

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 223

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Shannon Robinson

AN ACT

**RELATING TO STATE AGENCIES; CLARIFYING THE POWERS AND DUTIES
OF THE ALCOHOL AND GAMING DIVISION OF THE REGULATION AND
LICENSING DEPARTMENT AND THE DIRECTOR OF THAT DIVISION;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 9-16-4 NMSA 1978 (being Laws 1983,
Chapter 297, Section 20, as amended) is amended to read:**

**"9-16-4. DEPARTMENT ESTABLISHED. --There is created in
the executive branch the "regulation and licensing
department". The department shall not be a cabinet
department. The department shall consist of but not be
limited to [~~five~~] six divisions as follows:**

- A. the administrative services division;**
- B. the construction industries division;**

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

- 1 C. the financial institutions division;
- 2 D. the securities division; [~~and~~]
- 3 E. the manufactured housing division; and
- 4 F. the alcohol and gaming division. "

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

7 "60-3A-3. DEFINITIONS. --As used in the Liquor Control
8 Act:

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

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

20 C. "brewer" means [~~any~~] a person who owns or
21 operates a business for the manufacture of beer;

22 D. "club" means:
23 (1) any nonprofit group, including an
24 auxiliary or subsidiary group, organized and operated under
25 the laws of this state with a membership of not less than

underscored material = new
[bracketed material] = delete

1 fifty members who pay membership dues at the rate of not less
2 than five dollars (\$5.00) per year and who, under the
3 constitution and bylaws of the club, have all voting rights
4 and full membership privileges and which group is the owner,
5 lessee or occupant of premises used exclusively for club
6 purposes and which group the director finds:

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

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

19 (2) an airline passenger membership club
20 operated by an air common carrier [~~which~~] that maintains or
21 operates a clubroom at an international airport terminal. For
22 the purposes of this paragraph, "air common carrier" means a
23 person engaged in regularly scheduled air transportation
24 between fixed termini under a certificate of public
25 convenience and necessity issued by the civil aeronautics

. 134938. 1

underscored material = new
[bracketed material] = delete

1 board;

2 E. "commission" means the secretary of public
3 safety when the term is used in reference to the enforcement
4 and investigatory provisions of the Liquor Control Act and
5 means the superintendent of regulation and licensing when the
6 term is used in reference to the licensing provisions of the
7 Liquor Control Act;

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

16 G. "director" means the director of the special
17 investigations division of the department of public safety
18 when the term is used in reference to the enforcement and
19 investigatory provisions of the Liquor Control Act and means
20 the [~~superintendent~~] director of the alcohol and gaming
21 division of the regulation and licensing department when the
22 term is used in reference to the licensing provisions of the
23 Liquor Control Act;

24 H. "dispenser" means [~~any~~] a person licensed under
25 the provisions of the Liquor Control Act selling, offering for

1 sale or having in his possession with the intent to sell
2 alcoholic beverages both by the drink for consumption on the
3 licensed premises and in unbroken packages for consumption and
4 not for resale off the licensed premises;

5 I. "distiller" means [~~any~~] a person engaged in
6 manufacturing spirituous liquors;

7 J. "golf course" means a tract of land and
8 facilities used for playing golf and other recreational
9 activities that includes tees, fairways, greens, hazards,
10 putting greens, driving ranges, recreational facilities,
11 patios, pro shops, cart paths and public and private roads
12 that are located within the tract of land;

13 K. "governing body" means the board of county
14 commissioners of a county or the city council or city
15 commissioners of a municipality;

16 L. "hotel" means [~~any~~] an establishment or complex
17 having a resident of New Mexico as a proprietor or manager and
18 where, in consideration of payment, meals and lodging are
19 regularly furnished to the general public. The establishment
20 or complex ~~must~~ maintain for the use of its guests a minimum
21 of twenty-five sleeping rooms;

22 M "licensed premises" means the contiguous areas
23 or areas connected by indoor passageways of a structure and
24 the outside dining, recreation and lounge areas of the
25 structure that are under the direct control of the licensee

underscored material = new
[bracketed material] = delete

1 and from which the licensee is authorized to sell, serve or
2 allow the consumption of alcoholic beverages under the
3 provisions of its license; provided that in the case of a
4 restaurant, hotel, golf course or racetrack, "licensed
5 premises" includes all public and private rooms, facilities
6 and areas in which alcoholic beverages are sold or served in
7 the customary operating procedures of the restaurant, hotel,
8 golf course or racetrack;

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

19 O. "manufacturer" means a distiller, rectifier,
20 brewer or winer;

21 P. "minor" means [~~any~~] a person under twenty-one
22 years of age;

23 Q. "package" means [~~any~~] an immediate container of
24 alcoholic beverages [~~which~~] that is filled or packed by a
25 manufacturer or wine bottler for sale by the manufacturer or

underscored material = new
[bracketed material] = delete

1 wine bottler to wholesalers;

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

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

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

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

25 V. "spirituous liquors" means alcoholic beverages

underscored material = new
[bracketed material] = delete

1 as defined in Subsection A of this section except fermented
2 beverages such as wine, beer and ale;

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

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

14 Y. "wine bottler" means [~~any~~] a New Mexico
15 wholesaler who is licensed to sell wine at wholesale for
16 resale only and who buys wine in bulk and bottles it for
17 wholesale resale;

18 Z. "winemaker" means [~~any~~] a person who owns or
19 operates a business for the manufacture of wine; and

20 AA. "winer" means a winemaker. "

21 Section 3. Section 60-3A-6 NMSA 1978 (being Laws 1987,
22 Chapter 254, Section 24) is amended to read:

23 "60-3A-6. AUTHORITY OF [~~PUBLIC SAFETY~~] DEPARTMENT OF
24 PUBLIC SAFETY. --The [~~public safety~~] department of public
25 safety has authority over all investigations and enforcement

. 134938. 1

underscored material = new
[bracketed material] = delete

1 activities required under the Liquor Control Act except for
2 those provisions relating to the issuance, denial, suspension
3 or revocation of licenses, unless its assistance is requested
4 by the [~~superintendent~~] director of the alcohol and gaming
5 division of the regulation and licensing department. "

6 Section 4. Section 60-3A-7 NMSA 1978 (being Laws 1987,
7 Chapter 254, Section 25) is amended to read:

8 "60-3A-7. AUTHORITY OF THE ALCOHOL AND GAMING
9 DIVISION. --The alcohol and gaming division of the regulation
10 and licensing department has the authority over all matters
11 relating to the issuance, denial, suspension or revocation of
12 licenses under the Liquor Control Act. The [~~superintendent~~]
13 director of the alcohol and gaming division of the regulation
14 and licensing department may request the [~~public safety~~]
15 department of public safety to provide investigatory and
16 enforcement support as deemed necessary. "

17 Section 5. A new section of Chapter 60, Article 3A NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] POWERS AND DUTIES OF THE DIRECTOR OF THE
20 ALCOHOL AND GAMING DIVISION. --The director of the alcohol and
21 gaming division of the regulation and licensing department is
22 responsible for the operation of the division. It is his duty
23 to supervise all operations of the division and to:

24 A. administer and enforce the laws that the
25 division administers;

underscored material = new
[bracketed material] = delete

1 B. exercise general supervisory authority over all
2 employees of the division;

3 C. organize the division into units to enable it
4 to function most effectively;

5 D. confer authority and delegate responsibility as
6 is necessary and appropriate;

7 E. employ, within the limitations of current
8 appropriations and personnel laws, persons as are required to
9 discharge his duties;

10 F. undertake studies and conduct courses of
11 instruction for division employees that will improve the
12 operations of the division and advance its purposes; and

13 G. require compliance by employees of the division
14 with his verbal and written instructions by whatever
15 disciplinary means appropriate. "

16 Section 6. A new section of Chapter 60, Article 3A NMSA
17 1978 is enacted to read:

18 " [NEW MATERIAL] INVESTIGATIVE AUTHORITY AND POWERS. --

19 A. For the purpose of enforcing the licensing
20 provisions of the Liquor Control Act, the director is
21 authorized to examine and to require the production of any
22 pertinent records, books, information or evidence, to require
23 the presence of any person and to require him to testify under
24 oath concerning the subject matter of the inquiry and to make
25 a permanent record of the proceedings.

. 134938. 1

underscored material = new
[bracketed material] = delete

1 B. The director is vested with the power to issue
2 subpoenas. In no case shall a subpoena be made returnable
3 less than five days from the date of service.

4 C. A subpoena issued by the director shall state
5 with reasonable certainty the nature of the evidence required
6 to be produced, the time and place of the hearing, the nature
7 of the inquiry or investigation and the consequences of
8 failure to obey the subpoena, and shall bear the seal of the
9 department and be attested to by the director.

10 D. After service of a subpoena upon him, if a
11 person neglects or refuses to appear or produce records or
12 other evidence in response to the subpoena or neglects or
13 refuses to give testimony, as required, the director may
14 invoke the aid of the New Mexico district courts in the
15 enforcement of the subpoena. In appropriate cases, the court
16 shall issue its order requiring the person to appear and
17 testify or produce his books or records and may, upon failure
18 of the person to comply with the order, punish the person for
19 contempt.

20 E. The director may exchange identification
21 records and information with law enforcement agencies for
22 official use. Any identification records received from the
23 United States department of justice, including identification
24 records based on fingerprints, shall be used only to
25 effectuate the licensing purposes and provisions of the Liquor

underscored material = new
[bracketed material] = delete

1 Control Act. The alcohol and gaming division of the
2 regulation and licensing department shall not disseminate the
3 information, except to law enforcement agencies for official
4 use only. "

5 Section 7. A new section of Chapter 60, Article 3A NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] ADMINISTRATIVE RULES AND ORDERS--
8 PRESUMPTION OF CORRECTNESS. --

9 A. The director shall issue and file as required
10 by law all rules and orders necessary to implement and enforce
11 the licensing provisions of the Liquor Control Act.

12 B. Directives issued by the director shall be in
13 form substantially as follows:

14 (1) rules are written statements of the
15 director, of general application to licensees, interpreting
16 and exemplifying the statutes to which they relate;

17 (2) rulings are written statements of the
18 director interpreting the statutes to which they relate and
19 are of limited application to one or a small number of
20 licensees; and

21 (3) orders are written statements of the
22 director to implement his decision after a hearing.

23 C. To be effective, a rule shall first be issued
24 as a proposed rule and filed for public inspection in the
25 office of the director. Distribution of the rule shall be

underscored material = new
[bracketed material] = delete

1 made to interested persons and their comments shall be
2 invited. After the proposed rule has been on file for thirty
3 days and a public hearing has been held, the director may
4 issue it as a final rule by filing as required by law.

5 D. The director shall furnish a copy of the rules
6 to all licensees and other interested persons at a nominal
7 cost.

8 E. A rule or order issued by the director is
9 presumed to be a proper implementation of the licensing
10 provisions of the Liquor Control Act.

11 F. All rules and orders shall be applied
12 prospectively only. "

13 Section 8. A new section of Chapter 60, Article 3A NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] WRITTEN DECISIONS BY DIRECTOR. -- Every
16 decision by the director relating to the granting or denial of
17 a license, the transfer of a license or the revocation or
18 suspension of a license, or other disposition of a charge
19 against a licensee, shall be accompanied by a written order
20 containing findings of fact and the specific grounds relied
21 upon for the decision. "

22 Section 9. REPEAL. -- Sections 60-4B-5 and 60-4B-6 NMSA
23 1978 (being Laws 1981, Chapter 39, Sections 8 and 9) are
24 repealed.

25 Section 10. EFFECTIVE DATE. -- The effective date of the
. 134938. 1

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

provisions of this act is July 1, 2001.

- 14 -