

1 SENATE BILL 494

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

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO ALCOHOLIC BEVERAGES; AMENDING AND ENACTING SECTIONS
12 OF THE LIQUOR CONTROL ACT TO PROVIDE BEER AND WINE DELIVERY
13 LICENSES FOR THE DELIVERY OF BEER, CIDER OR WINE TOGETHER WITH
14 MEALS OR GROCERIES TO ADULT PURCHASERS; PROVIDING FOR LOCAL
15 OPTION DISTRICT AUTHORIZATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Liquor Control Act is
19 enacted to read:

20 "[NEW MATERIAL] BEER AND WINE DELIVERY LICENSE.--

21 A. On and after July 1, 2019, a local option
22 district may approve of the use of beer and wine delivery
23 licenses for the sale and delivery of beer, cider or wine,
24 along with the concurrent sale and delivery of meals or
25 groceries, by holding an election on the question pursuant to

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1 the procedures in Section 60-5A-1 NMSA 1978. Alternatively,
2 the election may be initiated by a resolution adopted by the
3 governing body of the local option district without the
4 submission of a petition from registered qualified electors.
5 As used in this section, "meals" means lunch or dinner entrees
6 and does not include only an appetizer, snack or dessert.

7 B. After the approval by the registered qualified
8 electors of a local option district of the use of beer and wine
9 delivery licenses, a restaurant, grocery store or food delivery
10 company located or to be located within the local option
11 district may apply for a beer and wine delivery license that,
12 concurrent with the delivery of meals or groceries, confers the
13 ability to sell and transport to a person at least twenty-one
14 years of age, up to one hundred forty-four ounces of beer or
15 cider or up to one and one-half liters of wine, subject to the
16 requirements and restrictions of this section.

17 C. An applicant for a beer and wine delivery
18 license shall submit evidence to the department that the
19 applicant has either:

20 (1) a current business license or permit as a
21 food service establishment or a grocery store;

22 (2) a retailer's license; or

23 (3) a current business license or permit as a
24 food delivery service business with delivery employees and
25 delivery vehicles and contracts with a minimum of six legally

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1 recognized food service establishments or grocery stores to
2 deliver meals or groceries on their behalf.

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

15 (1) the annual gross receipts from the sale
16 and delivery of meals or groceries and from the sale and
17 delivery of beer, cider or wine; and

18 (2) that meals or groceries ordered for each
19 delivery concurrent with beer, cider or wine had a minimum
20 retail value of twenty dollars (\$20.00).

21 E. All sales and delivery of beer, cider or wine
22 authorized by a beer and wine delivery license shall cease no
23 later than 10:00 p.m. If Sunday sales have been approved in
24 the local option district, a beer and wine delivery licensee
25 may sell and deliver beer, cider or wine on Sundays until no

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1 later than 9:00 p.m.

2 F. A beer and wine delivery license shall not be
3 transferable from person to person or from one location to
4 another.

5 G. A beer and wine delivery license shall provide
6 only for deliveries within a single local option district. A
7 separate license shall be issued to a restaurant, grocery store
8 or food delivery service business for each local option
9 district in which the licensee desires to operate. A beer and
10 wine delivery licensee shall have a physical business location
11 in each local option district in which it operates.
12 Inter-local option district deliveries of beer and wine are
13 prohibited.

14 H. Deliveries of beer, cider or wine by a beer and
15 wine delivery licensee are restricted to physical delivery to a
16 person at least twenty-one years of age at a residential
17 address or a commercial or private lodging facility. A
18 delivery is prohibited to:

19 (1) a location within three hundred feet of a
20 church, school, youth center, academic campus or educational
21 institution dormitory;

22 (2) public property;

23 (3) commercially zoned property other than a
24 lodging facility; and

25 (4) a location designated by a local option

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1 district through its zoning power.

2 I. A local option district shall create and
3 maintain a database of "do not deliver" addresses that will
4 allow property owners and residents to prevent beer and wine
5 delivery service. A local option district may also place
6 properties deemed nuisances on the "do not deliver" list.

7 J. Beer and wine delivery licensee delivery
8 personnel transporting and transferring control of beer, cider
9 or wine to a purchaser shall be:

10 (1) employees of the licensee;

11 (2) alcohol-server-certified by the
12 department; and

13 (3) trained and certified to handle perishable
14 food with a current food handler certificate.

15 K. The department shall adopt rules to guide best
16 practices for beer and wine delivery licensees in the use of
17 health and safety information, mobile document and
18 identification verification and delivery vehicle tracking.

19 L. All sales and delivery of beer, cider or wine by
20 a beer and wine delivery licensee shall be concurrent with the
21 sale and delivery of meals or groceries.

22 M. Sales of beer, cider or wine and meals or
23 groceries shall be by credit card, debit card or electronic
24 payment. Cash sales are prohibited. Sales records shall be
25 kept by a beer and wine delivery licensee as a business

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1 practice and available to the director for review for three
2 years.

3 N. A beer and wine delivery licensee shall obtain
4 beer, cider and wine inventory only from a retailer.

5 O. Unless the beer and wine delivery licensee is
6 also a retailer, in which case the limitations of this
7 subsection do not apply, a beer and wine delivery licensee may
8 maintain a secured inventory of beer, cider and wine with a
9 total retail value of no more than:

10 (1) at its place of business, three thousand
11 dollars (\$3,000); and

12 (2) in each delivery vehicle, four hundred
13 dollars (\$400), but only during the licensee's hours of
14 operation.

15 P. Delivery vehicles used by a beer and wine
16 delivery licensee shall be owned or leased by the licensee,
17 registered in New Mexico, covered by a commercial delivery
18 vehicle liability insurance policy and clearly marked on each
19 side of the vehicle with the name of the licensed business and
20 its telephone or website contact information. In addition to
21 the identifying contact information, each delivery vehicle
22 shall clearly display a number assigned by the department that
23 will allow the department to identify a specific vehicle.

24 Q. Nothing in this section shall prevent a beer and
25 wine delivery licensee from receiving other licenses pursuant

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1 to the Liquor Control Act.

2 R. A beer and wine delivery licensee shall maintain
3 alcoholic beverage liability insurance coverage of at least one
4 million dollars (\$1,000,000).

5 S. The provisions of Section 60-6A-18 NMSA 1978
6 shall not apply to a beer and wine delivery license."

7 SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,
8 Chapter 39, Section 3, as amended by Laws 2016, Chapter 73,
9 Section 1 and by Laws 2016, Chapter 76, Section 1) is amended
10 to read:

11 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
12 Act:

13 A. "alcoholic beverages" means distilled or
14 rectified spirits, potable alcohol, powdered alcohol, frozen or
15 freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic
16 bitters bearing the federal internal revenue strip stamps or
17 any similar alcoholic beverage, including blended or fermented
18 beverages, dilutions or mixtures of one or more of the
19 foregoing containing more than one-half percent alcohol, but
20 excluding medicinal bitters;

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

25 C. "brewer" means a person who owns or operates a

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1 business for the manufacture of beer;

2 D. "cider" means an alcoholic beverage made from
3 the normal alcoholic fermentation of the juice of sound, ripe
4 apples that contains not less than one-half of one percent
5 alcohol by volume and not more than seven percent alcohol by
6 volume;

7 E. "club" means:

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

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

20 (b) has been granted an exemption by the
21 United States from the payment of the federal income tax as a
22 club under the provisions of Section 501(a) of the Internal
23 Revenue Code of 1986, as amended, or, if the applicant has not
24 operated as a club for a sufficient time to be eligible for the
25 income tax exemption, it must execute and file with the

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1 director a sworn letter of intent declaring that it will, in
2 good faith, apply for an income tax exemption as soon as it is
3 eligible; or

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

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

17 G. "department" means the New Mexico state police
18 division of the department of public safety when the term is
19 used in reference to the enforcement and investigatory
20 provisions of the Liquor Control Act and means the director of
21 the alcohol and gaming division of the regulation and licensing
22 department when the term is used in reference to the licensing
23 provisions of the Liquor Control Act;

24 H. "director" means the chief of the New Mexico
25 state police division of the department of public safety when

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1 the term is used in reference to the enforcement and
2 investigatory provisions of the Liquor Control Act and means
3 the director of the alcohol and gaming division of the
4 regulation and licensing department when the term is used in
5 reference to the licensing provisions of the Liquor Control
6 Act;

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

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

15 K. "golf course" means a tract of land and
16 facilities used for playing golf and other recreational
17 activities that includes tees, fairways, greens, hazards,
18 putting greens, driving ranges, recreational facilities,
19 patios, pro shops, cart paths and public and private roads that
20 are located within the tract of land;

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

24 M. "growler" means a clean, refillable, resealable
25 container that has a liquid capacity that does not exceed one

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1 gallon and that is intended and used for the sale of beer, wine
2 or cider for consumption off premises;

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

9 O. "licensed premises" means the contiguous areas
10 or areas connected by indoor passageways of a structure and the
11 outside dining, recreation and lounge areas of the structure
12 and the grounds and vineyards of a structure that is a winery
13 that are under the direct control of the licensee and from
14 which the licensee is authorized to sell, serve or allow the
15 consumption of alcoholic beverages under the provisions of its
16 license; provided that in the case of a restaurant, "licensed
17 premises" includes a restaurant that has operated continuously
18 in two separate structures since July 1, 1987 and that is
19 located in a local option district that has voted to disapprove
20 the transfer of liquor licenses into that local option
21 district, hotel, golf course, ski area or racetrack and all
22 public and private rooms, facilities and areas in which
23 alcoholic beverages are sold or served in the customary
24 operating procedures of the restaurant, hotel, golf course, ski
25 area or racetrack. "Licensed premises" also includes rural

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1 dispenser licenses located in the unincorporated areas of a
2 county with a population of less than thirty thousand, located
3 in buildings in existence as of January 1, 2012, that are
4 within one hundred fifty feet of one another and that are under
5 the direct control of the license holder;

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

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

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

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

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

25 U. "rectifier" means a person who blends, mixes or

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1 distills alcohol with other liquids or substances for the
2 purpose of making an alcoholic beverage for the purpose of sale
3 other than to the consumer by the drink, and includes all
4 bottlers of spirituous liquors;

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

15 W. "retailer" means a person licensed under the
16 provisions of the Liquor Control Act selling, offering for sale
17 or having in the person's possession with the intent to sell
18 alcoholic beverages in unbroken packages, including growlers,
19 for consumption and not for resale off the licensed premises
20 except as otherwise provided in Section 1 of this 2019 act;

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

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

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

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

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

17 CC. "winegrower" means a person who owns or
18 operates a business for the manufacture of wine;

19 DD. "winer" means a winegrower; and

20 EE. "winery" means a facility in which a winegrower
21 manufactures and stores wine."

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

24 "60-6A-15. LICENSE FEES.--Every application for the
25 issuance or renewal of the following licenses shall be

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1 accompanied by a license fee in the following specified
2 amounts:

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

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

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

9 D. wholesaler's license to sell all alcoholic
10 beverages for resale only, two thousand five hundred dollars
11 (\$2,500);

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

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

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

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

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

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

25 K. dispenser's license, one thousand three hundred

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1 dollars (\$1,300);

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

4 M. restaurant license, one thousand fifty dollars
5 (\$1,050);

6 N. club license, for clubs with more than two
7 hundred fifty members, one thousand two hundred fifty dollars
8 (\$1,250), and for clubs with two hundred fifty members or
9 fewer, two hundred fifty dollars (\$250);

10 O. wine bottler's license to sell to wholesalers
11 only, five hundred dollars (\$500);

12 P. public service license, one thousand two hundred
13 fifty dollars (\$1,250);

14 Q. nonresident licenses, for a total billing to New
15 Mexico wholesalers:

- 16 (1) in excess of:
- | | | |
|----|-----------------------------------|-----------|
| 17 | \$3,000,000 annually | \$10,500; |
| 18 | 1,000,000 annually | 5,250; |
| 19 | 500,000 annually | 3,750; |
| 20 | 200,000 annually | 2,700; |
| 21 | 100,000 annually | 1,800; |
| 22 | and | |
| 23 | 50,000 annually | 900; |
| 24 | and | |
| 25 | (2) of \$50,000 or less | \$300; |

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