

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 503

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO LIQUOR CONTROL; AMENDING AND ENACTING SECTIONS OF
THE LIQUOR CONTROL ACT TO PROVIDE FOR BEER AND WINE DELIVERY
LICENSES.

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] BEER AND WINE DELIVERY LICENSE.--

A. On and after July 1, 2015, a local option
district may approve the issuance of beer and wine delivery
licenses for the sale of beer and wine, along with the
concurrent sales and delivery of prepared foods, by holding an
election on the question pursuant to Section 60-5A-1 NMSA 1978.
Alternatively, the election also may be initiated by a
resolution adopted by the governing body of the local option

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underscored material = new
[bracketed material] = delete

1 district without a petition from registered qualified electors
2 having been submitted.

3 B. After the approval of beer and wine delivery
4 licenses by the registered qualified electors of the local
5 option district and upon completion of all requirements in the
6 Liquor Control Act for the issuance of licenses, a restaurant
7 or food delivery company located or to be located within the
8 local option district may receive a beer and wine delivery
9 license that, concurrent with the delivery of prepared foods,
10 confers the ability to sell and transport to the end user, an
11 adult buyer, up to one hundred forty-four ounces of beer equal
12 to two six-packs and up to one and one-half liters or two
13 bottles of wine, subject to the requirements and restrictions
14 of this section.

15 C. The applicant shall submit evidence to the
16 department that the applicant has either:

17 (1) a current valid food service establishment
18 permit and a restaurant beer and wine license;

19 (2) a current business license and contracts
20 to deliver prepared food for a minimum of six permitted food
21 service establishments;

22 (3) a current valid food service establishment
23 with a full dispenser's license; or

24 (4) a current valid food service establishment
25 with a full retailer license.

1 D. The applicant shall satisfy the director that
2 the primary source of revenue from the operation of the
3 restaurant or food delivery service company will be derived
4 from meals and not from the sale of beer and wine. The
5 director shall condition renewal upon a requirement that no
6 less than seventy percent of gross receipts from the preceding
7 twelve months' delivery operation of the licensed restaurant or
8 food delivery service was derived from the sale of meals.
9 Upon application for renewal, the licensee shall submit an
10 annual report to the director indicating:

11 (1) the annual gross receipts from the sale of
12 ready-to-eat meals and from the sale of beer and wine; and

13 (2) that prepared and ready-to-eat foods
14 ordered for delivery concurrent to the beer or wine were of a
15 minimum restaurant menu value of twenty dollars (\$20.00).

16 E. All sales of beer and wine authorized by a beer
17 and wine delivery license shall cease at the time meals sales
18 and delivery services cease or at 10:00 p.m., whichever time is
19 earlier. If Sunday sales have been approved in the local
20 option district, a delivery licensee may sell and deliver beer
21 and wine on Sundays until the time meals sales and services
22 cease or 9:00 p.m., whichever time is earlier.

23 F. A beer and wine delivery license shall not be
24 transferable from person to person or from one location to
25 another.

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1 G. Beer and wine delivery licenses shall provide
2 for deliveries within individual local option districts.
3 Individual licenses shall be issued for each local option
4 district and subject to individual local option district
5 approval. Beer and wine delivery licensees shall have a
6 physical location in each local option district in which they
7 are licensed. Inter-local option district deliveries of beer
8 and wine are prohibited.

9 H. Deliveries of alcoholic goods are restricted to
10 residential addresses or licensed lodging facilities, and all
11 transfers to the responsible party shall be on private
12 property, at a doorway or gate or within a gated, defined or
13 enclosed area defining the property. Deliveries and transfers
14 of control to the buyer are prohibited to commercially zoned
15 property other than lodging, public property and public rights
16 of way. Deliveries are prohibited to locations three hundred
17 feet from schools, youth centers, academic campuses and
18 dormitories. Each local option district may designate other
19 zoning and geographic restrictions for use in adapting the
20 statewide rights to fit each local option district's goals and
21 character.

22 I. As a process of adoption, a local option
23 district shall create and maintain a list database of "do not
24 deliver" addresses that will allow property owners and
25 residents to opt out of the beer and wine delivery service.

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1 Property owners and residents may designate their property as a
2 "do not deliver" property that will be restricted from
3 alcoholic beverage deliveries. Local option districts may also
4 place properties deemed nuisances on the "do not deliver" list.
5 Penalties for delivering to a "do not deliver" property include
6 fines or temporary loss of delivery license privilege.
7 Penalties, enforcement and processes for the "do not deliver"
8 lists shall be set and administered by the local option
9 district and reported to the department annually as a part of
10 the license renewal process.

11 J. All delivery persons transporting and
12 transferring control to the end user, adult buyer, shall be
13 alcohol server-certified by the department.

14 K. Delivery license holders shall use best
15 practices to provide easier enforcement and transparency to
16 their orders and deliveries. The department shall adopt rules
17 to guide best practices as used in this subsection. The best
18 practices shall be reviewed every five years to update with
19 technology, health and safety information.

20 L. All sales of alcoholic goods for delivery and
21 delivery of beer and wine shall be concurrent with the sale and
22 delivery of prepared meals that are ready to eat.

23 M. All sales are to be via credit card, debit card
24 or electronic payment. Cash sales are prohibited. Sales
25 records are to be kept as a business practice and available to

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1 the director for review for five years.

2 N. Licensed delivery companies shall obtain beer
3 and wine inventory only from:

4 (1) licensed package retail locations in the
5 state of New Mexico; or

6 (2) licensed New Mexico manufacturers of beer
7 and wine.

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

10 P. Nothing in this section shall prevent a delivery
11 licensee from receiving other licenses pursuant to the Liquor
12 Control Act.

13 Q. Licensed delivery companies shall maintain
14 liquor liability coverage of at least one million dollars
15 (\$1,000,000)."

16 SECTION 2. Section 60-6A-18 NMSA 1978 (being Laws 1981,
17 Chapter 39, Section 35, as amended) is amended to read:

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

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

23 (1) in incorporated municipalities, not more
24 than one dispenser's or one retailer's license, including
25 canopy licenses [~~which~~] that are replaced by dispenser's

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1 licenses as provided in Section 60-6B-16 NMSA 1978, for each
2 two thousand inhabitants or major fraction thereof; and

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

10 B. For the purpose of this section, the number of
11 inhabitants of a local option district shall be determined by
12 annual population estimates published by the economic
13 development department.

14 C. Subsection A of this section shall not be
15 construed to prevent [~~any~~] a licensee holding a valid license
16 issued under the Liquor Control Act, or [~~his~~] the licensee's
17 transferee, from continuing the licensed business or from
18 renewing [~~his~~] the license, subject to compliance with the
19 Liquor Control Act and department regulations, notwithstanding
20 that the continuance or renewal may result in an excess over
21 the maximum number of licenses permitted in Subsection A of
22 this section.

23 D. Beer and wine delivery licenses are exempt from
24 the provisions of this section."