

HOUSE BILL 413

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Yvette Herrell

AN ACT

RELATING TO LIQUOR; AMENDING THE LIQUOR CONTROL ACT TO ALLOW FOR THE ISSUANCE OF RURAL RESTAURANT LICENSES IN CERTAIN LOCAL OPTION DISTRICTS IN CERTAIN COUNTIES.

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] RURAL RESTAURANT LICENSE.--Upon satisfaction of all requirements in the Liquor Control Act for the issuance of licenses, in a local option district that has approved the sale of alcoholic beverages, except for a local option district in a class A county, the director shall issue a rural restaurant license to a restaurant located within the local option district permitting the restaurant to sell, serve or allow the consumption of beer, wine and spirituous liquors

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1 subject to the following requirements and restrictions:

2 A. the premises of the restaurant for the proposed  
3 rural restaurant license shall not have had a dispenser or  
4 canopy license within the prior year;

5 B. no more than two rural restaurant licenses shall  
6 be issued per county;

7 C. if the director determines that there will be  
8 more applications for rural restaurant licenses than the  
9 available number of licenses, the director shall use a random  
10 selection method for the qualification, approval and issuance  
11 of rural restaurant licenses in accordance with the procedures  
12 set forth in Subsections H through J of Section 60-6B-2 NMSA  
13 1978 and any rules promulgated by the director;

14 D. a person shall not hold more than one rural  
15 restaurant license per county;

16 E. a rural restaurant license shall expire annually  
17 and be subject to renewal upon application to the director by  
18 the licensee in accordance with Section 60-6B-5 NMSA 1978;

19 F. a rural restaurant license shall not be  
20 transferable;

21 G. a rural restaurant licensee shall not permit the  
22 sale of beer, wine or spirituous liquors for consumption off  
23 the licensed premises;

24 H. all sales, service and consumption of beer, wine  
25 and spirituous liquors authorized by a rural restaurant license

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1 shall cease when meal sales and services cease for the day or  
2 at 11:00 p.m., whichever is earlier;

3 I. if Sunday sales have been approved in the local  
4 option district, a rural restaurant licensee may serve beer,  
5 wine and spirituous liquors on Sundays until meal sales and  
6 services cease for the day or until 11:00 p.m., whichever is  
7 earlier;

8 J. the applicant shall present evidence to the  
9 director that the applicant holds a current valid food  
10 establishment permit;

11 K. the applicant shall present sufficient evidence  
12 to the satisfaction of the director at the time of application,  
13 or upon application for renewal, of a rural restaurant license  
14 that at least fifty percent of the total gross receipts for the  
15 restaurant will derive from the sale of food and no more than  
16 fifty percent of the gross receipts will derive from the sale  
17 of alcoholic beverages;

18 L. upon application for renewal of a rural  
19 restaurant license, the licensee shall submit an annual report  
20 to the director indicating the annual gross receipts from the  
21 sale of meals and from the sale of beer, wine and spirituous  
22 liquors; and

23 M. the provisions of Section 60-6A-18 NMSA 1978  
24 shall not apply to rural restaurant licenses."

25 SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,

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1 Chapter 39, Section 3, as amended) is amended to read:

2 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
3 Act:

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

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

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

17 D. "club" means:

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

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1 which group the director finds:

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

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

14 (2) an airline passenger membership club  
15 operated by an air common carrier that maintains or operates a  
16 clubroom at an international airport terminal. As used in this  
17 paragraph, "air common carrier" means a person engaged in  
18 regularly scheduled air transportation between fixed termini  
19 under a certificate of public convenience and necessity issued  
20 by the federal aviation administration;

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

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1 Liquor Control Act;

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

9 G. "director" means the director of the special  
10 investigations division of the department of public safety  
11 when the term is used in reference to the enforcement and  
12 investigatory provisions of the Liquor Control Act and means  
13 the director of the alcohol and gaming division of the  
14 regulation and licensing department when the term is used in  
15 reference to the licensing provisions of the Liquor Control  
16 Act;

17 H. "dispenser" means a person licensed under the  
18 provisions of the Liquor Control Act selling, offering for sale  
19 or having in the person's possession with the intent to sell  
20 alcoholic beverages both by the drink for consumption on the  
21 licensed premises and in unbroken packages for consumption and  
22 not for resale off the licensed premises;

23 I. "distiller" means a person engaged in  
24 manufacturing spirituous liquors;

25 J. "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 that  
5 are located within the tract of land;

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

15 M. "licensed premises" means the contiguous areas  
16 or areas connected by indoor passageways of a structure and the  
17 outside dining, recreation and lounge areas of the structure  
18 and the grounds and vineyards of a structure that is a winery  
19 that are under the direct control of the licensee and from  
20 which the licensee is authorized to sell, serve or allow the  
21 consumption of alcoholic beverages under the provisions of its  
22 license; provided that in the case of a restaurant, "licensed  
23 premises" includes a restaurant that has operated continuously  
24 in two separate structures since July 1, 1987 and that is  
25 located in a local option district that has voted to disapprove

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1 the transfer of liquor licenses into that local option  
2 district, hotel, golf course or racetrack and all public and  
3 private rooms, facilities and areas in which alcoholic  
4 beverages are sold or served in the customary operating  
5 procedures of the restaurant, hotel, golf course or racetrack.  
6 "Licensed premises" also includes rural dispenser licenses  
7 located in the unincorporated areas of a county with a  
8 population of less than thirty thousand, located in buildings  
9 in existence as of January 1, 2012, that are within one hundred  
10 fifty feet of one another and that are under the direct control  
11 of the license holder;

12 N. "local option district" means a county that has  
13 voted to approve the sale, serving or public consumption of  
14 alcoholic beverages, or an incorporated municipality that falls  
15 within a county that has voted to approve the sale, serving or  
16 public consumption of alcoholic beverages, or an incorporated  
17 municipality of over five thousand population that has  
18 independently voted to approve the sale, serving or public  
19 consumption of alcoholic beverages under the terms of the  
20 Liquor Control Act or any former act;

21 O. "manufacturer" means a distiller, rectifier,  
22 brewer or winer;

23 P. "minor" means a person under twenty-one years of  
24 age;

25 Q. "package" means an immediate container of

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1 alcoholic beverages that is filled or packed by a manufacturer  
2 or wine bottler for sale by the manufacturer or wine bottler to  
3 wholesalers;

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

6 S. "rectifier" means a person who blends, mixes or  
7 distills alcohol with other liquids or substances for the  
8 purpose of making an alcoholic beverage for the purpose of sale  
9 other than to the consumer by the drink, and includes all  
10 bottlers of spirituous liquors;

11 T. "restaurant" means an establishment having a New  
12 Mexico resident as a proprietor or manager that is held out to  
13 the public as a place where meals are prepared and served  
14 primarily for on-premises consumption to the general public in  
15 consideration of payment and that has a dining room, a kitchen  
16 and the employees necessary for preparing, cooking and serving  
17 meals; provided that "restaurant" does not include  
18 establishments as defined in rules promulgated by the director  
19 serving only hamburgers, sandwiches, salads and other fast  
20 foods;

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

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1            V. "rural restaurant license" means a license held  
2 by a restaurant in a county other than a class A county in New  
3 Mexico;

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

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

11           [~~X.~~] Y. "wine" includes the words "fruit juices"  
12 and means alcoholic beverages obtained by the fermentation of  
13 the natural sugar contained in fruit or other agricultural  
14 products, with or without the addition of sugar or other  
15 products, that do not contain less than one-half percent nor  
16 more than twenty-one percent alcohol by volume;

17           [~~Y.~~] Z. "wine bottler" means a New Mexico  
18 wholesaler who is licensed to sell wine at wholesale for resale  
19 only and who buys wine in bulk and bottles it for wholesale  
20 resale;

21           [~~Z.~~] AA. "winegrower" means a person who owns or  
22 operates a business for the manufacture of wine;

23           [~~AA.~~] BB. "winer" means a winegrower; and

24           [~~BB.~~] CC. "winery" means a facility in which a  
25 winegrower manufactures and stores wine."

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

3           "60-6A-15. LICENSE FEES.--Every application for the  
4 issuance or renewal of the following licenses shall be  
5 accompanied by a license fee in the following specified  
6 amounts:

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

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

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

13           D. wholesaler's license to sell all alcoholic  
14 beverages for resale only, two thousand five hundred dollars  
15 (\$2,500);

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

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

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

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

25           I. wholesaler's license to sell wine for resale

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1 only, seven hundred fifty dollars (\$750);

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

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

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

8 M. restaurant license, one thousand fifty dollars  
9 (\$1,050);

10 N. club license, for clubs with more than two  
11 hundred fifty members, one thousand two hundred fifty dollars  
12 (\$1,250), and for clubs with two hundred fifty members or  
13 fewer, two hundred fifty dollars (\$250);

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

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

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

20 (1) in excess of:

21 \$3,000,000 annually . . . . . \$10,500;

22 1,000,000 annually . . . . . 5,250;

23 500,000 annually . . . . . 3,750;

24 200,000 annually . . . . . 2,700;

25 100,000 annually . . . . . 1,800;

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1 and  
2 50,000 annually . . . . . 900;

3 and  
4 (2) of \$50,000 or less . . . . . \$300;

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

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

12 T. rural restaurant license, a one-time fee of  
13 fifty thousand dollars (\$50,000), due at the time of issuance  
14 of the license, and an annual renewal fee of one thousand three  
15 hundred dollars (\$1,300)."