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HOUSE BILL 200

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Dona G. Irwin

AN ACT

RELATING TO BUSINESS LICENSES; AMENDING A SECTION OF THE LIQUOR CONTROL ACT TO CLARIFY THE DEFINITION OF "LICENSED PREMISES".

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

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

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

7 D. "club" means:

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

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

20 (b) has been granted an exemption by the
21 United States from the payment of the federal income tax as a
22 club under the provisions of Section 501(a) of the Internal
23 Revenue Code of 1986, as amended, or, if the applicant has not
24 operated as a club for a sufficient time to be eligible for the
25 income tax exemption, it must execute and file with the

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1 director a sworn letter of intent declaring that it will, in
2 good faith, apply for an income tax exemption as soon as it is
3 eligible; or

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

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

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

24 G. "director" means the director of the special
25 investigations division of the department of public safety

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

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

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

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

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

24 L. "hotel" means an establishment or complex having
25 a resident of New Mexico as a proprietor or manager and where,

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1 in consideration of payment, meals and lodging are regularly
2 furnished to the general public. The establishment or complex
3 must maintain for the use of its guests a minimum of twenty-
4 five sleeping rooms;

5 M. "licensed premises" means the contiguous areas
6 or areas connected by indoor passageways of a structure and the
7 outside dining, recreation and lounge areas of the structure
8 and the grounds and vineyards of a structure that is a winery
9 that are under the direct control of the licensee and from
10 which the licensee is authorized to sell, serve or allow the
11 consumption of alcoholic beverages under the provisions of its
12 license; provided that in the case of a restaurant, [~~including~~]
13 "licensed premises" includes a restaurant that has operated
14 continuously in two separate structures since July 1, 1987 and
15 that is located in a local option district that has voted to
16 disapprove the transfer of liquor licenses into that local
17 option district, hotel, golf course or racetrack [~~"licensed~~
18 ~~premises" includes~~] and all public and private rooms,
19 facilities and areas in which alcoholic beverages are sold or
20 served in the customary operating procedures of the restaurant,
21 hotel, golf course or racetrack. "Licensed premises" also
22 includes rural dispenser licenses located in the unincorporated
23 areas of a county with a population of less than thirty
24 thousand, located in buildings in existence as of January 1,
25 2012, that are within one hundred fifty feet of one another and

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1 that are under the direct control of the license holder;

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

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

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

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

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

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

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

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

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

23 X. "wine" includes the words "fruit juices" and
24 means alcoholic beverages obtained by the fermentation of the
25 natural sugar contained in fruit or other agricultural

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

4 Y. "wine bottler" means a New Mexico wholesaler who
5 is licensed to sell wine at wholesale for resale only and who
6 buys wine in bulk and bottles it for wholesale resale;

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

9 AA. "winer" means a winegrower; and

10 BB. "winery" means a facility in which a winegrower
11 manufactures and stores wine."