

SENATE BILL 6

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Peter Wirth and Ron Griggs

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LIQUOR CONTROL; AMENDING AND ENACTING SECTIONS OF THE LIQUOR CONTROL ACT TO PERMIT CERTAIN PERSONS TO DELIVER ALCOHOLIC BEVERAGES; ADDING A NEW TYPE OF RESTAURANT LICENSE THAT ALLOWS SALE OF ALCOHOLIC BEVERAGES IN RESTAURANTS; IMPOSING LICENSE ISSUANCE FEES; ALLOWING DISPENSER'S LICENSES TO BE TRANSFERRED OUT OF A LOCAL OPTION DISTRICT INTACT; ALLOWING CERTAIN DISPENSER'S LICENSES TO REINSTATE RETAIL PRIVILEGES.

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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] ALCOHOLIC BEVERAGE DELIVERY PERMIT--THIRD-PARTY DELIVERY LICENSE.--

A. A person otherwise qualified pursuant to the provisions of the Liquor Control Act may apply for and the department may issue an alcoholic beverage delivery permit authorizing the person to deliver alcoholic beverages if the applicant holds a valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant license.

B. An alcoholic beverage delivery permit issued to a valid restaurant licensee shall only convey the authority to deliver alcoholic beverages concurrently with the delivery of a minimum of STBTC→~~twenty-five dollars (\$25.00)~~←STBTC STBTC→**ten dollars (\$10.00)**←STBTC worth of food; provided that under no circumstances shall the delivery of alcoholic beverages be more than twenty-five fluid ounces of wine or seventy-two fluid ounces of beer.

C. An alcoholic beverage delivery permit is not transferable from person to person or from one location to another.

D. An alcoholic beverage delivery permit issued pursuant to this section is valid for one year from the date of issuance. An alcoholic beverage delivery permittee may renew

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an alcoholic beverage delivery permit annually as required by the department.

E. The director shall promulgate rules to implement the provisions of this section, which shall include the following requirements and restrictions:

(1) an alcoholic beverage delivery permittee shall deliver alcoholic beverages only in unbroken packages;

(2) payment for alcoholic beverages shall be received only at the licensed premises of the selling licensee personally or by other means, including telephonically, electronically, via website, application or internet platform;

(3) a licensee shall not change the price charged for an alcoholic beverage because that beverage is purchased for delivery; provided that a separate fee may be charged for delivery; and further provided that the fee shall be disclosed to the customer at the time of the purchase;

(4) deliveries of alcoholic beverages shall occur only during the hours the selling licensee is authorized to sell alcoholic beverages;

(5) alcoholic beverages may be delivered only within the county in which the selling licensee's licensed premises is located;

(6) an alcoholic beverage delivery permittee shall not deliver an alcoholic beverage to a business, a commercial establishment, a college or university campus or a

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school campus that is not a home school;

(7) an alcoholic beverage delivery permittee delivering alcoholic beverages shall obtain valid proof of the recipient's identity and age;

(8) deliveries of alcoholic beverages shall not be made to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

(9) while delivering alcoholic beverages, an alcoholic beverage delivery permittee shall have in the permittee's possession only alcoholic beverages that have been purchased for delivery;

(10) while delivering alcoholic beverages, an alcoholic beverage delivery permittee shall have in the permittee's possession the original or an electronic or physical copy of the permittee's alcoholic beverage delivery permit;

(11) a licensee that sells alcoholic beverages for delivery shall obtain and maintain the following records for a period of three years:

(a) the name and address of the purchaser of the alcoholic beverages;

(b) the time, date and place of delivery of the alcoholic beverages;

(c) the type and quantity of alcoholic

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beverages delivered;

(d) the name of the person delivering the alcoholic beverages;

(e) all invoices related to the sale and delivery of the alcoholic beverages; and

(f) a valid signature of the person who accepted the delivery of the alcoholic beverage; and

(12) the director may audit all records and transactions related to alcoholic beverage deliveries.

F. A licensee that holds an alcoholic beverage delivery permit issued pursuant to this section may utilize an employee who is at least twenty-one years of age and who holds a valid server permit to deliver alcoholic beverages.

G. A licensee that holds an alcoholic beverage delivery permit issued pursuant to this section may contract with a third-party alcohol delivery service licensed by the department; provided that the licensee, the third-party alcohol delivery service and the server who delivers alcohol may be separately liable for violations of the Liquor Control Act, including for the delivery of alcohol to an intoxicated person or to a minor.

H. The department, by rule, shall create a third-party alcohol delivery license and, at a minimum, condition the issuance of a third-party alcohol delivery license on:

(1) requiring that all delivery employees of

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the third-party alcohol delivery service hold a valid New Mexico alcohol server permit;

(2) requiring proof of general liability insurance coverage with a liquor liability endorsement in an amount not less than one million dollars (\$1,000,000) per occurrence;

(3) requiring disclosure of written agreements between licensees and the third-party alcohol delivery service that explicitly ensure that no indemnification or similar agreement shall be effective to transfer liability for the delivery of alcoholic beverages in violation of the Liquor Control Act between licensees, third-party alcohol delivery services and servers; and

(4) any other such requirements that shall ensure that delivery of alcoholic beverages in New Mexico shall be conducted for the public health and safety of its residents.

I. A person, company or licensee that wishes to deliver retail sales of alcohol in New Mexico on behalf of valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant licensees that also hold a valid alcoholic beverage delivery permit shall obtain a third-party alcohol delivery license from the department.

J. An applicant for a third-party alcohol delivery license is required to be authorized to do business in this state, may not share in the profits of the sale of alcohol with

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a licensee and may only charge a delivery fee that is disclosed to the buyer at the time of sale.

K. A third-party alcohol delivery licensee shall not have the ability to buy, hold or deliver alcohol under its own license but to only allow for delivery of alcohol from a licensed premises and from a qualified licensee with a valid alcoholic beverage delivery permit to the buyer.

L. A third-party alcohol delivery licensee shall be independently liable for the delivery of alcoholic beverages to an intoxicated person or to a minor or for any violation of the Liquor Control Act and be subject to suspension, revocation or administrative fine pursuant to Sections 60-6C-1 through 60-6C-6 NMSA 1978.

M. A third-party delivery license shall be valid for one year, and may be renewed."

SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended by Laws 2019, Chapter 29, Section 2 and by Laws 2019, Chapter 229, Section 3) 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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any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but excluding medicinal bitters;

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

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

D. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent alcohol by volume and not more than eight and one-half percent alcohol by volume;

E. "club" means:

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

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

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

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

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

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G. "department" means the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "director" means the chief of the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CC. "winegrower" means a person who owns or

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operates a business for the manufacture of wine or cider;

DD. "winer" means a winegrower; and

EE. "winery" means a facility in which a winegrower manufactures and stores wine or cider."

SECTION 3. Section 60-6A-4 NMSA 1978 (being Laws 1981, Chapter 39, Section 21, as amended) is amended to read:

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

A. A local option district may approve the issuance of restaurant licenses for the sale of beer and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the governing body of the local option district without a petition from qualified electors having been submitted.

B. A local option district that has approved the issuance of restaurant licenses for the sale of beer and wine may approve the issuance of restaurant licenses for the sale of beer, wine and STBTC→~~alcoholic beverages~~←STBTC STBTC→spirituous liquors←STBTC in restaurants by adoption of an ordinance.

C. A restaurant license issued or renewed on or after July 1, 2021 that permits the sale and service of beer and wine only shall be designated a type A restaurant license. The license shall be issued in accordance with the provisions of this section and rules adopted by the department.

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D. A restaurant license issued on or after July 1, 2021 that permits the sale and service of beer, wine and STBTC→alcoholic beverages←STBTC STBTC→spirituous liquors←STBTC shall be designated a type B restaurant license. The license shall be issued in accordance with the provisions of this section and rules adopted by the department.

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

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

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

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

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(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of ~~[meals]~~ food and from beer and wine sales;

(5) ~~[restaurant]~~ licensees shall not sell beer and wine for consumption off the licensed premises ~~STBTC→~~, except for delivery of alcohol as provided for in the Liquor Control Act←STBTC ;

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

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

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

F. Upon completion of all requirements in the Liquor Control Act for the issuance of licenses on and after July 1, 2021, and upon the adoption of an ordinance by the governing body of a local option district, a restaurant located or to be located within the local option district may receive a

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type B restaurant license to sell, serve or allow the consumption of beer, wine and STBTC→~~alcoholic beverages~~←STBTC STBTC→spirituous liquors←STBTC subject to the following requirements and restrictions:

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

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from the sale of food and not from the sale of beer, wine and STBTC→~~alcoholic beverages~~←STBTC STBTC→spirituous liquors←STBTC ;

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

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of food and from beer, wine and STBTC→~~alcoholic beverages~~←STBTC STBTC→spirituous liquors←STBTC sales;

(5) licensees shall not sell beer, wine or STBTC→~~alcoholic beverages~~←STBTC STBTC→spirituous liquors←STBTC for consumption off the licensed premises STBTC→, except for delivery of alcohol as provided for in the

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Liquor Control Act ←STBTC ;

(6) all sales, service and consumption of beer, wine and STBTC →alcoholic beverages ←STBTC

STBTC →spirituous liquors ←STBTC authorized by a type B restaurant license shall cease at the time food sales and services cease or at 11:00 p.m., whichever time is earlier;

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

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

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

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

SECTION 4. Section 60-6A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 32, as amended) is amended to read:

"60-6A-15. LICENSE AND PERMIT FEES.--Every application for the issuance or renewal of the following licenses and permits shall be accompanied by a [license] fee in the

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following specified amounts:

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

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

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

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

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

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

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

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

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

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

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

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

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

N. restaurant license type B, three thousand dollars (\$3,000);

~~[N-]~~ O. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars (\$1,250), and for clubs with two hundred fifty members or fewer, two hundred fifty dollars (\$250);

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

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

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

(1) in excess of:

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

1,000,000 annually 5,250;

500,000 annually 3,750;

200,000 annually 2,700;

100,000 annually 1,800;

and

50,000 annually 900;

and

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

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

S-] T. beer bottler's license, two hundred dollars (\$200);

U. third-party alcohol delivery license, not to exceed STBTC→three hundred dollars (\$300)←STBTC STBTC→one thousand dollars (\$1,000)←STBTC ; and

V. alcoholic beverage delivery permit, not to exceed three hundred dollars (\$300)."

SECTION 5. Section 60-6B-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 113, as amended) is amended to read:

"60-6B-12. INTER-LOCAL OPTION DISTRICT AND INTER-COUNTY TRANSFERS.--

A. Dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class

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B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law, subject to the approval of transferring locations of those liquor licenses by the governing body for that location; provided that the requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled; and provided further that STBTC→:

~~(1) beginning in calendar year 1997, no more than ten dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year;~~
and

(2)←STBTC the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection H of Section 60-6B-2 NMSA 1978.

B. Transfer of location of a liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one

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hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district. Notice of such election shall be published as provided in [~~Section 3-8-35 MSA 1978~~] the Local Election Act, and the election shall be held within sixty days after the date the petition is verified or it may be held in conjunction with a regular election of the governing body if such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that

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district, unless a petition is filed requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

~~[G. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises.~~

~~D.]~~ C. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; STBTC→~~provided that they shall not be transferred to any location within ten miles of another licensed premises;~~ and←STBTC provided STBTC→~~further~~←STBTC that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled.

D. A dispenser's licensee that, under previous law, lost the privilege to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises as a result of transferring out of its original local option district may have the privilege reinstated if the

licensee pays STBTC→~~fifty thousand dollars (\$50,000)~~←STBTC
STBTC→twenty-five thousand dollars (\$25,000)←STBTC to the
department."

SECTION 6. Section 60-6C-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 97, as amended) is amended to read:

"60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

A. The director may suspend or revoke the license
or permit or fine the licensee in an amount not more than ten
thousand dollars (\$10,000), or both, when [~~he~~] the director
finds that [~~any~~] a licensee has:

(1) violated any provision of the Liquor
Control Act or any [~~regulation~~] rule or order promulgated
pursuant to that act;

(2) been convicted of a felony pursuant to the
provisions of the Criminal Code, the Liquor Control Act or
federal law; or

(3) permitted [~~his~~] the licensee's licensed
premises to remain a public nuisance in the neighborhood where
it is located after written notice from the director that
investigation by the department has revealed that the
establishment is a public nuisance in the neighborhood.

B. The director shall suspend or revoke the license
or permit and may fine the licensee in an amount not to exceed
ten thousand dollars (\$10,000), or both, when [~~he~~] the director

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finds that any licensee or:

(1) [~~his~~] the licensee's employee or agent knowingly has sold, served, delivered or given [~~any~~] an alcoholic beverage to a minor in violation of Section 60-7B-1 NMSA 1978 or to an intoxicated person in violation of Section 60-7A-16 NMSA 1978, on two separate occasions within any twelve-month period; or

(2) [~~his~~] the licensee's agent has made any material false statement or concealed any material facts in [~~his~~] the licensee's application for the license or permit granted [~~him~~] the licensee pursuant to the provisions of the Liquor Control Act.

C. [~~Any~~] A licensee aggrieved by a revocation, suspension or fine proposed to be imposed by the director pursuant to this section shall be entitled to the hearing procedures set forth in Chapter 60, Article 6C NMSA 1978 before the revocation, suspension or fine shall be effective.

D. [~~Any~~] A charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the department of public safety and local law enforcement agencies whose jurisdictions include the licensed establishment or address of record of the person issued an alcoholic beverage delivery permit.

E. For purposes of this section, "licensee" includes any person issued an alcoholic beverage delivery

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permit."

SECTION 7. Section 60-6C-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 98, as amended) is amended to read:

"60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC--HEARING OFFICER.--All hearings held pursuant to the provisions of the Liquor Control Act shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensed premises or the business of the person issued an alcoholic beverage delivery permit that ~~[are]~~ is the subject matter of the hearing ~~[are]~~ is located. All such hearings shall be open to the public."

SECTION 8. Section 60-6C-4 NMSA 1978 (being Laws 1981, Chapter 39, Section 100, as amended) is amended to read:

"60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS-- INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act, unless the complaint is deficient on its face, the director shall request that the department of public safety investigate the complaint.

B. The department of public safety shall investigate the complaint and make a written report to the director.

C. If the director believes from the report that

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probable cause exists for filing charges against the licensee for the revocation or suspension of [~~his~~] the licensee's license or permit or for fining [~~him~~] the licensee, or for both, [~~he~~] the director or [~~his~~] the director's designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. After charges have been filed, the director shall issue a signed order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license or permit should not be revoked or suspended or why the licensee should not be fined, or both.

E. The director shall keep the original of the charge and the order to show cause on file in [~~his~~] the director's office.

F. The director shall appoint a hearing officer no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why [~~his~~] the licensee's license or permit should not be revoked or suspended or why the licensee should not be fined, or both.

G. The director shall have a copy of the charge and a copy of the order to show cause sent to the licensee or the licensee's resident agent at the agent's last known address by

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certified mail at least fourteen days before the date set for the hearing on the order to show cause.

H. At ~~any~~ a hearing on an order to show cause, the director shall cause a record of hearing to be made, which shall record:

- (1) the style of the proceedings;
- (2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3) the place, date and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the licensee;
- (5) if the licensee appears with an attorney, the name and address of the attorney;
- (6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7) the findings of fact and law as to whether ~~or not~~ the licensee has violated the Liquor Control Act as set out in the charge; and
- (8) the decision of the director.

I. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the director shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license or permit revoked or

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suspended or the licensee fined, or both, on all the grounds alleged in the charge and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings.

J. If the licensee admits guilt on all grounds set out in the charge, the director shall order the revocation or suspension of the license or permit or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of [~~his~~] the director's order of revocation or suspension of the license or permit or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

K. If the licensee appears at the hearing and does not testify or denies guilt of any [~~or all~~] of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the director or the hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the director shall allow the licensee or [~~his~~] the licensee's attorney to cross-examine all witnesses;

(2) the licensee shall be allowed to present testimony and evidence [~~he~~] the licensee may have in denial or in mitigation of the grounds set out in the charge;

(3) the department shall have the right to

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cross-examine the licensee or any witness testifying in [~~his~~]
the licensee's favor;

(4) the department shall present any evidence
or testimony in rebuttal of that produced by the licensee;

(5) the director or the hearing officer shall
make a finding on each ground alleged and a finding of the
guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any
ground alleged and proved, the director shall make [~~his~~] an
order of revocation or suspension of the license or permit or
fine of the licensee, or both; and

(7) the rules of evidence shall not be
required to be observed, but the order of suspension or
revocation or fine, or both, shall be based upon substantial,
competent and relevant evidence and testimony appearing in the
record of hearing.

L. No admission of guilt, admission against
interest or transcript of testimony made or given in [~~any~~] a
hearing pursuant to this section shall be received or used in
[~~any~~] criminal proceedings wherein the licensee is a defendant;
provided, however, if the licensee commits perjury in a
hearing, the evidence shall be admissible in a perjury trial if
otherwise competent and relevant.

M. The director shall adopt reasonable
[~~regulations~~] rules setting forth uniform standards of

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penalties concerning fines and suspensions imposed by the director.

N. For purposes of this section, "licensee" includes a person issued an alcoholic beverage delivery permit."

SECTION 9. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended by Laws 1999, Chapter 265, Section 75 and by Laws 1999, Chapter 277, Section 1) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as [~~he~~] the officer may find are just, in [~~his~~] the officer's discretion suspend the operation of the order of suspension, revocation or fine

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pending the appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee" includes a person issued an alcoholic beverage delivery permit and includes a person issued a server permit pursuant to the Alcohol Server Education Article of the Liquor Control Act."

SECTION 10. Section 60-6E-3 NMSA 1978 (being Laws 1999, Chapter 277, Section 4) is amended to read:

"60-6E-3. DEFINITIONS.--As used in [~~Chapter 60, Article 6D NMSA 1978~~] the Alcohol Server Education Article of the Liquor Control Act:

- A. "director" means the director of the division;
- B. "division" means the [~~alcohol and gaming~~] alcoholic beverage control division of the regulation and licensing department;
- C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act to sell, serve or dispense alcoholic beverages for consumption and not for resale;
- D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;
- E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;

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F. "server" means an individual who sells, serves, or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol and when the context requires, includes a person who delivers alcoholic beverages.

"Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale, delivery or service of alcohol; and

G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages."

SECTION 11. Section 60-6E-8 NMSA 1978 (being Laws 1999, Chapter 277, Section 9) is amended to read:

"60-6E-8. SERVER PERMIT--SUSPENSION--REVOCATION-- ADMINISTRATIVE FINES--PENALTIES.-- [~~In addition to any other penalties available~~] The following penalties [~~may be imposed~~] are in addition to any other penalties available for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act or rules of the division:

A. the director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars (\$500), or both, when [~~he~~] the director finds that the server is guilty of a first offense of selling, serving, delivering or dispensing an alcoholic beverage to an intoxicated person in violation of

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Section 60-7A-16 NMSA 1978 or to a minor in violation of
Section 60-7B-1 NMSA 1978;

B. the director shall suspend a server's server permit for a period of one year when [~~he~~] the director finds that the server is guilty of a second offense of selling, serving, delivering or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incident giving rise to [~~his~~] the server's first offense;

C. the director shall permanently revoke a server's server permit when [~~he~~] the director finds that the server is guilty of a third offense of selling, serving, delivering or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to [~~his~~] the server's first and second offenses;

D. no person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises or deliver alcoholic beverages during the period of suspension or revocation;

E. no person whose server permit is suspended may serve or deliver alcoholic beverages on or after the date of

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suspension unless the person obtains a new server permit in accordance with the provisions of ~~[Article 6D of Chapter 60]~~ the Alcohol Server Education Article of the Liquor Control Act; and

F. nothing in ~~[this]~~ the Alcohol Server Education Article of the Liquor Control Act shall be interpreted to waive ~~[any]~~ a permit holder's or license holder's liability that may arise pursuant to the provisions of ~~[this]~~ the Liquor Control Act."

SECTION 12. Section 60-6E-9 NMSA 1978 (being Laws 1999, Chapter 277, Section 10) is amended to read:

"60-6E-9. ALCOHOL SERVER EDUCATION--REQUIRED FOR LICENSE RENEWAL.--A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, ~~[his]~~ the lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served, delivered or dispensed."

SECTION 13. Section 60-6E-10 NMSA 1978 (being Laws 1999, Chapter 277, Section 11) is amended to read:

"60-6E-10. ADMINISTRATIVE PROCEEDINGS--HEARINGS.--

A. Hearings for the suspension or revocation of any server's server permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

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B. The director may suspend or revoke a server permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978.

C. Notwithstanding the provisions of Subsection B of this section, the director may suspend or revoke a server permit and may impose a fine in an amount not to exceed ten thousand dollars (\$10,000), or impose a combination of those penalties, on a server who holds an alcoholic beverage delivery permit for any violation of the Liquor Control Act committed while the server is delivering alcoholic beverages pursuant to the provisions of this 2021 act."

SECTION 14. Section 60-7A-4 NMSA 1978 (being Laws 1981, Chapter 39, Section 50, as amended) is amended to read:

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

A. It is unlawful for [~~any~~] a person on [~~his~~] the person's own behalf or as the agent of another person, except a licensed New Mexico wholesaler or manufacturer or the agent of either, to directly or indirectly sell or offer for sale for shipment into the state or ship into the state, except as provided in Section 60-7A-3 NMSA 1978, [~~any~~] alcoholic beverages unless [~~such~~] the person or [~~his~~] the person's principals [~~has~~] have secured a nonresident license as provided in Section [~~60-7A-7~~] 60-6A-7 NMSA 1978.

B. It is a violation of the Liquor Control Act to

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deliver any alcoholic beverages transported into the state unless the delivery is made in accordance with Section 60-7A-3 NMSA 1978 or Section 1 of this 2021 act.

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

SECTION 15. Section 60-7A-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 78, as amended) is amended to read:

"60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES, RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR LESSEES AND CLUBS.--It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose or with the intent of reselling the alcoholic beverages from any person unless the person is duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell; possess for the purpose of sale; or bottle bulk wine for sale other than by the drink for immediate consumption on its licensed premises;

C. directly, indirectly or through subterfuge, own, operate or control any interest in a wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent:

(1) a dispenser from owning an interest in a legal entity, directly or indirectly or through an affiliate,

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that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978; or

(2) a small brewer or winegrower licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act from holding an interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant or a dispenser's license and a small brewer and winegrower limited wholesaler's license issued pursuant to the Liquor Control Act;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except its licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not received alcohol server training within thirty days of employment; or

F. employ or engage a person to sell, serve, deliver or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked."

SECTION 16. Section 60-7A-16 NMSA 1978 (being Laws 1981, Chapter 39, Section 93, as amended) is amended to read:

"60-7A-16. SALE TO INTOXICATED PERSONS.--It is a violation of the Liquor Control Act for a person to sell,

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deliver or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, delivering, serving, procuring or aiding in procurement knows or has reason to know that [~~he~~] the person is selling, delivering, serving, procuring or aiding in procurement of alcoholic beverages for a person [~~that~~] who is intoxicated."

SECTION 17. Section 60-7B-5 NMSA 1978 (being Laws 1981, Chapter 39, Section 85, as amended) is amended to read:

"60-7B-5. REFUSAL TO SELL, [~~OR~~] SERVE OR DELIVER ALCOHOLIC BEVERAGES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--[~~Any~~] A person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person or any person delivering alcoholic beverages on behalf of that person shall refuse to sell, deliver or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that [~~he~~] the person is twenty-one years of age or over."

SECTION 18. Section 60-7B-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 86, as amended) is amended to read:

"60-7B-6. DEMANDING AND SEEING IDENTITY CARD BEFORE FURNISHING ALCOHOLIC BEVERAGES.--In any criminal prosecution or in any proceedings for the suspension or revocation of a license or alcoholic beverage delivery permit or in any proceeding for violation of a municipal or county ordinance

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prohibiting the gift, sale or service of alcoholic beverages to minors, proof that the accused licensee or alcoholic beverage delivery permittee in good faith demanded and was shown an identity card before furnishing any alcoholic beverages to a minor shall be a defense to the prosecution or proceedings."

SECTION 19. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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