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SENATE BILL 210

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

INTRODUCED BY

Ron Griggs and Richard C. Martinez

AN ACT

RELATING TO LIQUOR LICENSES; ADDING A NEW TYPE OF RESTAURANT  
LICENSE THAT ALLOWS SALE OF ALCOHOLIC BEVERAGES IN RESTAURANTS;  
IMPOSING LICENSE ISSUANCE FEES.

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

SECTION 1. 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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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]~~ food and lodging are  
15 regularly furnished to the general public. The establishment  
16 or complex must maintain for the use of its guests a minimum of  
17 twenty-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~~] food is prepared and  
17 served primarily for on-premises consumption to the general  
18 public in consideration of payment and that has a dining room,  
19 a kitchen and the employees necessary for preparing, cooking  
20 and serving [~~meals~~] food; provided that "restaurant" does not  
21 include establishments as defined in rules promulgated by the  
22 director serving only hamburgers, sandwiches, salads and other  
23 fast 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. "wholesaler" means a person whose place of  
13 business is located in New Mexico and who sells, offers for  
14 sale or possesses for the purpose of sale any alcoholic  
15 beverages for resale by the purchaser;

16 AA. "wine" includes the words "fruit juices" and  
17 means alcoholic beverages obtained by the fermentation of the  
18 natural sugar contained in fruit or other agricultural  
19 products, with or without the addition of sugar or other  
20 products, that do not contain less than one-half percent nor  
21 more than twenty-one percent alcohol by volume;

22 BB. "wine bottler" means a New Mexico wholesaler  
23 who is licensed to sell wine at wholesale for resale only and  
24 who buys wine in bulk and bottles it for wholesale resale;

25 CC. "winegrower" means a person who owns or

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1 operates a business for the manufacture of wine;

2 DD. "winer" means a winegrower; and

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

5 SECTION 2. Section 60-6A-4 NMSA 1978 (being Laws 1981,  
6 Chapter 39, Section 21, as amended) is amended to read:

7 "60-6A-4. RESTAURANT LICENSE.--

8 A. At any time after the effective date of the  
9 Liquor Control Act, a local option district may approve the  
10 issuance of restaurant licenses for the sale of beer and wine  
11 by holding an election on that question pursuant to the  
12 procedures set out in Section 60-5A-1 NMSA 1978. The election  
13 also may be initiated by a resolution adopted by the governing  
14 body of the local option district without a petition from  
15 registered qualified electors having been submitted.

16 B. A local option district that has approved the  
17 issuance of restaurant licenses for the sale of beer and wine  
18 may approve the issuance of restaurant licenses for the sale of  
19 beer, wine and alcoholic beverages in restaurants by adoption  
20 of an ordinance.

21 C. A restaurant license issued or renewed after  
22 July 1, 2019 that permits the sale and service of beer and wine  
23 only shall be designated a type A restaurant license. The  
24 license shall be issued in accordance with the provisions of  
25 this section and rules adopted by the department.

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1           D. A restaurant license issued after July 1, 2019  
2           that permits the sale and service of beer, wine and alcoholic  
3           beverages shall be designated a type B restaurant license. The  
4           license shall be issued in accordance with the provisions of  
5           this section and rules adopted by the department.

6           [~~B-~~] E. After the approval of restaurant licenses  
7 by the registered qualified electors of the local option  
8 district for the sale of beer and wine and upon completion of  
9 all requirements in the Liquor Control Act for the issuance of  
10 licenses, a restaurant located or to be located within the  
11 local option district may receive a type A restaurant license  
12 to sell, serve or allow the consumption of beer and wine  
13 subject to the following requirements and restrictions:

14                   (1) the applicant shall submit evidence to the  
15 department that [~~he~~] the applicant has a current valid food  
16 service establishment permit;

17                   (2) the applicant shall satisfy the director  
18 that the primary source of revenue from the operation of the  
19 restaurant will be derived from [~~meals~~] food and not from the  
20 sale of beer and wine;

21                   (3) the director shall condition renewal upon  
22 a requirement that no less than sixty percent of gross receipts  
23 from the preceding twelve months' operation of the licensed  
24 restaurant was derived from the sale of [~~meals~~] food;

25                   (4) upon application for renewal, the licensee

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1 shall submit an annual report to the director indicating the  
2 annual gross receipts from the sale of ~~[meals]~~ food and from  
3 beer and wine sales;

4 (5) ~~[restaurant]~~ licensees shall not sell beer  
5 and wine for consumption off the licensed premises;

6 (6) all sales, services and consumption of  
7 beer and wine authorized by a type A restaurant license shall  
8 cease at the time ~~[meals]~~ food sales and services cease or at  
9 11:00 p.m., whichever time is earlier;

10 (7) if Sunday sales have been approved in the  
11 local option district, a ~~[restaurant]~~ licensee may serve beer  
12 and wine on Sundays until the time ~~[meals]~~ food sales and  
13 services cease or 11:00 p.m., whichever time is earlier; and

14 (8) a type A restaurant license shall not be  
15 transferable from person to person ~~[or]~~ but shall be  
16 transferable from one location to another location within the  
17 same local option district.

18 F. Upon completion of all requirements in the  
19 Liquor Control Act for the issuance of licenses and after July  
20 1, 2019, and upon the adoption of an ordinance by the governing  
21 body of the local option district, a restaurant located or to  
22 be located within the local option district may receive a type  
23 B restaurant license to sell, serve or allow the consumption of  
24 beer, wine and alcoholic beverages subject to the following  
25 requirements and restrictions:

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1                   (1) the applicant shall submit evidence to the  
2 department that the applicant has a current valid food service  
3 establishment permit;

4                   (2) the applicant shall satisfy the director  
5 that the primary source of revenue from the operation of the  
6 restaurant will be derived from the sale of food and not from  
7 the sale of beer, wine and alcoholic beverages;

8                   (3) the director shall condition renewal upon  
9 a requirement that no less than sixty percent of gross receipts  
10 from the preceding twelve months' operation of the licensed  
11 restaurant was derived from the sale of food;

12                   (4) upon application for renewal, the licensee  
13 shall submit an annual report to the director indicating the  
14 annual gross receipts from the sale of food and from beer, wine  
15 and alcoholic beverages sales;

16                   (5) licensees shall not sell beer, wine or  
17 alcoholic beverages for consumption off the licensed premises;

18                   (6) all sales, service and consumption of  
19 beer, wine and alcoholic beverages authorized by a type B  
20 restaurant license shall cease at the time food sales and  
21 services cease or at 11:00 p.m., whichever time is earlier;

22                   (7) if Sunday sales have been approved in the  
23 local option district, a licensee may serve beer, wine and  
24 alcoholic beverages on Sundays until the time food sales and  
25 services cease or 11:00 p.m., whichever time is earlier; and

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1                   (8) a type B restaurant license shall not be  
2 transferable from person to person but shall be transferable  
3 from one location to another location within the same local  
4 option district.

5                   ~~[G.]~~ G. The provisions of Section 60-6A-18 NMSA  
6 1978 shall not apply to restaurant licenses.

7                   ~~[D.]~~ H. Nothing in this section shall prevent a  
8 restaurant licensee from receiving other licenses pursuant to  
9 the Liquor Control Act."

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

12                   "60-6A-15. LICENSE FEES.--Every application for the  
13 issuance or renewal of the following licenses shall be  
14 accompanied by a license fee in the following specified  
15 amounts:

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

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

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

22                   D. wholesaler's license to sell all alcoholic  
23 beverages for resale only, two thousand five hundred dollars  
24 (\$2,500);

25                   E. wholesaler's license to sell spirituous liquors

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1 and wine for resale only, one thousand seven hundred fifty  
2 dollars (\$1,750);

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

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

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

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

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

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

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

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

19 N. restaurant license type B:

20 (1) issuance, twenty thousand dollars  
21 (\$20,000); and

22 (2) renewal, one thousand three hundred  
23 dollars (\$1,300);

24 [~~N.~~] O. club license, for clubs with more than two  
25 hundred fifty members, one thousand two hundred fifty dollars

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1 (\$1,250), and for clubs with two hundred fifty members or  
2 fewer, two hundred fifty dollars (\$250);

3 [~~Θ~~] P. wine bottler's license to sell to  
4 wholesalers only, five hundred dollars (\$500);

5 [~~P~~] Q. public service license, one thousand two  
6 hundred fifty dollars (\$1,250);

7 [~~Q~~] R. nonresident licenses, for a total billing  
8 to New Mexico wholesalers:

9 (1) in excess of:

- 10 \$3,000,000 annually . . . . . \$10,500;
- 11 1,000,000 annually . . . . . 5,250;
- 12 500,000 annually . . . . . 3,750;
- 13 200,000 annually . . . . . 2,700;
- 14 100,000 annually . . . . . 1,800;

15 and

- 16 50,000 annually . . . . . 900;

17 and

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

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

24 [~~S~~] T. beer bottler's license, two hundred dollars  
25 (\$200)."

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SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.