

1 SENATE BILL 264

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Gerald Ortiz y Pino and James E. Smith

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10 AN ACT

11 RELATING TO LIQUOR CONTROL; PROVIDING FOR THE ISSUANCE OF BEER
12 AND WINE DELIVERY LICENSES WITH LOCAL OPTION DISTRICTS'
13 APPROVAL; PROVIDING LICENSEE QUALIFICATIONS AND RESTRICTIONS;
14 REQUIRING RULEMAKING; PROVIDING A LICENSE FEE.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

20 A. On and after July 1, 2016, a local option
21 district may approve the issuance of beer and wine delivery
22 licenses for the sale of beer and wine, along with the
23 concurrent sales and delivery of prepared foods, by holding an
24 election on the question pursuant to Section 60-5A-1 NMSA 1978.
25 Alternatively, the election may be initiated by a resolution

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1 adopted by the governing body of the local option district
2 without a petition from registered qualified electors having
3 been submitted.

4 B. After the approval of the issuance of beer and
5 wine delivery licenses by the registered qualified electors of
6 the local option district and upon completion of all
7 requirements in the Liquor Control Act for the issuance of
8 licenses, a restaurant or a food delivery service provider
9 located or to be located within the local option district may
10 apply for a beer and wine delivery license that confers the
11 right to sell and deliver to a customer, up to one hundred
12 forty-four ounces of beer and up to one and one-half liters of
13 wine, concurrent with the sale and delivery of prepared food
14 and subject to the requirements and restrictions in this
15 section and in the Liquor Control Act.

16 C. An applicant shall submit evidence to the
17 department that the applicant has:

18 (1) a valid food service establishment permit
19 and a restaurant license;

20 (2) a valid food service establishment permit
21 and a dispenser's license;

22 (3) a valid food service establishment permit
23 and a retailer's license; or

24 (4) a valid business license and valid
25 contracts to deliver prepared food for a minimum of six

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1 permitted food service establishments.

2 D. An applicant shall satisfy the director that the
3 primary source of revenue from the operation of the restaurant
4 or the food delivery service provider will be derived from the
5 sale of prepared food and not from the sale of beer and wine.

6 E. The director shall condition renewal of a beer
7 and wine delivery license upon a requirement that not less than
8 seventy percent of gross receipts from a licensee's preceding
9 twelve months' delivery operations was derived from the sale of
10 prepared food.

11 F. Upon application for renewal, a licensee shall
12 submit a report to the director indicating, for the previous
13 twelve months:

14 (1) the licensee's gross receipts from the
15 sale of prepared food and from the sale of beer and wine; and

16 (2) that every order and delivery of prepared
17 food concurrent to the order and delivery of beer or wine
18 included a minimum purchase of twenty dollars (\$20.00) of
19 prepared food.

20 G. All sales and deliveries of beer and wine
21 pursuant to a beer and wine delivery license shall cease at the
22 time the licensee's meals sales or delivery services cease or
23 at 10:00 p.m., whichever time is earlier. If Sunday sales have
24 been approved in the local option district, a licensee may sell
25 and deliver beer and wine on Sundays until the time meal sales

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1 and delivery service ceases or 9:00 p.m., whichever time is
2 earlier.

3 H. A beer and wine delivery license shall not be
4 transferable from person to person or from one location to
5 another.

6 I. A beer and wine delivery license shall only
7 authorize the delivery of beer and wine within the local option
8 district in which the license was issued. A beer and wine
9 delivery licensee shall, at all times, have a physical business
10 location in each local option district in which the licensee is
11 licensed pursuant to this section. Inter-local option district
12 deliveries are prohibited.

13 J. Delivery of beer or wine pursuant to this
14 section shall be made only to a private residential address or
15 to a lodging unit at a licensed lodging facility, and only one
16 delivery shall be made to the same private residential address
17 or lodging unit per twenty-four-hour period. Deliveries to
18 public property, to a public right of way or to a location
19 within three hundred feet of a school, youth center, academic
20 campus or dormitory are prohibited. A local option district
21 may designate other zoning and geographic restrictions that
22 apply to deliveries made pursuant to this section.

23 K. A property owner or a resident may designate the
24 property owner's or the resident's residential address as a "do
25 not deliver" address to which delivery of beer and wine

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1 pursuant to this section shall not be made. A local option
2 district may also designate the address of a property deemed a
3 nuisance as a "do not deliver" address. A local option
4 district that approves the issuance of beer and wine delivery
5 licenses shall maintain a database of "do not deliver"
6 addresses and shall prescribe rules that govern the maintenance
7 of the database.

8 L. Penalties for delivering to a "do not deliver"
9 address or to a location to which deliveries are prohibited as
10 provided in this section shall include fines or temporary
11 suspension of a delivery license, or both, and shall be
12 established, administered and enforced by the relevant local
13 option district.

14 M. All persons who deliver beer or wine pursuant to
15 this section shall be certified by the department as alcohol
16 servers.

17 N. The department shall adopt rules prescribing
18 best practices for licensees, to guide enforcement of the
19 requirements in this section. Every five years, the department
20 shall review and, as necessary, update those rules to
21 accommodate changes in technology and health and safety
22 information and policies. The best practices included in the
23 department's rules shall include at least the following:

24 (1) upon delivery of beer or wine pursuant to
25 this section, the person who makes the delivery shall:

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1 (a) make an electronic record of the
2 customer's identification, which shall include the customer's
3 date of birth and photograph; and

4 (b) make an electronic record of the
5 customer's acknowledgment of receipt of the following
6 information and shall provide the information and additional
7 information to the customer upon the customer's request:

8 "I understand that I am responsible for the control of the
9 beer or wine delivered to me. This responsibility includes
10 ensuring that persons who are under twenty-one years of age and
11 persons who are intoxicated do not consume the beer or wine. I
12 understand that the penalty for serving alcohol to a person who
13 is underage includes up to five years in prison or a ten-
14 thousand-dollar (\$10,000) fine, or both. I understand that
15 serving alcohol to an intoxicated person can result in my
16 personal liability for the intoxicated person's actions.

17 I understand that driving while under the influence of
18 alcohol is illegal. It has been proven that driving while
19 under the influence of alcohol is dangerous and can lead to
20 great bodily harm and death. The penalty for driving while
21 under the influence of alcohol includes a sentence of
22 incarceration or a fine of up to ten thousand dollars
23 (\$10,000), or both. I understand that I could also incur
24 personal liability for driving while under the influence of
25 alcohol.

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1 The combination of alcohol and many prescription and
2 nonprescription drugs can amplify the effects of the alcohol or
3 drugs and can cause unintended and severe reactions. I will
4 verify such potential risks before consuming a combination of
5 drugs and alcohol.

6 I would like an electronic copy of this information and
7 additional information about responsible consumption of
8 alcohol.";

9 (2) a restaurant or food delivery service
10 provider shall use a real-time global positioning system or
11 another system that provides real-time position monitoring of
12 all vehicles in use to make deliveries pursuant to this
13 section; and

14 (3) information about a delivery vehicle's
15 position or global positioning system location shall be
16 available at all times to local and state law enforcement
17 agencies upon request.

18 O. All purchases of beer and wine provided for by
19 this section shall be via credit card, debit card or other
20 electronic payment. Cash sales are prohibited. Records of all
21 sales shall be kept and shall be available to the director for
22 review for at least five years.

23 P. A food delivery service provider shall sell and
24 deliver beer and wine only from:

25 (1) a New Mexico business with a retailer's

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1 license;

2 (2) a restaurant with a restaurant license
3 that has contracted with the provider to deliver prepared food
4 from the restaurant's menu; or

5 (3) a New Mexico business with a wine
6 blender's, winegrower's or small brewer's license.

7 Q. The annual fee for a beer and wine delivery
8 license is one thousand three hundred dollars (\$1,300).

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

12 S. For the purpose of this section:

13 (1) "customer" means a person who is twenty-
14 one years of age or older and who places an order for delivery
15 of beer or wine and prepared food pursuant to this section; and

16 (2) "prepared food" means food that has been
17 prepared at a restaurant, is ready to eat and is ordered
18 concurrently with beer or wine for delivery pursuant to this
19 section."

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

22 "60-6A-15. LICENSE FEES.--Every application for the
23 issuance or renewal of the following licenses shall be
24 accompanied by a license fee in the following specified
25 amounts:

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

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

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

7 D. wholesaler's license to sell all alcoholic
8 beverages for resale only, two thousand five hundred dollars
9 (\$2,500);

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

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

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

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

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

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

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

25 L. canopy license, one thousand three hundred

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1 dollars (\$1,300);

2 M. restaurant license, one thousand fifty dollars
3 (\$1,050);

4 N. club license, for clubs with more than two
5 hundred fifty members, one thousand two hundred fifty dollars
6 (\$1,250), and for clubs with two hundred fifty members or
7 fewer, two hundred fifty dollars (\$250);

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

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

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

14 (1) in excess of:

15 \$3,000,000 annually \$10,500;

16 1,000,000 annually 5,250;

17 500,000 annually 3,750;

18 200,000 annually 2,700;

19 100,000 annually 1,800;

20 and

21 50,000 annually 900;

22 and

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

24 R. wine wholesaler's license, for persons with
25 sales of five thousand gallons of wine per year or less,

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1 twenty-five dollars (\$25.00), and for persons with sales in
2 excess of five thousand gallons of wine per year, one hundred
3 dollars (\$100); ~~and~~

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

6 T. beer and wine delivery license, one thousand
7 three hundred dollars (\$1,300)."

8 SECTION 3. Section 60-6A-18 NMSA 1978 (being Laws 1981,
9 Chapter 39, Section 35, as amended) is amended to read:

10 "60-6A-18. LIMITATION ON NUMBER OF LICENSES--
11 EXCEPTIONS.--

12 A. The maximum number of licenses to be issued
13 under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978
14 shall be as follows:

15 (1) in incorporated municipalities, not more
16 than one dispenser's or one retailer's license, including
17 canopy licenses ~~[which]~~ that are replaced by dispenser's
18 licenses as provided in Section 60-6B-16 NMSA 1978, for each
19 two thousand inhabitants or major fraction thereof; and

20 (2) in unincorporated areas of each county,
21 not more than one dispenser's or one retailer's license,
22 including canopy licenses ~~[which]~~ that are replaced by
23 dispenser's licenses as provided in Section 60-6B-16 NMSA 1978,
24 for each two thousand inhabitants or major fraction thereof,
25 excluding the population of incorporated municipalities within

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1 the county.

2 B. For the purpose of this section, the number of
3 inhabitants of a local option district shall be determined by
4 annual population estimates published by the economic
5 development department.

6 C. Subsection A of this section shall not be
7 construed to prevent ~~[any]~~ a licensee holding a valid license
8 issued under the Liquor Control Act, or ~~[his]~~ the licensee's
9 transferee, from continuing the licensed business or from
10 renewing ~~[his]~~ the license, subject to compliance with the
11 Liquor Control Act and department regulations, notwithstanding
12 that the continuance or renewal may result in an excess over
13 the maximum number of licenses permitted in Subsection A of
14 this section.

15 D. A beer and wine delivery license is exempt from
16 the provisions of this section."

17 SECTION 4. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2016.