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HOUSE BILL 971

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Brian K. Moore

AN ACT

RELATING TO ALCOHOLIC LIQUORS; CREATING A LIMITED DISPENSER'S
LICENSE FOR USE IN LOCAL OPTION DISTRICTS THAT ARE CLASS B OR C
COUNTIES OR FIRST CLASS COUNTIES WITH A 2006 VALUATION OF ONE
HUNDRED FIFTY MILLION DOLLARS (\$150,000,000) OR LESS.

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

Section 1. 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

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1 the foregoing containing more than one-half percent alcohol,
2 but excluding medicinal bitters;

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

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

9 D. "club" means:

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

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

22 (b) has been granted an exemption by the
23 United States from the payment of the federal income tax as a
24 club under the provisions of Section 501(a) of the Internal
25 Revenue Code of 1986, as amended, or, if the applicant has not

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1 operated as a club for a sufficient time to be eligible for the
2 income tax exemption, it must execute and file with the
3 director a sworn letter of intent declaring that it will, in
4 good faith, apply for ~~such~~ an income tax exemption as soon as
5 it is eligible; or

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

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

19 F. "department" means the special investigations
20 division of the department of public safety when the term is
21 used in reference to the enforcement and investigatory
22 provisions of the Liquor Control Act and means the director of
23 the alcohol and gaming division of the regulation and licensing
24 department when the term is used in reference to the licensing
25 provisions of the Liquor Control Act;

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

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

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

17 J. "golf course" means a tract of land and
18 facilities used for playing golf and other recreational
19 activities that includes tees, fairways, greens, hazards,
20 putting greens, driving ranges, recreational facilities,
21 patios, pro shops, cart paths and public and private roads that
22 are located within the tract of land;

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

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

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

22 N. "limited dispenser" means a person licensed
23 under the provisions of the Liquor Control Act selling,
24 offering for sale or having in the person's possession with the
25 intent to sell alcoholic beverages only by the drink for

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1 consumption on the licensed premises;

2 ~~[N-]~~ O. "local option district" means a county that
3 has voted to approve the sale, serving or public consumption of
4 alcoholic beverages, or ~~[any]~~ an incorporated municipality that
5 falls within a county that has voted to approve the sale,
6 serving or public consumption of alcoholic beverages, or ~~[any]~~
7 an incorporated municipality of over five thousand population
8 that has independently voted to approve the sale, serving or
9 public consumption of alcoholic beverages under the terms of
10 the Liquor Control Act or any former act;

11 ~~[O-]~~ P. "manufacturer" means a distiller,
12 rectifier, brewer or winer;

13 ~~[P-]~~ Q. "minor" means a person under twenty-one
14 years of age;

15 ~~[Q-]~~ R. "package" means an immediate container of
16 alcoholic beverages that is filled or packed by a manufacturer
17 or wine bottler for sale by the manufacturer or wine bottler to
18 wholesalers;

19 ~~[R-]~~ S. "person" means an individual, corporation,
20 firm, partnership, copartnership, association or other legal
21 entity;

22 ~~[S-]~~ T. "rectifier" means a person who blends,
23 mixes or distills alcohol with other liquids or substances for
24 the purpose of making an alcoholic beverage for the purpose of
25 sale other than to the consumer by the drink, and includes all

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1 bottlers of spirituous liquors;

2 [~~T.~~] U. "restaurant" means an establishment having
3 a New Mexico resident as a proprietor or manager that is held
4 out to the public as a place where meals are prepared and
5 served primarily for on-premises consumption to the general
6 public in consideration of payment and that has a dining room,
7 a kitchen and the employees necessary for preparing, cooking
8 and serving meals; provided that "restaurant" does not include
9 establishments as defined in rules promulgated by the director
10 serving only hamburgers, sandwiches, salads and other fast
11 foods;

12 [~~U.~~] V. "retailer" means a person licensed under
13 the provisions of the Liquor Control Act selling, offering for
14 sale or having in [~~his~~] the person's possession with the intent
15 to sell alcoholic beverages in unbroken packages for
16 consumption and not for resale off the licensed premises;

17 [~~V.~~] W. "spirituous liquors" means alcoholic
18 beverages as defined in Subsection A of this section except
19 fermented beverages such as wine, beer and ale;

20 [~~W.~~] X. "wholesaler" means a person whose place of
21 business is located in New Mexico and who sells, offers for
22 sale or possesses for the purpose of sale any alcoholic
23 beverages for resale by the purchaser;

24 [~~X.~~] Y. "wine" includes the words "fruit juices"
25 and means alcoholic beverages obtained by the fermentation of

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1 the natural sugar contained in fruit or other agricultural
2 products, with or without the addition of sugar or other
3 products, that do not contain less than one-half percent nor
4 more than twenty-one percent alcohol by volume;

5 [~~Y-~~] Z. "wine bottler" means a New Mexico
6 wholesaler who is licensed to sell wine at wholesale for resale
7 only and who buys wine in bulk and bottles it for wholesale
8 resale;

9 [~~Z-~~] AA. "winegrower" means a person who owns or
10 operates a business for the manufacture of wine; and

11 [~~AA-~~] BB. "winer" means a winegrower."

12 Section 2. Section 60-6A-15 NMSA 1978 (being Laws 1981,
13 Chapter 39, Section 32, as amended) is amended to read:

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

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

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

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

24 D. wholesaler's license to sell all alcoholic
25 beverages for resale only, two thousand five hundred dollars

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1 (\$2,500);

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

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

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

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

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

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

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

17 L. limited dispenser's license, one thousand three
18 hundred dollars (\$1,300);

19 [~~E.~~] M. canopy license, one thousand three hundred
20 dollars (\$1,300);

21 [~~M.~~] N. restaurant license, one thousand fifty
22 dollars (\$1,050);

23 [~~N.~~] O. club license, for clubs with more than two
24 hundred fifty members, one thousand two hundred fifty dollars
25 (\$1,250), and for clubs with two hundred fifty members or

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1 fewer, two hundred fifty dollars (\$250);

2 ~~[P-]~~ P. wine bottler's license to sell to
3 wholesalers only, five hundred dollars (\$500);

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

6 ~~[Q-]~~ R. nonresident licenses, for a total billing
7 to New Mexico wholesalers:

8 (1) in excess of:

- 9 \$3,000,000 annually \$10,500;
- 10 1,000,000 annually 5,250;
- 11 500,000 annually 3,750;
- 12 200,000 annually 2,700;
- 13 100,000 annually 1,800;

14 and

- 15 50,000 annually 900;

16 and

- 17 (2) of \$50,000 or less \$300;

18 ~~[R-]~~ S. wine wholesaler's license, for persons with
19 sales of five thousand gallons of wine per year or less,
20 twenty-five dollars (\$25.00), and for persons with sales in
21 excess of five thousand gallons of wine per year, one hundred
22 dollars (\$100); and

23 ~~[S-]~~ T. beer bottler's license, two hundred dollars
24 (\$200)."

25 Section 3. A new section of the Liquor Control Act is

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1 enacted to read:

2 "[NEW MATERIAL] LIMITED DISPENSER'S LICENSE.--

3 A. In a local option district that is a class B or
4 C county or a first class county with a 2006 valuation of one
5 hundred fifty million dollars (\$150,000,000) or less, a person
6 qualified under the provisions of the Liquor Control Act may
7 apply for and be granted a limited dispenser's license.

8 B. A limited dispenser's license:

9 (1) shall only be used by the person to which
10 the license is issued and shall only be used within the
11 original licensed premises, pursuant to the provisions of the
12 Liquor Control Act. The license shall not be transferred in
13 any manner, including sale, bulk sale, lease, exchange or
14 assignment, to another person, other than to an original
15 licensee, or to another location;

16 (2) only entitles the person to which it is
17 issued to sell alcoholic beverages by the drink for consumption
18 on the licensed premises and does not entitle the person to
19 sell alcoholic beverages in unbroken packages for consumption
20 off the licensed premises;

21 (3) is not subject to the provisions of
22 Section 60-6A-18 NMSA 1978 regarding the maximum number of
23 licenses that may be issued; and

24 (4) shall expire by its own terms and not be
25 renewable if:

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1 (a) the business premises for which it
2 was originally issued are transferred in violation of Paragraph
3 (1) of this subsection;

4 (b) as an exception to the provisions of
5 Section 60-6B-7 NMSA 1978, the licensee fails to commence
6 operation of the licensed premises within ninety days after the
7 license is issued and to operate continuously during customary
8 hours and days of operation for that type of business with no
9 more than ten days of cessation of business during each license
10 year; provided that the licensee gives written notice of the
11 cessation to the director prior to the start of the cessation
12 period. The director may extend the number of days of
13 cessation of a licensed business pursuant to this paragraph for
14 good cause shown based upon an unforeseeable event happening to
15 the licensed premises or the licensee; and

16 (c) the licensee fails to renew the
17 license within thirty days of the license annual renewal date
18 pursuant to the Liquor Control Act.

19 C. Except as otherwise provided in this section, a
20 limited dispenser's license is subject to the provisions of the
21 Liquor Control Act applicable to a dispenser's license."

22 Section 4. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2007.