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HOUSE BILL 211

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO LIQUOR CONTROL; PROVIDING THAT UNFAIR COMPETITION PROVISIONS APPLY TO ALL LICENSEES.

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

SECTION 1. Section 60-8A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 60, as amended) is amended to read:

"60-8A-1. UNFAIR COMPETITION--EXCLUSIVE OUTLET--TIED HOUSE--CONSIGNMENT SALES.--It is unlawful for [~~an importer, manufacturer, nonresident licensee or any kind or class of wholesaler~~] a person who holds a license issued pursuant to the Liquor Control Act, directly or indirectly, or through an affiliate:

A. to require by agreement or otherwise that a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee

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1 engaged in the sale of alcoholic beverages in the state
2 purchase alcoholic beverages from that person to the exclusion
3 in whole or in part of alcoholic beverages sold or offered for
4 sale by other persons;

5 B. to induce, through any of the following means, a
6 wholesaler, retailer, dispenser, canopy licensee, restaurant
7 licensee, club licensee or governmental licensee or its lessee
8 engaged in the sale of any kind or class of alcoholic beverages
9 to purchase alcoholic beverages from that person to the
10 exclusion in whole or in part of alcoholic beverages sold or
11 offered for sale by other persons:

12 (1) by acquiring or holding, after the
13 expiration of an existing license, an interest in a license
14 with respect to the premises of the wholesaler, retailer,
15 dispenser, canopy licensee, restaurant licensee, club licensee
16 or governmental licensee or its lessee;

17 (2) by acquiring an interest in real or
18 personal property owned, occupied or used by a wholesaler,
19 retailer, dispenser, restaurant licensee or club licensee in
20 the conduct of the buying wholesaler's, retailer's,
21 dispenser's, canopy licensee's, restaurant licensee's, club
22 licensee's or governmental licensee's or its lessee's business,
23 subject to exceptions that the director may prescribe, having
24 due regard for the free flow of commerce, the purposes of this
25 subsection and established trade customs not contrary to the

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1 public interest;

2 (3) by furnishing, giving, renting, lending or
3 selling to a wholesaler, retailer, dispenser, canopy licensee,
4 restaurant licensee, club licensee or governmental licensee or
5 its lessee equipment, fixtures, signs, supplies, money,
6 services or other thing of value, subject to exceptions that
7 the director may by regulation prescribe, having due regard for
8 public health and welfare, the quantity and value of the
9 articles involved and established trade customs not contrary to
10 the public interest and the purposes of this subsection;

11 (4) by paying or crediting the wholesaler,
12 retailer, dispenser, canopy licensee, restaurant licensee, club
13 licensee or governmental licensee or its lessee for
14 advertising, display or distribution services;

15 (5) by requiring a wholesaler, retailer,
16 dispenser, canopy licensee, restaurant licensee, club licensee
17 or governmental licensee or its lessee to take and dispose of a
18 certain quota or combination of alcoholic beverages; or

19 (6) by commercial bribery by offering or
20 giving a bonus, premium or compensation to an officer,
21 employee, agent or representative of a wholesaler, retailer,
22 dispenser, canopy licensee, restaurant licensee, club licensee
23 or governmental licensee or its lessee; or

24 C. to sell, offer for sale or contract to sell to a
25 retailer, dispenser, canopy licensee, restaurant licensee, club

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1 licensee or governmental licensee or its lessee alcoholic
2 beverages of any kind or class on consignment or under a
3 conditional sale or on a basis other than a bona fide sale;
4 provided that this subsection shall not apply to transactions
5 involving solely the bona fide return of alcoholic beverages
6 for ordinary and usual commercial reasons arising after the
7 alcoholic beverages have been sold, including a return of
8 alcoholic beverages that are at or near spoilage or expiration
9 date or that were damaged by the wholesaler, but not including
10 a return of alcoholic beverages that were damaged by any other
11 licensee or any other licensee's employees or customers."

12 SECTION 2. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2018.

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