

AN ACT  
RELATING TO STATE AGENCIES; CLARIFYING THE POWERS AND DUTIES  
OF THE ALCOHOL AND GAMING DIVISION OF THE REGULATION AND  
LICENSING DEPARTMENT AND THE DIRECTOR OF THAT DIVISION;  
AMENDING, REPEALING AND ENACTING 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 six divisions as follows:

- A. the administrative services division;
- B. the construction industries division;
- C. the financial institutions division;
- D. the securities division;
- E. the manufactured housing division; and
- F. the alcohol and gaming division. "

Section 2. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended) is amended to read:

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

- A. "alcoholic beverages" means distilled or

rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters;

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

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

D. "club" means:

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

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

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

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

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

F. "department" means the special investigations division of the department of public safety when the term is

used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "director" means the director of the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

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

I. "distiller" means a person engaged in manufacturing spirituous liquors;

J. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens, driving ranges, recreational facilities, patios, pro shops, cart paths and public and private roads

that are located within the tract of land;

K. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

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

M. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, hotel, golf course or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack;

N. "local option district" means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality that falls within a county that has voted to approve the

sale, serving or public consumption of alcoholic beverages, or any incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

O. "manufacturer" means a distiller, rectifier, brewer or winer;

P. "minor" means a person under twenty-one years of age;

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

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

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

T. "restaurant" means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining

room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

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

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

W. "wholesaler" means a 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;

X. "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, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

Y. "wine bottler" means a 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;

Z. "winegrower" means a person who owns or operates a business for the manufacture of wine; and

AA. "winer" means a winegrower. "

Section 3. Section 60-3A-6 NMSA 1978 (being Laws 1987, Chapter 254, Section 24) is amended to read:

"60-3A-6. AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY. -- The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department. "

Section 4. Section 60-3A-7 NMSA 1978 (being Laws 1987, Chapter 254, Section 25) is amended to read:

"60-3A-7. AUTHORITY OF THE ALCOHOL AND GAMING DIVISION. -- The alcohol and gaming division of the regulation and licensing department has the authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The director of the alcohol and gaming division of the regulation and licensing department may request the department of public safety to provide investigatory and enforcement support as deemed necessary. "

Section 5. A new section of Chapter 60, Article 3A

NMSA 1978 is enacted to read:

"POWERS AND DUTIES OF THE DIRECTOR OF THE ALCOHOL AND GAMING DIVISION. -- The director of the alcohol and gaming division of the regulation and licensing department is responsible for the operation of the division. It is his duty to supervise all operations of the division and to:

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

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

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

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

E. employ, within the limitations of current appropriations and personnel laws, persons as are required to discharge his duties;

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

G. require compliance by employees of the division with his verbal and written instructions by whatever disciplinary means appropriate. "

Section 6. A new section of Chapter 60, Article 3A

NMSA 1978 is enacted to read:

"ADMINISTRATIVE AUTHORITY AND POWERS. --

A. For the purpose of administering the licensing provisions of the Liquor Control Act, the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the alcohol and gaming division of the regulation and licensing department, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the legal counsel for the alcohol and gaming division of the regulation and licensing department shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may

invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The alcohol and gaming division of the regulation and licensing department shall require criminal history background checks for purposes of administering the licensing provisions of the Liquor Control Act. For purposes of conducting the criminal history background check, the alcohol and gaming division shall require the fingerprinting of applicants for liquor licenses as required by the Liquor Control Act. Fingerprint cards shall be submitted by the director to the department of public safety records bureau for processing through the federal bureau of investigation. The director shall establish procedures within the alcohol and gaming division to maintain the confidentiality of information received from the department of public safety and the federal bureau of investigation."

Section 7. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"ADMINISTRATIVE RULES AND ORDERS--PRESUMPTION OF CORRECTNESS.--

A. The director shall issue and file as required by law all rules and orders necessary to administer the

licensing provisions of the Liquor Control Act.

B. Directives issued by the director shall be in form substantially as follows:

(1) rules are written statements of the director, of general application to licensees, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and

(3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, a rule shall first be issued as a proposed rule and filed for public inspection in the office of the director. Distribution of the rule shall be made to interested persons and their comments shall be invited. After the proposed rule has been on file for thirty days and a public hearing has been held, the director may issue it as a final rule by filing as required by law.

D. The director shall furnish a copy of the rules to all licensees and other interested persons at a nominal cost.

E. A rule or order issued by the director is presumed to be a proper implementation of the licensing provisions of the Liquor Control Act.

F. All rules and orders shall be applied

prospectively only."

Section 8. A new section of Chapter 60, Article 3A NMSA 1978 is enacted to read:

"WRITTEN DECISIONS BY DIRECTOR. --Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license, or other disposition of a charge against a licensee, shall be accompanied by a written order containing findings of fact and the specific grounds relied upon for the decision."

Section 9. REPEAL. --Sections 60-4B-5 and 60-4B-6 NMSA 1978 (being Laws 1981, Chapter 39, Sections 8 and 9) are repealed.

Section 10. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_