery licensee are restricted to physical delivery to
10 a person at least twenty-one years of age at a residential
11 address or a commercial or private lodging facility. A
12 delivery is prohibited to:

13 (1) a location within three hundred feet of
14 a church, school, youth center, academic campus or
15 educational institution dormitory;

16 (2) public property;

17 (3) commercially zoned property other than a
18 lodging facility; and

19 (4) a location designated by a local option
20 district through its zoning power.

21 I. A local option district shall create and
22 maintain a database of "do not deliver" addresses that will
23 allow property owners and residents to prevent beer and wine
24 delivery service. A local option district may also place
25 properties deemed nuisances on the "do not deliver" list.

1 J. Beer and wine delivery licensee delivery
2 personnel transporting and transferring control of beer,
3 cider or wine to a purchaser shall be:

- 4 (1) employees of the licensee;
5 (2) alcohol-server-certified by the
6 department; and
7 (3) trained and certified to handle
8 perishable food with a current food handler certificate.

9 K. The department shall adopt rules to guide best
10 practices for beer and wine delivery licensees in the use of
11 health and safety information, mobile document and
12 identification verification and delivery vehicle tracking.

13 L. All sales and delivery of beer, cider or wine
14 by a beer and wine delivery licensee shall be concurrent with
15 the sale and delivery of meals or groceries.

16 M. Sales of beer, cider or wine and meals or
17 groceries shall be by credit card, debit card or electronic
18 payment. Cash sales are prohibited. Sales records shall be
19 kept by a beer and wine delivery licensee as a business
20 practice and available to the director for review for three
21 years.

22 N. A beer and wine delivery licensee shall obtain
23 beer, cider and wine inventory only from a retailer or
24 dispenser.

25 O. Unless the beer and wine delivery licensee is

1 also a retailer or dispenser, in which case the limitations
2 of Paragraph (1) of this subsection do not apply, a beer and
3 wine delivery licensee may maintain a secured inventory of
4 beer, cider and wine with a total retail value of no more
5 than:

6 (1) at its place of business, three thousand
7 dollars (\$3,000); and

8 (2) in each delivery vehicle, four hundred
9 dollars (\$400), but only during the licensee's hours of
10 operation.

11 P. Delivery vehicles used by a beer and wine
12 delivery licensee shall be owned or leased by the licensee,
13 registered in New Mexico, covered by a commercial delivery
14 vehicle liability insurance policy and clearly marked on each
15 side of the vehicle with the name of the licensed business
16 and its telephone or website contact information. In
17 addition to the identifying contact information, each
18 delivery vehicle shall clearly display a number assigned by
19 the department that will allow the department to identify a
20 specific vehicle.

21 Q. Nothing in this section shall prevent a beer
22 and wine delivery licensee from receiving other licenses
23 pursuant to the Liquor Control Act.

24 R. A beer and wine delivery licensee shall
25 maintain alcoholic beverage liability insurance coverage of

1 at least one million dollars (\$1,000,000).

2 S. The provisions of Section 60-6A-18 NMSA 1978
3 shall not apply to a beer and wine delivery license."

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

8 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
9 Act:

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

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

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

24 D. "cider" means an alcoholic beverage made from
25 the normal alcoholic fermentation of the juice of sound, ripe

1 apples that contains not less than one-half of one percent
2 alcohol by volume and not more than seven percent alcohol by
3 volume;

4 E. "club" means:

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

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

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

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

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

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

21 H. "director" means the chief of the New Mexico
22 state police division of the department of public safety when
23 the term is used in reference to the enforcement and
24 investigatory provisions of the Liquor Control Act and means
25 the director of the alcohol and gaming division of the

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

4 I. "dispenser" means a person licensed under the
5 provisions of the Liquor Control Act selling, offering for
6 sale or having in the person's possession with the intent to
7 sell alcoholic beverages both by the drink for consumption on
8 the licensed premises and in unbroken packages, including
9 growlers, for consumption and not for resale off the licensed
10 premises, except as otherwise provided in Section 1 of this
11 2019 act;

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
19 that 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,

1 wine or cider for consumption off premises;

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

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

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

7 (2) locations of a secured inventory of
8 beer, cider and wine of a beer and wine delivery licensee
9 pursuant to Subsection 0 of Section 1 of this 2019 act, as
10 those locations are further defined in department rules;

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

20 Q. "manufacturer" means a distiller, rectifier,
21 brewer or winer;

22 R. "minor" means a person under twenty-one years
23 of age;

24 S. "package" means an immediate container of
25 alcoholic beverages that is filled or packed by a

1 manufacturer or wine bottler for sale by the manufacturer or
2 wine bottler to wholesalers;

3 T. "person" means an individual, corporation,
4 firm, partnership, copartnership, association or other legal
5 entity;

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

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

21 W. "retailer" means a person licensed under the
22 provisions of the Liquor Control Act selling, offering for
23 sale or having in the person's possession with the intent to
24 sell alcoholic beverages in unbroken packages, including
25 growlers, for consumption and not for resale off the licensed

1 premises except as otherwise provided in Section 1 of this
2 2019 act;

3 X. "ski area" means a tract of land and facilities
4 for the primary purpose of alpine skiing, snowboarding or
5 other snow sports with trails, parks and at least one
6 chairlift with uphill capacity and may include facilities
7 necessary for other seasonal or year-round recreational
8 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

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
4 winegrower manufactures and stores wine."

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

7 "60-6A-15. LICENSE FEES.--Every application for the
8 issuance or renewal of the following licenses shall be
9 accompanied by a license fee in the following specified
10 amounts:

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

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

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

17 D. wholesaler's license to sell all alcoholic
18 beverages for resale only, two thousand five hundred dollars
19 (\$2,500);

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

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

25 G. wholesaler's license to sell beer and wine for

1 resale only, one thousand five hundred dollars (\$1,500);

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

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

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

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

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

12 M. restaurant license, one thousand fifty dollars
13 (\$1,050);

14 N. club license, for clubs with more than two
15 hundred fifty members, one thousand two hundred fifty dollars
16 (\$1,250), and for clubs with two hundred fifty members or
17 fewer, two hundred fifty dollars (\$250);

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

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

22 Q. nonresident licenses, for a total billing to
23 New Mexico wholesalers:

24 (1) in excess of:

25 \$3,000,000 annually.. . . . \$10,500; SB 494
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1 1,000,000 annually.. 5,250;
2 500,000 annually.. 3,750;
3 200,000 annually.. 2,700;
4 100,000 annually.. 1,800;

5 and

6 50,000 annually.. 900;

7 and

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

9 R. wine wholesaler's license, for persons with
10 sales of five thousand gallons of wine per year or less,
11 twenty-five dollars (\$25.00), and for persons with sales in
12 excess of five thousand gallons of wine per year, one hundred
13 dollars (\$100);

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

16 T. beer and wine delivery license, one thousand
17 three hundred dollars (\$1,300)."

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