

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 364

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING THE REQUIREMENTS FOR
AN ALCOHOLIC BEVERAGE DELIVERY PERMIT; MAKING THE REQUIREMENTS
GENERALLY APPLICABLE TO LICENSE HOLDERS; PROHIBITING THE
ACCEPTANCE OF ADVERTISING MONEY TO PREFERENTIALLY LIST A
PRODUCT.

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

SECTION 1. Section 60-6A-37 NMSA 1978 (being Laws 2021,
Chapter 7, Section 4) is amended to read:

"60-6A-37. ALCOHOLIC BEVERAGE DELIVERY PERMIT--THIRD-
PARTY DELIVERY LICENSE.--

A. A person otherwise qualified pursuant to the
provisions of the Liquor Control Act may apply for and the
department may issue an alcoholic beverage delivery permit
authorizing the person to deliver alcoholic beverages if:

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1 (1) the applicant holds a valid retailer's,
2 dispenser's, craft distiller's, winegrower's, small brewer's or
3 restaurant license; ~~[provided, however, that if the licensed~~
4 ~~premises has indoor retail space greater than ten thousand~~
5 ~~square feet in size and is located within a class A county, the~~
6 ~~department may issue an alcoholic beverage delivery permit if:~~

7 ~~(1) the license holder uses an identification~~
8 ~~verification system that meets the department's requirements to~~
9 ~~establish that the identification of the purchaser was checked,~~
10 ~~scanned and stored for each delivery transaction;~~

11 ~~(2) no spirituous liquors are included in~~
12 ~~deliveries of alcoholic beverages~~

13 ~~(3)]~~ (2) the liquor liability endorsement
14 required pursuant to Paragraph (2) of Subsection H of this
15 section is in an amount of not less than five million dollars
16 (\$5,000,000); and

17 ~~[(4) deliveries of alcoholic beverages are not~~
18 ~~made using a third-party alcohol delivery service pursuant to~~
19 ~~Subsection G of this section]~~

20 (3) the license holder agrees not to accept
21 advertising money to preferentially list a product in the
22 license holder's delivery ordering system; provided that this
23 paragraph shall not apply to internal promotions sponsored by
24 the license holder.

25 B. An alcoholic beverage delivery permit issued to

1 a valid restaurant licensee shall only convey the authority to
 2 deliver alcoholic beverages concurrently with the delivery of a
 3 minimum of ten dollars (\$10.00) worth of food; provided that
 4 under no circumstances shall the delivery of alcoholic
 5 beverages be more than seven hundred fifty milliliters of wine,
 6 six twelve-ounce containers of prepackaged wine, beer, cider or
 7 spirituous liquors or one locally produced growler.

8 C. An alcoholic beverage delivery permit is not
 9 transferable from person to person or from one location to
 10 another.

11 D. An alcoholic beverage delivery permit issued
 12 pursuant to this section is valid for one year from the date of
 13 issuance. An alcoholic beverage delivery permittee may renew
 14 an alcoholic beverage delivery permit annually as required by
 15 the department.

16 E. The director shall promulgate rules to implement
 17 the provisions of this section, which shall include the
 18 following requirements and restrictions:

19 (1) an alcoholic beverage delivery permittee
 20 shall deliver alcoholic beverages only in unbroken packages or
 21 growlers;

22 (2) payment for alcoholic beverages shall be
 23 received only at the licensed premises of the selling licensee
 24 personally or by other means, including telephonically,
 25 electronically, via website, application or internet platform;

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1 (3) a licensee shall not change the price
2 charged for an alcoholic beverage because that beverage is
3 purchased for delivery; provided that a separate fee may be
4 charged for delivery; and further provided that the fee shall
5 be disclosed to the customer at the time of the purchase;

6 (4) deliveries of alcoholic beverages shall
7 occur only during the hours the selling licensee is authorized
8 to sell alcoholic beverages;

9 (5) an alcoholic beverage delivery permittee
10 shall not deliver an alcoholic beverage to a business, a
11 commercial establishment, a college or university campus or a
12 school campus that is not a home school;

13 (6) an alcoholic beverage delivery permittee
14 delivering alcoholic beverages shall use an identification
15 verification system that meets the department's requirements to
16 obtain valid proof of the recipient's identity and age;

17 (7) deliveries of alcoholic beverages shall
18 not be made to an intoxicated person in violation of Section
19 60-7A-16 NMSA 1978 or to a minor in violation of Section
20 60-7B-1 NMSA 1978;

21 (8) while delivering alcoholic beverages, an
22 alcoholic beverage delivery permittee shall have in the
23 permittee's possession only alcoholic beverages that have been
24 purchased for delivery; and

25 (9) while delivering alcoholic beverages, an

1 alcoholic beverage delivery permittee shall have in the
 2 permittee's possession the original or an electronic or
 3 physical copy of the permittee's alcoholic beverage delivery
 4 permit.

5 F. A licensee that holds an alcoholic beverage
 6 delivery permit issued pursuant to this section may utilize an
 7 employee who is at least twenty-one years of age and who holds
 8 a valid server permit to deliver alcoholic beverages.

9 G. A licensee that holds an alcoholic beverage
 10 delivery permit issued pursuant to this section may contract
 11 with a third-party alcohol delivery service licensed by the
 12 department; provided that the licensee, the third-party alcohol
 13 delivery service and the server who delivers alcohol may be
 14 separately liable for violations of the Liquor Control Act,
 15 including for the delivery of alcohol to an intoxicated person
 16 or to a minor.

17 H. The department, by rule, shall create a third-
 18 party alcohol delivery permit and, at a minimum, condition the
 19 issuance of a third-party alcohol delivery permit on:

20 (1) requiring that all delivery employees or
 21 independent contractors of the third-party alcohol delivery
 22 service hold a valid New Mexico alcohol server permit; and

23 (2) requiring proof of general liability
 24 insurance coverage with a liquor liability endorsement in an
 25 amount not less than one million dollars (\$1,000,000) per

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1 occurrence, which endorsement shall provide coverage for
2 employees or independent contractors of the third-party alcohol
3 delivery service.

4 I. A person, company or licensee that wishes to
5 deliver retail sales of alcohol in New Mexico on behalf of
6 valid retailer's, dispenser's, craft distiller's, winegrower's,
7 small brewer's or restaurant licensees that also hold a valid
8 alcoholic beverage delivery permit shall obtain a third-party
9 alcohol delivery license from the department.

10 J. An applicant for a third-party alcohol delivery
11 license is required to be authorized to do business in this
12 state, may not share in the profits of the sale of alcohol with
13 a licensee and may only charge a delivery fee that is disclosed
14 to the buyer at the time of sale.

15 K. A third-party alcohol delivery licensee shall
16 not have the ability to buy, hold or deliver alcohol under its
17 own license but to only allow for delivery of alcohol from a
18 licensed premises and from a qualified licensee with a valid
19 alcoholic beverage delivery permit to the buyer.

20 L. A third-party alcohol delivery licensee shall be
21 independently liable for the delivery of alcoholic beverages to
22 an intoxicated person or to a minor or for any violation of the
23 Liquor Control Act and be subject to suspension, revocation or
24 administrative fine pursuant to Sections 60-6C-1 through
25 60-6C-6 NMSA 1978.

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1 M. A third-party alcohol delivery license shall be
2 valid for one year and may be renewed."

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