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HOUSE BILL 1066

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO REGULATION AND LICENSING; PROVIDING FOR THE ALCOHOL AND GAMING DIVISION; PROVIDING COVERAGE IN THE PERSONNEL ACT FOR THE DIRECTOR OF THE ALCOHOL AND GAMING DIVISION; AMENDING SECTIONS OF THE NMSA 1978.

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

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

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

- A. the administrative services division;
- B. the construction industries division;

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- 1 C. the financial institutions division;
- 2 D. the securities division; [~~and~~]
- 3 E. the manufactured housing division; and
- 4 F. the alcohol and gaming division. "

5 Section 2. Section 9-16-7 NMSA 1978 (being Laws 1983,  
6 Chapter 297, Section 23) is amended to read:

7 "9-16-7. DIVISION DIRECTORS. --The superintendent shall  
8 appoint, with the approval of the governor, "directors" of the  
9 divisions established within the department. The positions so  
10 appointed are exempt from the Personnel Act, except for the  
11 director of the alcohol and gaming division, who shall be  
12 covered by the provisions of that act. "

13 Section 3. Section 10-9-4 NMSA 1978 (being Laws 1961,  
14 Chapter 240, Section 4, as amended) is amended to read:

15 "10-9-4. COVERAGE OF SERVICE. --The Personnel Act and the  
16 service cover all state positions except:

- 17 A. officials elected by popular vote or appointed to  
18 fill vacancies to elective offices;
- 19 B. members of boards and commissions and heads of  
20 agencies appointed by the governor;
- 21 C. heads of agencies appointed by boards or  
22 commissions;
- 23 D. directors of department divisions, except as  
24 provided in Section 9-16-7 NMSA 1978;
- 25 E. those in educational institutions and in public

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1 schools;

2 F. those employed by state institutions and by state  
3 agencies providing educational programs and who are required to  
4 hold valid certificates as certified school instructors as  
5 defined in Section 22-1-2 NMSA 1978 issued by the state board of  
6 education;

7 G. those in the governor's office;

8 H. those in the state militia or the commissioned  
9 officers of the New Mexico state police division of the  
10 department of public safety;

11 I. those in the judicial branch of government;

12 J. those in the legislative branch of government;

13 K. not more than two assistants and one secretary in  
14 the office of each official listed in Subsections A, B and C of  
15 this section, excluding members of boards and commissions in  
16 Subsection B of this section;

17 L. those of a professional or scientific nature  
18 which are temporary in nature;

19 M. those filled by patients or inmates in  
20 charitable, penal or correctional institutions;

21 N. state employees if the personnel board in its  
22 discretion decides that the position is one of policymaking; and

23 O. disadvantaged youth under twenty-two years of age  
24 regularly enrolled or to be enrolled in a secondary educational  
25 institution approved by the state board of education or in an

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1 accredited state institution of advanced learning or vocational  
2 training and who are to be employed for not more than seven  
3 hundred twenty hours during any calendar year:

4 (1) the term "disadvantaged youth" shall be  
5 defined for purposes of this exemption by regulation duly  
6 promulgated by the board; and

7 (2) the board shall:

8 (a) require that all the criteria of this  
9 subsection have been met;

10 (b) establish employment lists for the  
11 certification of the highest-standing candidates to the  
12 prospective employers; and

13 (c) establish the pay rates for such  
14 employees. "

15 Section 4. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
16 Chapter 39, Section 3, as amended) is amended to read:

17 "60-3A-3. DEFINITIONS. --As used in the Liquor Control Act:

18 A. "alcoholic beverages" means distilled or  
19 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
20 and aromatic bitters bearing the federal internal revenue strip  
21 stamps or any similar alcoholic beverage, including blended or  
22 fermented beverages, dilutions or mixtures of one or more of the  
23 foregoing containing more than one-half of one percent alcohol,  
24 but excluding medicinal bitters;

25 B. "beer" means any alcoholic beverage obtained by

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1 the fermentation of any infusion or decoction of barley, malt  
2 and hops or other cereals in water, and includes porter, beer,  
3 ale and stout;

4 C. "brewer" means any person who owns or operates a  
5 business for the manufacture of beer;

6 D. "club" means:

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

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

19 (b) the proposed licensee has been  
20 granted an exemption by the United States from the payment of  
21 the federal income tax as a club under the provisions of Section  
22 501(a) of the Internal Revenue Code of 1954, as amended or, if  
23 the applicant has not operated as a club for a sufficient time  
24 to be eligible for the income tax exemption, it must execute and  
25 file with the director a sworn letter of intent declaring that

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1 it will, in good faith, apply for such exemption as soon as it  
2 is eligible; or

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

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

16 F. "department" means the special investigations  
17 division of the department of public safety [~~department~~] when  
18 the term is used in reference to the enforcement and  
19 investigatory provisions of the Liquor Control Act and means the  
20 superintendent of regulation and licensing when the term is used  
21 in reference to the licensing provisions of the Liquor Control  
22 Act;

23 G. "director" means the director of the special  
24 investigations division of the department of public safety  
25 [~~department~~] when the term is used in reference to the

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

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

12 I. "distiller" means any person engaged in  
13 manufacturing spirituous liquors;

14 J. "governing body" means the board of county  
15 commissioners of a county or the city council or city  
16 commissioners of a municipality;

17 K. "hotel" means any establishment or complex having  
18 a resident of New Mexico as a proprietor or manager and where,  
19 in consideration of payment, meals and lodging are regularly  
20 furnished to the general public. The establishment or complex  
21 must maintain for the use of its guests a minimum of twenty-five  
22 sleeping rooms;

23 L. "licensed premises" means the contiguous areas or  
24 areas connected by indoor passageways of a structure and the  
25 outside dining, recreation and lounge areas of the structure

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1 which are under the direct control of the licensee and from  
2 which the licensee is authorized to sell, serve or allow the  
3 consumption of alcoholic beverages under the provisions of its  
4 license; provided that in the case of a restaurant, hotel or  
5 racetrack, "licensed premises" includes all public and private  
6 rooms, facilities and areas in which alcoholic beverages are  
7 sold or served in the customary operating procedures of the  
8 restaurant, hotel or racetrack;

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

18 N. "manufacturer" means a distiller, rectifier,  
19 brewer or winer;

20 O. "minor" means any person under twenty-one years  
21 of age;

22 P. "package" means any immediate container of  
23 alcoholic beverages which is filled or packed by a manufacturer  
24 or wine bottler for sale by the manufacturer or wine bottler to  
25 wholesalers;

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1 Q. "person" means an individual, corporation, firm,  
2 partnership, copartnership, association or other legal entity;

3 R. "rectifier" means any person who blends, mixes or  
4 distills alcohol with other liquids or substances for the  
5 purpose of making an alcoholic beverage for the purpose of sale  
6 other than to the consumer by the drink, and includes all  
7 bottlers of spirituous liquors;

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

18 T. "retailer" means any person licensed under the  
19 provisions of the Liquor Control Act selling, offering for sale  
20 or having in his possession with the intent to sell any  
21 alcoholic beverages in unbroken packages for consumption and not  
22 for resale off the licensed premises;

23 U. "spirituous liquors" means alcoholic beverages as  
24 defined in Subsection A of this section except fermented  
25 beverages such as wine, beer and ale;

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

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

X. "wine bottler" means any New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale; and

Y. "winer" means any person who owns or operates a business for the manufacture of wine. "