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HOUSE BILL 72

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO LIQUOR LICENSE LEASING; REQUIRING HEARINGS;  
DECLARING AN EMERGENCY.

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

Section 1. Section 60-3A-1 NMSA 1978 (being Laws 1981,  
Chapter 39, Section 1, as amended) is amended to read:

"60-3A-1. SHORT TITLE. -- Chapter 60, Articles 3A, 4B, 4C,  
5A, 6A, 6B, 6C, 6D, 7A, 7B and 8A [~~of Chapter 60~~] NMSA 1978  
may be cited as the "Liquor Control Act". "

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. "agent lessee" means a person who operates a  
liquor license pursuant to a lease agreement with a licensee,

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1 who compensates the licensee for the use of the license and  
2 who is entitled to profits and responsible for losses from the  
3 operation of the license;

4 [A-] B. "alcoholic beverages" means distilled or  
5 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
6 and aromatic bitters bearing the federal internal revenue  
7 strip stamps or any similar alcoholic beverage, including  
8 blended or fermented beverages, dilutions or mixtures of one  
9 or more of the foregoing containing more than one-half of one  
10 percent alcohol, but excluding medicinal bitters;

11 [B-] C. "beer" means [~~any~~] an alcoholic beverage  
12 obtained by the fermentation of any infusion or decoction of  
13 barley, malt and hops or other cereals in water, and includes  
14 porter, beer, ale and stout;

15 [C-] D. "brewer" means [~~any~~] a person who owns or  
16 operates a business for the manufacture of beer;

17 [D-] E. "club" means:

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

. 134538. 1

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1 purposes and which group the director finds:

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

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

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

22 [~~E.-~~] F. "commission" means the secretary of public  
23 safety when the term is used in reference to the enforcement  
24 and investigatory provisions of the Liquor Control Act and  
25 means the superintendent of regulation and licensing when the

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1 term is used in reference to the licensing provisions of the  
2 Liquor Control Act;

3 ~~[F.]~~ G. "department" means the special  
4 investigations division of the department of public safety  
5 when the term is used in reference to the enforcement and  
6 investigatory provisions of the Liquor Control Act and means  
7 the superintendent of regulation and licensing when the term  
8 is used in reference to the licensing provisions of the Liquor  
9 Control Act;

10 ~~[G.]~~ H. "director" means the director of the  
11 special investigations division of the department 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 ~~[H.]~~ I. "dispenser" means ~~[any]~~ a person licensed  
18 under the provisions of the Liquor Control Act selling,  
19 offering for sale or having in his possession with the intent  
20 to sell alcoholic beverages both by the drink for consumption  
21 on the licensed premises and in unbroken packages for  
22 consumption and not for resale off the licensed premises;

23 ~~[I.]~~ J. "distiller" means ~~[any]~~ a person engaged  
24 in manufacturing spirituous liquors;

25 ~~[J.]~~ K. "golf course" means a tract of land and

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1 facilities used for playing golf and other recreational  
2 activities that includes tees, fairways, greens, hazards,  
3 putting greens, driving ranges, recreational facilities,  
4 patios, pro shops, cart paths and public and private roads  
5 that are located within the tract of land;

6 ~~[K-]~~ L. "governing body" means the board of county  
7 commissioners of a county or the city council or city  
8 commissioners of a municipality;

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

15 ~~[M-]~~ N. "licensed premises" means the contiguous  
16 areas or areas connected by indoor passageways of a structure  
17 and the outside dining, recreation and lounge areas of the  
18 structure that are under the direct control of the licensee  
19 and from which the licensee is authorized to sell, serve or  
20 allow the consumption of alcoholic beverages under the  
21 provisions of its license; provided that in the case of a  
22 restaurant, hotel, golf course or racetrack, "licensed  
23 premises" includes all public and private rooms, facilities  
24 and areas in which alcoholic beverages are sold or served in  
25 the customary operating procedures of the restaurant, hotel,

. 134538. 1

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1 golf course or racetrack;

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

12 [~~Q.~~] P. "manufacturer" means a distiller,  
13 rectifier, brewer or winer;

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

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

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

23 [~~S.~~] T. "rectifier" means [~~any~~] a person who  
24 blends, mixes or distills alcohol with other liquids or  
25 substances for the purpose of making an alcoholic beverage for

. 134538. 1

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1 the purpose of sale other than to the consumer by the drink,  
2 and includes all bottlers of spirituous liquors;

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

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

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

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

25 ~~[X.]~~ Y. "wine" includes the words "fruit juices"

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1 and means alcoholic beverages obtained by the fermentation of  
2 the natural sugar contained in fruit or other agricultural  
3 products, with or without the addition of sugar or other  
4 products, ~~[which]~~ that do not contain less than one-half of  
5 one percent nor more than twenty-one percent alcohol by  
6 volume;

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

11 ~~[Z.]~~ AA. "winegrower" means ~~[any]~~ a person who  
12 owns or operates a business for the manufacture of wine; and

13 ~~[AA.]~~ BB. "winer" means a winegrower."

14 Section 3. A new section of the Liquor Control Act is  
15 enacted to read:

16 "[NEW MATERIAL] AGENT LESSEE-- HEARINGS REQUIRED-- NOTICE--  
17 PENALTIES. --

18 A. Before a license issued by the director may be  
19 leased by an agent lessee, the proposed agent lessee and the  
20 licensee shall:

21 (1) submit to the director a written  
22 application on a form provided by the department requesting  
23 licensure of the agent lessee;

24 (2) submit to the director all information  
25 required by the director, including all information required



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1 of a new license applicant pursuant to Section 60-6B-2 NMSA  
2 1978; and

3 (3) appear before the director or a hearing  
4 officer in a hearing held on the record in Santa Fe to  
5 determine if the proposed agent lessee is qualified to be  
6 licensed, all requirements of the Liquor Control Act have been  
7 met and the transfer of control of the license to the proposed  
8 agent lessee furthers the policy of the Liquor Control Act to  
9 protect the health, safety and morals of the public.

10 B. Each person who is required to file  
11 fingerprints pursuant to rules of the department shall submit  
12 an affidavit stating that the person has not been convicted of  
13 a felony in any jurisdiction. An applicant for a license as  
14 an agent lessee who files a false affidavit shall be denied a  
15 license to act as an agent lessee. When the director  
16 determines a false affidavit has been filed, he shall refer  
17 the matter to the attorney general or district attorney for  
18 prosecution of perjury.

19 C. The director shall notify the licensee and  
20 proposed agent lessee by certified mail of the date, time and  
21 place of the hearing. The director shall cause a notice of  
22 intent to license an agent lessee to be posted in a manner  
23 that conforms with the provisions of Subsection M of Section  
24 60-6B-2 NMSA 1978 for a continuous period of at least twenty  
25 days prior to the hearing. The contents of the notice of

. 134538. 1

1 intent to license an agent lessee shall state the date, time  
2 and place of the hearing to be held regarding the application  
3 and shall provide an address to which comments may be sent  
4 regarding the licensure of the agent lessee for inclusion in  
5 the record.

6 D. In determining whether a license shall be  
7 issued, the director shall take into consideration the record  
8 of the hearing and all requirements of the Liquor Control Act.  
9 In the issuance of a license, the director shall specifically  
10 consider the nature and number of violations of the Liquor  
11 Control Act by the applicant or the licensee or of citations  
12 issued within the prior five years against a license held or  
13 operated pursuant to a lease by the applicant or the licensee  
14 or against a license in which the applicant or licensee had an  
15 ownership interest required to be disclosed pursuant to  
16 provisions of the Liquor Control Act. The director shall  
17 approve or disapprove the issuance of the license based upon a  
18 review of all documentation.

19 E. No license shall be issued until all  
20 requirements of the Liquor Control Act are satisfactorily  
21 completed as determined by the director.

22 F. All costs of posting a notice of intent to  
23 license an agent lessee shall be paid by the licensee.

24 G. It is unlawful for any person to remove or  
25 deface a notice posted in accordance with this section. A

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1 person convicted of a violation of this subsection shall be  
2 punished by a fine of not more than three hundred dollars  
3 (\$300) or by imprisonment in the county jail for not more than  
4 one hundred twenty days or both. "

5 Section 4. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect  
7 immediately.