

SENATE BILL 494

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Gerald Ortiz y Pino

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING AND ENACTING SECTIONS OF THE LIQUOR CONTROL ACT TO PROVIDE BEER AND WINE DELIVERY LICENSES FOR THE DELIVERY OF BEER, CIDER OR WINE TOGETHER WITH MEALS OR GROCERIES TO ADULT PURCHASERS; PROVIDING FOR LOCAL OPTION DISTRICT AUTHORIZATION.

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

SECTION 1. A new section of the Liquor Control Act is enacted to read:

"[NEW MATERIAL] BEER AND WINE DELIVERY LICENSE.--

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A. On and after July 1, 2019, a local option district may approve of the use of beer and wine delivery licenses for the sale and delivery of beer, cider or wine, along with the concurrent sale and delivery of meals or groceries, by holding an election on the question pursuant to the procedures in Section 60-5A-1 NMSA 1978. Alternatively, the election may be initiated by a resolution adopted by the governing body of the local option district without the submission of a petition from registered qualified electors. As used in this section, "meals" means lunch or dinner entrees and does not include only an appetizer, snack or dessert.

B. After the approval by the registered qualified electors of a local option district of the use of beer and wine delivery licenses, a SJC→retailer, dispenser,←SJC restaurant, grocery store or food delivery company located or to be located within the local option district may apply for a beer and wine delivery license that, concurrent with the delivery of meals or groceries, confers the ability to sell and transport to a person at least twenty-one years of age, up to one hundred forty-four ounces of beer SJC→or cider←SJC or up to one and one-half liters of wine SJC→or cider←SJC, subject to the requirements and restrictions of this section.

C. An applicant for a beer and wine delivery license shall submit evidence to the department that the applicant has either:

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(1) a current business license or permit as a food service establishment or a grocery store;

(2) a retailer's license SJC→or dispenser's license←SJC; or

(3) a current business license or permit as a food delivery service business with delivery employees and delivery vehicles and contracts with a minimum of six legally recognized food service establishments or grocery stores to deliver meals or groceries on their behalf.

D. The applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant, grocery store or food delivery service business pursuant to the beer and wine delivery license will be derived from the sale and delivery of meals or groceries and not from the sale and delivery of beer, cider or wine. The director shall condition renewal of the license upon a requirement that no less than seventy percent of gross receipts from the preceding twelve months' operation of the licensee was derived from the sale of meals or groceries. Upon application for renewal, the licensee shall submit an annual report to the director indicating:

(1) the annual gross receipts from the sale and delivery of meals or groceries and from the sale and delivery of beer, cider or wine; and

(2) that meals or groceries ordered for each

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delivery concurrent with beer, cider or wine had a minimum retail value of twenty dollars (\$20.00).

E. All sales and delivery of beer, cider or wine authorized by a beer and wine delivery license shall cease no later than 10:00 p.m. If Sunday sales have been approved in the local option district, a beer and wine delivery licensee may sell and deliver beer, cider or wine on Sundays until no later than 9:00 p.m.

F. A beer and wine delivery license shall not be transferable from person to person or from one location to another.

G. A beer and wine delivery license shall provide only for deliveries within a single local option district. A separate license shall be issued to a SJC→retailer, dispenser,←SJC restaurant, grocery store or food delivery service business for each local option district in which the licensee desires to operate. A beer and wine delivery licensee shall have a physical business location in each local option district in which it operates. Inter-local option district deliveries of beer and wine are prohibited.

H. Deliveries of beer, cider or wine by a beer and wine delivery licensee are restricted to physical delivery to a person at least twenty-one years of age at a residential address or a commercial or private lodging facility. A delivery is prohibited to:

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(1) a location within three hundred feet of a church, school, youth center, academic campus or educational institution dormitory;

(2) public property;

(3) commercially zoned property other than a lodging facility; and

(4) a location designated by a local option district through its zoning power.

I. A local option district shall create and maintain a database of "do not deliver" addresses that will allow property owners and residents to prevent beer and wine delivery service. A local option district may also place properties deemed nuisances on the "do not deliver" list.

J. Beer and wine delivery licensee delivery personnel transporting and transferring control of beer, cider or wine to a purchaser shall be:

(1) employees of the licensee;

(2) alcohol-server-certified by the department; and

(3) trained and certified to handle perishable food with a current food handler certificate.

K. The department shall adopt rules to guide best practices for beer and wine delivery licensees in the use of health and safety information, mobile document and identification verification and delivery vehicle tracking.

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L. All sales and delivery of beer, cider or wine by a beer and wine delivery licensee shall be concurrent with the sale and delivery of meals or groceries.

M. Sales of beer, cider or wine and meals or groceries shall be by credit card, debit card or electronic payment. Cash sales are prohibited. Sales records shall be kept by a beer and wine delivery licensee as a business practice and available to the director for review for three years.

N. A beer and wine delivery licensee shall obtain beer, cider and wine inventory only from a retailer SJC→**or dispenser**←SJC.

O. Unless the beer and wine delivery licensee is also a retailer SJC→**or dispenser**←SJC, in which case the limitations SJC→**of Paragraph (1)**←SJC of this subsection do not apply, a beer and wine delivery licensee may maintain a secured inventory of beer, cider and wine with a total retail value of no more than:

(1) at its place of business, three thousand dollars (\$3,000); and

(2) in each delivery vehicle, four hundred dollars (\$400), but only during the licensee's hours of operation.

P. Delivery vehicles used by a beer and wine delivery licensee shall be owned or leased by the licensee,

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registered in New Mexico, covered by a commercial delivery vehicle liability insurance policy and clearly marked on each side of the vehicle with the name of the licensed business and its telephone or website contact information. In addition to the identifying contact information, each delivery vehicle shall clearly display a number assigned by the department that will allow the department to identify a specific vehicle.

Q. Nothing in this section shall prevent a beer and wine delivery licensee from receiving other licenses pursuant to the Liquor Control Act.

R. A beer and wine delivery licensee shall maintain alcoholic beverage liability insurance coverage of at least one million dollars (\$1,000,000).

S. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to a beer and wine delivery license."

SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended by Laws 2016, Chapter 73, Section 1 and by Laws 2016, Chapter 76, Section 1) 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, powdered alcohol, frozen or freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or

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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;

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. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent alcohol by volume and not more than seven percent alcohol by volume;

E. "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:

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

(b) 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 an income tax 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. As used in 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 federal aviation administration;

F. "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;

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G. "department" means the New Mexico state police 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. "director" means the chief of the New Mexico state police 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;

I. "dispenser" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises SJC→, except as otherwise provided in Section 1 of this 2019 act←SJC;

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

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K. "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;

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

M. "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider for consumption off premises;

N. "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;

O. "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 and the grounds and vineyards of a structure that is a winery that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the

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consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, "licensed premises" includes a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district, hotel, golf course, ski area or racetrack and 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, ski area or racetrack. "Licensed premises" also includes
SJC→:←SJC

SJC→(1)←SJC rural dispenser licenses located in the unincorporated areas of a county with a population of less than thirty thousand, located in buildings in existence as of January 1, 2012, that are within one hundred fifty feet of one another and that are under the direct control of the license holder; SJC→and←SJC

SJC→(2) locations of a secured inventory of beer, cider and wine of a beer and wine delivery licensee pursuant to Subsection 0 of Section 1 of this 2019 act, as those locations are further defined in department rules;←SJC

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

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

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

S. "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;

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

U. "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;

V. "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

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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;

W. "retailer" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages in unbroken packages, including growlers, for consumption and not for resale off the licensed premises except as otherwise provided in Section 1 of this 2019 act;

X. "ski area" means a tract of land and facilities for the primary purpose of alpine skiing, snowboarding or other snow sports with trails, parks and at least one chairlift with uphill capacity and may include facilities necessary for other seasonal or year-round recreational activities;

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

Z. "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;

AA. "wine" includes the words "fruit juices" and

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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 percent nor more than twenty-one percent alcohol by volume;

BB. "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;

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

DD. "winer" means a winegrower; and

EE. "winery" means a facility in which a winegrower manufactures and stores wine."

SECTION 3. Section 60-6A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 32, as amended) is amended to read:

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

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

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

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

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D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars (\$2,500);

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

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

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

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

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

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

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

L. canopy license, one thousand three hundred dollars (\$1,300);

M. restaurant license, one thousand fifty dollars (\$1,050);

N. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars (\$1,250), and for clubs with two hundred fifty members or

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

O. wine bottler's license to sell to wholesalers only, five hundred dollars (\$500);

P. public service license, one thousand two hundred fifty dollars (\$1,250);

Q. nonresident licenses, for a total billing to New Mexico wholesalers:

(1) in excess of:

\$3,000,000 annually	\$10,500;
1,000,000 annually	5,250;
500,000 annually	3,750;
200,000 annually	2,700;
100,000 annually	1,800;

and

50,000 annually	900;
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and

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

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

S. beer bottler's license, two hundred dollars (\$200); and

T. beer and wine delivery license, one thousand

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three hundred dollars (\$1,300)."