

1 SENATE BILL 127

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mary Kay Papen

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10 AN ACT

11 RELATING TO ALCOHOLIC BEVERAGES; ESTABLISHING CONDITIONS AND
12 LIMITATIONS ON IMPORTING ALCOHOLIC BEVERAGES INTO THE STATE;
13 ESTABLISHING PENALTIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,
17 Chapter 39, Section 3, as amended by Laws 2016, Chapter 73,
18 Section 1 and by Laws 2016, Chapter 76, Section 1) is amended
19 to read:

20 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
21 Act:

22 A. "alcoholic beverages" means distilled or
23 rectified spirits, potable alcohol, powdered alcohol, frozen or
24 freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic
25 bitters bearing the federal internal revenue strip stamps or

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1 any similar alcoholic beverage, including blended or fermented
2 beverages, dilutions or mixtures of one or more of the
3 foregoing containing more than one-half percent alcohol, but
4 excluding medicinal bitters;

5 B. "beer" means an alcoholic beverage obtained by
6 the fermentation of any infusion or decoction of barley, malt
7 and hops or other cereals in water, and includes porter, beer,
8 ale and stout;

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

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

16 E. "club" means:

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

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

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

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

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

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1 G. "department" means the New Mexico state police
2 division of the department of public safety when the term is
3 used in reference to the enforcement and investigatory
4 provisions of the Liquor Control Act and means the director of
5 the alcohol and gaming division of the regulation and licensing
6 department when the term is used in reference to the licensing
7 provisions of the Liquor Control Act;

8 H. "director" means the chief of the New Mexico
9 state police division of the department of public safety when
10 the term is used in reference to the enforcement and
11 investigatory provisions of the Liquor Control Act and means
12 the director of the alcohol and gaming division of the
13 regulation and licensing department when the term is used in
14 reference to the licensing provisions of the Liquor Control
15 Act;

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

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

24 K. "golf course" means a tract of land and
25 facilities used for playing golf and other recreational

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

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

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

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

18 O. "licensed premises" means the contiguous areas
19 or areas connected by indoor passageways of a structure and the
20 outside dining, recreation and lounge areas of the structure
21 and the grounds and vineyards of a structure that is a winery
22 that are under the direct control of the licensee and from
23 which the licensee is authorized to sell, serve or allow the
24 consumption of alcoholic beverages under the provisions of its
25 license; provided that in the case of a restaurant, "licensed

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1 premises" includes a restaurant that has operated continuously
2 in two separate structures since July 1, 1987 and that is
3 located in a local option district that has voted to disapprove
4 the transfer of liquor licenses into that local option
5 district, hotel, golf course, ski area or racetrack and all
6 public and private rooms, facilities and areas in which
7 alcoholic beverages are sold or served in the customary
8 operating procedures of the restaurant, hotel, golf course, ski
9 area or racetrack. "Licensed premises" also includes rural
10 dispenser licenses located in the unincorporated areas of a
11 county with a population of less than thirty thousand, located
12 in buildings in existence as of January 1, 2012, that are
13 within one hundred fifty feet of one another and that are under
14 the direct control of the license holder;

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

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

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

3 S. "package" means an immediate container of
4 alcoholic beverages that is filled or packed by a manufacturer
5 or wine bottler for sale by the manufacturer or wine bottler to
6 wholesalers;

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

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

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

24 W. "retailer" means a person licensed under the
25 provisions of the Liquor Control Act selling, offering for sale

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1 or having in the person's possession with the intent to sell
2 alcoholic beverages in unbroken packages, including growlers,
3 for consumption and not for resale off the licensed premises;

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

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

12 Z. "third party aggregator" means a person that
13 does not hold a license in New Mexico to sell, offer to sell or
14 ship alcoholic beverages, and whose business is to accept and
15 fulfill orders for the sale and delivery of alcoholic
16 beverages, whether or not the person takes possession of the
17 alcoholic beverages, or to offer to sell and ship, or cause to
18 be shipped, directly to New Mexico residents for a purpose
19 other than resale, through a third party internet website,
20 dedicated mobile application or other form of communication;

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

25 [~~AA.~~] BB. "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, that do not contain less than one-half percent nor
5 more than twenty-one percent alcohol by volume;

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

10 ~~[GG.]~~ DD. "winegrower" means a person who owns or
11 operates a business for the manufacture of wine;

12 ~~[DD.]~~ EE. "winer" means a winegrower; and

13 ~~[EE.]~~ FF. "winery" means a facility in which a
14 winegrower manufactures and stores wine."

15 SECTION 2. Section 60-6A-11.1 NMSA 1978 (being Laws 2011,
16 Chapter 109, Section 1) is amended to read:

17 "60-6A-11.1. DIRECT WINE SHIPMENT PERMIT--
18 AUTHORIZATION--RESTRICTIONS.--

19 ~~[A. A licensee with a winegrower's license or a
20 person licensed in a state other than New Mexico that holds a
21 winery license may apply to the director for and the director
22 may issue to the applicant a direct wine shipment permit.]~~

23 A. The director shall only issue a direct wine
24 shipment permit to a winery holding both a current basic permit
25 to produce wine issued by the alcohol and tobacco tax and trade

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1 bureau of the United States department of the treasury and a
2 current license or permit to produce wine issued by this state
3 or another state. The director shall not issue a direct wine
4 shipment permit to a third party aggregator.

5 B. An application for a direct wine shipment permit
6 shall include:

7 (1) contact information for the applicant in a
8 form required by the department;

9 (2) an annual application fee of fifty dollars
10 (\$50.00) if the applicant does not hold a winegrower's license;

11 (3) the number of the applicant's winegrower's
12 license if the applicant is located in New Mexico or a copy of
13 the applicant's winery license if the applicant is located in a
14 state other than New Mexico; ~~and~~

15 (4) any other information or documents
16 required by the director. Upon approval of an applicant for a
17 permit, the director shall forward to the taxation and revenue
18 department the name of each permittee and the contact
19 information for the permittee; and

20 (5) a copy of the applicant's basic permit to
21 produce wine issued by the alcohol and tobacco tax and trade
22 bureau of the United States department of the treasury.

23 ~~[B-]~~ C. A direct wine shipment permit shall be
24 valid for a permit year. A permittee shall renew a direct wine
25 shipment permit annually as required by the department to

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1 continue making direct shipments of wine to New Mexico
2 residents.

3 ~~[G.]~~ D. A permittee may ship:

4 (1) not more than two nine-liter cases of wine
5 monthly to a New Mexico resident who is twenty-one years of age
6 or older for the recipient's personal consumption or use, but
7 not for resale; ~~[and]~~

8 (2) only wine sold under a brand name owned or
9 exclusively licensed to the permittee;

10 (3) wine ordered by any means, including
11 phone, fax, mail and the internet; and

12 ~~[+2]~~ (4) wine directly to a New Mexico
13 resident only in containers that are conspicuously labeled with
14 the words:

15 "CONTAINS ALCOHOL
16 SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED
17 FOR DELIVERY".

18 ~~[D.]~~ E. A permittee shall:

19 (1) register with the taxation and revenue
20 department for the payment of liquor excise tax and gross
21 receipts taxes due on the sales of wine pursuant to the
22 permittee's activities in New Mexico;

23 (2) submit to the jurisdiction of New Mexico
24 courts to resolve legal actions that arise from the shipping by
25 the permittee of wine into New Mexico to New Mexico residents;

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1 (3) monthly, by the twenty-fifth day of each
2 month following the month in which the permittee was issued a
3 direct wine shipment permit, pay to the taxation and revenue
4 department the liquor excise tax due and the gross receipts tax
5 due; and

6 (4) submit to an audit by an agent of the
7 taxation and revenue department of the permittee's records of
8 the wine shipped pursuant to this section to New Mexico
9 residents upon notice and during usual business hours.

10 F. A permittee may contract with a warehouse or
11 common carrier licensed in another state to act as an agent of
12 the permittee for the fulfillment of orders, shipping and
13 transporting wine to a New Mexico resident, as long as the
14 order is placed through the permittee.

15 [~~E-~~] G. As used in this section:

16 (1) "permit year" means the period between
17 July 1 and June 30 of a year; and

18 (2) "permittee" means a person that is the
19 holder of a direct wine shipment permit."

20 **SECTION 3.** Section 60-7A-3 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 49, as amended) is amended to read:

22 "60-7A-3. TRANSPORTATION INTO STATE WITHOUT PERMIT--
23 EXPORTATION OF ALCOHOLIC BEVERAGES WITHOUT PERMIT--IMPORTATION
24 FOR PRIVATE USE--[~~RECIPROCAL SHIPPING~~] WHEN UNLAWFUL.--

25 A. Except as provided in Subsections [~~E-and~~] F and

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1 G of this section, it is a violation of the Liquor Control Act
2 for a registered common carrier to knowingly deliver a shipment
3 of alcoholic beverages from another state to a person in this
4 state without receiving at the time of delivery a permit issued
5 by the department covering the quantity and class of alcoholic
6 beverages to be delivered and requiring the shipment be
7 transported from the shipper designated in the permit to the
8 designated consignee and from the designated point of origin to
9 the destination designated in the permit.

10 B. Except as provided in Paragraph (14) of
11 Subsection B of Section 60-6A-11 NMSA 1978, Section 60-6A-11.1
12 NMSA 1978 and Subsections F and G of this section, it is a
13 violation of the Liquor Control Act for any person to knowingly
14 deliver alcoholic beverages in this state on behalf of a person
15 that does not hold a New Mexico wholesaler's license unless the
16 person holds a license or permit issued by the director
17 specifically granting that authority.

18 [~~B-~~] C. Except as provided in Subsections [~~D~~
19 ~~through F~~] E, F and G of this section, it is a violation of the
20 Liquor Control Act for a person other than a registered common
21 carrier to knowingly transport from another state and deliver
22 in this state alcoholic beverages, unless the person has in the
23 person's possession on entering New Mexico a permit from the
24 department for the quantity and class of alcoholic beverages to
25 be delivered, designating the name of the shipper and consignee

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1 and the point of origin and destination of the alcoholic
2 beverages.

3 ~~[G.]~~ D. Except as provided in ~~[Subsections D and]~~
4 Subsection E of this section, it is a violation of the Liquor
5 Control Act for a person to transport out of state alcoholic
6 beverages on which the excise tax has not been paid, unless the
7 shipment is accompanied by a permit issued by the department
8 for the exact quantity and class transported, showing the
9 consignee's federal and state license numbers and the point of
10 origin and destination of the alcoholic beverages.

11 ~~[D.]~~ E. An individual not a minor may transport
12 into or out of the state a reasonable amount of alcoholic
13 beverages for the exclusive purpose of the individual's private
14 use or consumption, and nothing in the Liquor Control Act
15 limits or applies to such private actions.

16 ~~[E. An individual or licensee, except for a person~~
17 ~~holding a winery license, in a state that affords New Mexico~~
18 ~~licensees or individuals an equal reciprocal shipping privilege~~
19 ~~may ship for personal use and not for resale not more than two~~
20 ~~cases of wine, each case containing no more than nine liters,~~
21 ~~per month to an individual not a minor in this state. Delivery~~
22 ~~of a shipment pursuant to this subsection shall not be deemed~~
23 ~~to constitute a sale in this state, and nothing in the Liquor~~
24 ~~Control Act limits or applies to such shipments. The shipping~~
25 ~~container of wine sent into or out of this state under this~~

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1 ~~subsection shall be labeled clearly to indicate that the~~
2 ~~package cannot be delivered to a minor or to an intoxicated~~
3 ~~person.]~~

4 F. An individual may ship wine to an individual not
5 a minor in this state, for non-commercial use and not for
6 resale, in an amount not to exceed two cases of wine per month,
7 each case containing no more than nine liters. The shipping
8 container of wine shipped under this subsection shall be
9 labeled clearly to indicate that the package cannot be
10 delivered to a minor or to an intoxicated person.

11 ~~[F.]~~ G. The holder of a direct wine shipment permit
12 issued pursuant to Section 60-6A-11.1 NMSA 1978 may ship no
13 more than two nine-liter cases of wine per month to a person
14 living in New Mexico who is twenty-one years of age or older
15 for the person's personal consumption and not for resale.

16 ~~[G.]~~ H. As used in this section, "in this state"
17 means within the exterior boundaries of the state."

18 **SECTION 4.** Section 60-7A-4 NMSA 1978 (being Laws 1981,
19 Chapter 39, Section 50, as amended) is amended to read:

20 "60-7A-4. SALE, SHIPMENT AND DELIVERY UNLAWFUL.--

21 A. It is unlawful for ~~[any]~~ a person on ~~[his]~~ the
22 person's own behalf or as the agent of another person, except a
23 licensed New Mexico wholesaler or manufacturer or the agent of
24 either, to directly or indirectly sell or offer for sale for
25 shipment into the state or ship into the state, except as

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1 provided in Section 60-7A-3 NMSA 1978, [~~any~~] alcoholic
2 beverages unless [~~such~~] the person or [~~his~~] the person's
3 principals [~~has~~] have secured a nonresident license as provided
4 in Section [~~60-7A-7~~] 60-6A-7 NMSA 1978, unless the person holds
5 a license or permit granted by the director that specifically
6 grants that authority.

7 B. It is unlawful for a person to take or fulfill
8 an order for the sale of alcoholic beverages directly from a
9 member of the public in this state through an online platform
10 or other form of communication, except as provided in Section
11 60-6A-11.1 NMSA 1978, Subsections E through G of Section
12 60-7A-3 NMSA 1978 and Paragraph (14) of Subsection B of Section
13 60-6A-11 NMSA 1978, unless the person holds a license or permit
14 issued by the director specifically granting that authority.

15 [~~B.~~] C. It is a violation of the Liquor Control Act
16 to deliver any alcoholic beverages transported into the state
17 unless the delivery is made in accordance with Section 60-7A-3
18 NMSA 1978, or otherwise authorized pursuant to Subsection F of
19 Section 60-6A-11.1 NMSA 1978 or Paragraph (14) of Subsection B
20 of Section 60-6A-11 NMSA 1978, unless the person holds a
21 license or permit issued by the director specifically granting
22 that authority.

23 [~~G.~~] D. As used in this section, "into the state
24 [~~of New Mexico~~]" means into the exterior boundaries of the

25 state."

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1 SECTION 5. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
2 Chapter 179, Section 1, as amended) is amended to read:

3 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--
4 CRIMINAL PENALTY--FORFEITURE.--

5 A. It is unlawful for [~~any~~] a person to sell or
6 attempt to sell alcoholic beverages at any place other than a
7 licensed premises or as otherwise provided by the Liquor
8 Control Act.

9 B. It is unlawful for a person to take or fulfill
10 an order for the sale of alcoholic beverages directly to a
11 member of the public in this state through an online platform
12 or other form of communication, except as provided in Section
13 60-6A-11.1 NMSA 1978, Subsection G of Section 60-7A-3 NMSA 1978
14 and Paragraph (14) of Subsection B of Section 60-6A-11 NMSA
15 1978, unless the person holds a license or permit issued by the
16 director specifically granting that authority.

17 [~~B. Any~~] C. A person who violates the provisions
18 of Subsection A or B of this section is guilty of a fourth
19 degree felony.

20 [~~G. Any~~] D. A conveyance used or intended to be
21 used for the purpose of unlawful sale of alcoholic beverages or
22 money [~~which~~] that is the fruit or instrumentality of the crime
23 is subject to forfeiture, and the provisions of the Forfeiture
24 Act apply to the seizure, forfeiture and disposal of such
25 property."

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SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.