

1 HOUSE BILL 8
2 55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

3 INTRODUCED BY
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10 AN ACT

11 RELATING TO LIQUOR CONTROL; AMENDING AND ENACTING SECTIONS OF
12 THE LIQUOR CONTROL ACT TO PERMIT CERTAIN PERSONS TO DELIVER
13 ALCOHOLIC BEVERAGES; ADDING A NEW TYPE OF RESTAURANT LICENSE
14 THAT ALLOWS SALE OF ALCOHOLIC BEVERAGES IN RESTAURANTS;
15 IMPOSING LICENSE ISSUANCE FEES; ALLOWING DISPENSER'S LICENSES
16 TO BE TRANSFERRED OUT OF A LOCAL OPTION DISTRICT INTACT;
17 ALLOWING CERTAIN DISPENSER'S LICENSES TO REINSTATE RETAIL
18 PRIVILEGES.
19

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

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

23 "[NEW MATERIAL] ALCOHOLIC BEVERAGE DELIVERY PERMIT--THIRD-
24 PARTY DELIVERY LICENSE.--

25 A. A person otherwise qualified pursuant to the

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

7 B. An alcoholic beverage delivery permit issued to
8 a valid restaurant licensee shall only convey the authority to
9 deliver alcoholic beverages concurrently with the delivery of a
10 minimum of twenty-five dollars (\$25.00) worth of food; provided
11 that under no circumstances shall the delivery of alcoholic
12 beverages be more than twenty-five fluid ounces of wine or
13 seventy-two fluid ounces of beer.

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

17 D. An alcoholic beverage delivery permit issued
18 pursuant to this section is valid for one year from the date of
19 issuance. An alcoholic beverage delivery permittee may renew
20 an alcoholic beverage delivery permit annually as required by
21 the department.

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

25 (1) an alcoholic beverage delivery permittee

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1 shall deliver alcoholic beverages only in unbroken packages;

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

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

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

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

17 (6) an alcoholic beverage delivery permittee
18 shall not deliver an alcoholic beverage to a business, a
19 commercial establishment, a college or university campus or a
20 school campus that is not a home school;

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

24 (8) deliveries of alcoholic beverages shall
25 not be made to an intoxicated person in violation of Section

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1 60-7A-16 NMSA 1978 or to a minor in violation of Section
2 60-7B-1 NMSA 1978;

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

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

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

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

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

19 (c) the type and quantity of alcoholic
20 beverages delivered;

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

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

25 (f) a valid signature of the person who

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1 accepted the delivery of the alcoholic beverage; and

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

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

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

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

19 (1) requiring that all delivery employees of
20 the third-party alcohol delivery service hold a valid New
21 Mexico alcohol server permit;

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

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

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

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

17 J. An applicant for a third-party alcohol delivery
18 license is required to be authorized to do business in this
19 state, may not share in the profits of the sale of alcohol with
20 a licensee and may only charge a delivery fee that is disclosed
21 to the buyer at the time of sale.

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

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1 alcoholic beverage delivery permit to the buyer.

2 L. A third-party alcohol delivery licensee shall be
3 independently liable for the delivery of alcoholic beverages to
4 an intoxicated person or to a minor or for any violation of the
5 Liquor Control Act and be subject to suspension, revocation or
6 administrative fine pursuant to Sections 60-6C-1 through
7 60-6C-6 NMSA 1978.

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

10 SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,
11 Chapter 39, Section 3, as amended by Laws 2019, Chapter 29,
12 Section 2 and by Laws 2019, Chapter 229, Section 3) is amended
13 to read:

14 "60-3A-3. DEFINITIONS.--As used in the Liquor Control
15 Act:

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

24 B. "beer" means an alcoholic beverage obtained by
25 the fermentation of any infusion or decoction of barley, malt

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1 and hops or other cereals in water, and includes porter, beer,
2 ale and stout;

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

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

10 E. "club" means:

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

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

23 (b) has been granted an exemption by the
24 United States from the payment of the federal income tax as a
25 club under the provisions of Section 501(a) of the Internal

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1 Revenue Code of 1986, as amended, or, if the applicant has not
2 operated as a club for a sufficient time to be eligible for the
3 income tax exemption, it must execute and file with the
4 director a sworn letter of intent declaring that it will, in
5 good faith, apply for an income tax exemption as soon as it is
6 eligible; or

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

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

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

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1 licensing provisions of the Liquor Control Act;

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

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

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

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

24 L. "governing body" means the board of county
25 commissioners of a county or the city council or city

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1 commissioners of a municipality;

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

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

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

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1 alcoholic beverages are sold or served in the customary
2 operating procedures of the restaurant, hotel, golf course, ski
3 area or racetrack. "Licensed premises" also includes rural
4 dispenser licenses located in the unincorporated areas of a
5 county with a population of less than thirty thousand, located
6 in buildings in existence as of January 1, 2012, that are
7 within one hundred fifty feet of one another and that are under
8 the direct control of the license holder;

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

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

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

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

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

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

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

18 W. "retailer" means a person licensed under the
19 provisions of the Liquor Control Act selling, offering for sale
20 or having in the person's possession with the intent to sell
21 alcoholic beverages in unbroken packages, including growlers,
22 for consumption and not for resale off the licensed premises;

23 X. "ski area" means a tract of land and facilities
24 for the primary purpose of alpine skiing, snowboarding or other
25 snow sports with trails, parks and at least one chairlift with

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1 uphill capacity and may include facilities necessary for other
2 seasonal or year-round recreational activities;

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

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

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

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

19 CC. "winegrower" means a person who owns or
20 operates a business for the manufacture of wine or cider;

21 DD. "winer" means a winegrower; and

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

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

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1 "60-6A-4. RESTAURANT LICENSE.--

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

9 B. A local option district that has approved the
10 issuance of restaurant licenses for the sale of beer and wine
11 may approve the issuance of restaurant licenses for the sale of
12 beer, wine and alcoholic beverages in restaurants by adoption
13 of an ordinance.

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

19 D. A restaurant license issued on or after July 1,
20 2021 that permits the sale and service of beer, wine and
21 alcoholic beverages shall be designated a type B restaurant
22 license. The license shall be issued in accordance with the
23 provisions of this section and rules adopted by the department.

24 [~~B.~~] E. After the approval of restaurant licenses
25 by the qualified electors of the local option district for the

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1 sale of beer and wine and upon completion of all requirements
2 in the Liquor Control Act for the issuance of licenses, a
3 restaurant located or to be located within the local option
4 district may receive a type A restaurant license to sell, serve
5 or allow the consumption of beer and wine subject to the
6 following requirements and restrictions:

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

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

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

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

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

24 (6) all sales, services and consumption of
25 beer and wine authorized by a type A restaurant license shall

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1 cease at the time [~~meal~~] food sales and services cease or at
2 11:00 p.m., whichever time is earlier;

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

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

11 F. Upon completion of all requirements in the
12 Liquor Control Act for the issuance of licenses on and after
13 July 1, 2021, and upon the adoption of an ordinance by the
14 governing body of a local option district, a restaurant located
15 or to be located within the local option district may receive a
16 type B restaurant license to sell, serve or allow the
17 consumption of beer, wine and alcoholic beverages subject to
18 the following requirements and restrictions:

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

22 (2) the applicant shall satisfy the director
23 that the primary source of revenue from the operation of the
24 restaurant will be derived from the sale of food and not from
25 the sale of beer, wine and alcoholic beverages;

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

5 (4) upon application for renewal, the licensee
6 shall submit an annual report to the director indicating the
7 annual gross receipts from the sale of food and from beer, wine
8 and alcoholic beverages sales;

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

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

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

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

23 ~~[G.]~~ G. The provisions of Section 60-6A-18 NMSA
24 1978 shall not apply to restaurant licenses.

25 ~~[D.]~~ H. Nothing in this section shall prevent a

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1 restaurant licensee from receiving other licenses pursuant to
2 the Liquor Control Act."

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

5 "60-6A-15. LICENSE AND PERMIT FEES.--Every application
6 for the issuance or renewal of the following licenses and
7 permits shall be accompanied by a [~~license~~] fee in the
8 following specified amounts:

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

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

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

15 D. wholesaler's license to sell all alcoholic
16 beverages for resale only, two thousand five hundred dollars
17 (\$2,500);

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

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

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

25 H. wholesaler's license to sell beer for resale

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1 only, one thousand dollars (\$1,000);

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

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

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

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

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

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

14 [~~N.~~] O. club license, for clubs with more than two
15 hundred fifty members, one thousand two hundred fifty dollars
16 (\$1,250), and for clubs with two hundred fifty members or
17 fewer, two hundred fifty dollars (\$250);

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

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

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

24 (1) in excess of:
25 \$3,000,000 annually \$10,500;

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1 1,000,000 annually 5,250;
2 500,000 annually 3,750;
3 200,000 annually 2,700;
4 100,000 annually 1,800;

5 and

6 50,000 annually 900;

7 and

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

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

14 S-] T. beer bottler's license, two hundred dollars
15 (\$200);

16 U. third-party alcohol delivery license, not to
17 exceed three hundred dollars (\$300); and

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

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

22 "60-6B-12. INTER-LOCAL OPTION DISTRICT AND INTER-COUNTY
23 TRANSFERS.--

24 A. Dispenser's and retailer's licenses originally
25 issued before July 1, 1981, except rural dispenser's and rural

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1 retailer's licenses and canopy licenses that were replaced by
2 dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978,
3 may be transferred to any location within the state, except
4 class B counties having a population of between fifty-six
5 thousand and fifty-seven thousand according to the 1980 federal
6 decennial census, the municipalities located within those class
7 B counties and any municipality or county that prohibits by
8 election the transfer of a license from another local option
9 district, without regard to the limitations on the maximum
10 number of licenses provided in Section 60-6A-18 NMSA 1978, not
11 otherwise contrary to law, subject to the approval of
12 transferring locations of those liquor licenses by the
13 governing body for that location; provided that the
14 requirements of the Liquor Control Act and department
15 regulations for the transfer of licenses are fulfilled; and
16 provided further that:

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

21 (2) the dispenser's or retailer's licenses
22 transferred under this section shall count in the computation
23 of the limitation of the maximum number of licenses that may be
24 issued in the future in any local option district as provided
25 in Section 60-6A-18 NMSA 1978 for the purpose of determining

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1 whether additional licenses may be issued in the local option
2 district under the provisions of Subsection H of Section
3 60-6B-2 NMSA 1978.

4 B. Transfer of location of a liquor license
5 pursuant to Subsection A of this section shall become effective
6 upon approval of the local governing body, unless within one
7 hundred twenty days after the effective date of the Liquor
8 Control Act a petition requesting an election on the question
9 of approval of statewide transfers of liquor licenses into that
10 local option district is filed with the clerk of the local
11 option district and the petition is signed by at least five
12 percent of the number of registered voters of the district.
13 The clerk of the district shall verify the petition signatures.
14 If the petition is verified as containing the required number
15 of signatures of registered voters, the governing body shall
16 adopt a resolution calling an election on the question of
17 approving or disapproving statewide transfers of liquor
18 licenses into that district. Notice of such election shall be
19 published as provided in [~~Section 3-8-35 NMSA 1978~~] the Local
20 Election Act, and the election shall be held within sixty days
21 after the date the petition is verified or it may be held in
22 conjunction with a regular election of the governing body if
23 such election occurs within sixty days after the date of
24 verification. If a majority of the registered voters of the
25 district voting in such election votes to approve statewide

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1 transfers of liquor licenses into the local option district,
2 each license proposing to be transferred shall be subject to
3 the approval of the governing body. If the voters of the
4 district voting in the election vote against the approval, then
5 all statewide transfers of liquor licenses pursuant to
6 Subsection A of this section shall be prohibited in that
7 district, unless a petition is filed requesting the question be
8 again submitted to the voters as provided in this subsection.
9 The question of approving or disapproving statewide transfers
10 of liquor licenses into the local option district shall not be
11 submitted again within two years from the date of the last
12 election on the question.

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

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

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1 fulfilled.

2 D. A dispenser's licensee that, under previous law,
3 lost the privilege to sell alcoholic beverages in unbroken
4 packages for consumption and not for resale off the licensed
5 premises as a result of transferring out of its original local
6 option district may have the privilege reinstated if the
7 licensee pays fifty thousand dollars (\$50,000) to the
8 department."

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

11 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
12 ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

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

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

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

23 (3) permitted [~~his~~] the licensee's licensed
24 premises to remain a public nuisance in the neighborhood where
25 it is located after written notice from the director that

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1 investigation by the department has revealed that the
2 establishment is a public nuisance in the neighborhood.

3 B. The director shall suspend or revoke the license
4 or permit and may fine the licensee in an amount not to exceed
5 ten thousand dollars (\$10,000), or both, when ~~he~~ the director
6 finds that any licensee or:

7 (1) ~~his~~ the licensee's employee or agent
8 knowingly has sold, served, delivered or given ~~any~~ an
9 alcoholic beverage to a minor in violation of Section 60-7B-1
10 NMSA 1978 or to an intoxicated person in violation of Section
11 60-7A-16 NMSA 1978, on two separate occasions within any
12 twelve-month period; or

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

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

23 D. ~~Any~~ A charge filed against a licensee by the
24 department and the resulting disposition of the charge shall be
25 reported to the department of public safety and local law

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1 enforcement agencies whose jurisdictions include the licensed
2 establishment or address of record of the person issued an
3 alcoholic beverage delivery permit.

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

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

9 "60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC--HEARING
10 OFFICER.--All hearings held pursuant to the provisions of the
11 Liquor Control Act shall be conducted by the director or a
12 hearing officer appointed by the director and shall be held in
13 the county in which the licensed premises or the business of
14 the person issued an alcoholic beverage delivery permit that
15 [~~are~~] is the subject matter of the hearing [~~are~~] is located.
16 All such hearings shall be open to the public."

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

19 "60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS--
20 INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

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

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1 the complaint.

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

5 C. If the director believes from the report that
6 probable cause exists for filing charges against the licensee
7 for the revocation or suspension of [~~his~~] the licensee's
8 license or permit or for fining [~~him~~] the licensee, or for
9 both, [~~he~~] the director or [~~his~~] the director's designee shall
10 file in the department a charge against the licensee in the
11 name of the state, stating the nature of the grounds relied
12 upon for the filing, the approximate date of the alleged
13 violation and the names and addresses of the witnesses who are
14 expected to give testimony or evidence against the licensee.

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

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

23 F. The director shall appoint a hearing officer no
24 later than ten days prior to the date set for the hearing at
25 which the licensee shall appear to explain why [~~his~~] the

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1 licensee's license or permit should not be revoked or suspended
2 or why the licensee should not be fined, or both.

3 G. The director shall have a copy of the charge and
4 a copy of the order to show cause sent to the licensee or the
5 licensee's resident agent at the agent's last known address by
6 certified mail at least fourteen days before the date set for
7 the hearing on the order to show cause.

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

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

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1 I. If the licensee fails to appear without good
2 cause at the time and place designated in the order to show
3 cause for the hearing, the director shall order the
4 nonappearance of the licensee to be entered in the record of
5 hearing and shall order the license or permit revoked or
6 suspended or the licensee fined, or both, on all the grounds
7 alleged in the charge and shall cause the record of hearing to
8 show the particulars in detail. In such a case, there shall be
9 no reopening, appeal or review of the proceedings.

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

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

21 (1) the director or the hearing officer shall
22 administer oaths to all witnesses, the department shall cause
23 all testimony and evidence in support of the grounds alleged in
24 the charge to be presented in the presence of the licensee and
25 the director shall allow the licensee or [~~his~~] the licensee's

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1 attorney to cross-examine all witnesses;

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

5 (3) the department shall have the right to
6 cross-examine the licensee or any witness testifying in [~~his~~]
7 the licensee's favor;

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

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

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

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

22 L. No admission of guilt, admission against
23 interest or transcript of testimony made or given in [~~any~~] a
24 hearing pursuant to this section shall be received or used in
25 [~~any~~] criminal proceedings wherein the licensee is a defendant;

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1 provided, however, if the licensee commits perjury in a
2 hearing, the evidence shall be admissible in a perjury trial if
3 otherwise competent and relevant.

4 M. The director shall adopt reasonable
5 [~~regulations~~] rules setting forth uniform standards of
6 penalties concerning fines and suspensions imposed by the
7 director.

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

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

15 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

16 A. No injunction or writ of mandamus or other legal
17 or equitable process shall issue in any suit, action or
18 proceeding to prevent or enjoin any finding of guilt or order
19 of suspension or revocation or fine made by a liquor control
20 hearing officer under the provisions of Section 60-6C-4 NMSA
21 1978. A licensee aggrieved or adversely affected by an order
22 of revocation, suspension or fine shall have the right to
23 appeal to the district court pursuant to the provisions of
24 Section 39-3-1.1 NMSA 1978.

25 B. No appeal shall have the effect of suspending

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1 the operation of the order of suspension, revocation or fine,
2 but the liquor control hearing officer may, for good cause
3 shown and upon such terms and conditions as ~~[he]~~ the officer
4 may find are just, in ~~[his]~~ the officer's discretion suspend
5 the operation of the order of suspension, revocation or fine
6 pending the appeal. The court shall tax costs against the
7 losing party.

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

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

14 "60-6E-3. DEFINITIONS.--As used in ~~[Chapter 60, Article~~
15 ~~6D NMSA 1978]~~ the Alcohol Server Education Article of the
16 Liquor Control Act:

17 A. "director" means the director of the division;

18 B. "division" means the ~~[alcohol and gaming]~~
19 alcoholic beverage control division of the regulation and
20 licensing department;

21 C. "licensee" means a person issued a license
22 pursuant to the provisions of the Liquor Control Act to sell,
23 serve or dispense alcoholic beverages for consumption and not
24 for resale;

25 D. "program" means an alcohol server education

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1 course and examination approved by the director to be
2 administered by providers;

3 E. "provider" means an individual, partnership,
4 corporation, public or private school or any other legal entity
5 certified by the director to provide a program;

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

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

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

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

19 "60-6E-8. SERVER PERMIT--SUSPENSION--REVOCATION--
20 ADMINISTRATIVE FINES--PENALTIES.--~~[In addition to any other~~
21 ~~penalties available]~~ The following penalties ~~[may be imposed]~~
22 are in addition to any other penalties available for sales to
23 minors or intoxicated persons in violation of the provisions of
24 the Liquor Control Act or rules of the division:

25 A. the director may suspend a server's server

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1 permit for a period of thirty days or fine the server in an
2 amount not to exceed five hundred dollars (\$500), or both, when
3 ~~[he]~~ the director finds that the server is guilty of a first
4 offense of selling, serving, delivering or dispensing an
5 alcoholic beverage to an intoxicated person in violation of
6 Section 60-7A-16 NMSA 1978 or to a minor in violation of
7 Section 60-7B-1 NMSA 1978;

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

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

24 D. no person whose server permit is suspended or
25 revoked pursuant to the provisions of this section may be a

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1 server of alcoholic beverages on a licensed premises or deliver
2 alcoholic beverages during the period of suspension or
3 revocation;

4 E. no person whose server permit is suspended may
5 serve or deliver alcoholic beverages on or after the date of
6 suspension unless the person obtains a new server permit in
7 accordance with the provisions of [~~Article 6D of Chapter 60~~]
8 the Alcohol Server Education Article of the Liquor Control Act;
9 and

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

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

17 "60-6E-9. ALCOHOL SERVER EDUCATION--REQUIRED FOR LICENSE
18 RENEWAL.--A licensee seeking renewal of a license shall submit
19 to the division, as a condition of license renewal, proof that
20 the licensee, [~~his~~] the lessee, if any, and each server
21 employed by the licensee or lessee during the prior licensing
22 year have or had valid server permits at all times that
23 alcoholic beverages were sold, served, delivered or dispensed."

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

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1 "60-6E-10. ADMINISTRATIVE PROCEEDINGS--HEARINGS.--

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

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

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

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

20 "60-7A-4. SALE, SHIPMENT AND DELIVERY UNLAWFUL.--

21 A. It is unlawful for [~~any~~] a person on [~~his~~] the
22 person's own behalf or as the agent of another person, except a
23 licensed New Mexico wholesaler or manufacturer or the agent of
24 either, to directly or indirectly sell or offer for sale for
25 shipment into the state or ship into the state, except as

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1 provided in Section 60-7A-3 NMSA 1978, [~~any~~] alcoholic
2 beverages unless [~~such~~] the person or [~~his~~] the person's
3 principals [~~has~~] have secured a nonresident license as provided
4 in Section [~~60-7A-7~~] 60-6A-7 NMSA 1978.

5 B. It is a violation of the Liquor Control Act to
6 deliver any alcoholic beverages transported into the state
7 unless the delivery is made in accordance with Section 60-7A-3
8 NMSA 1978 or Section 1 of this 2021 act.

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

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

13 "60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES,
14 RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR LESSEES
15 AND CLUBS.--It is a violation of the Liquor Control Act for any
16 dispenser, canopy licensee, restaurant licensee, governmental
17 licensee or its lessee or club to:

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

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

25 C. directly, indirectly or through subterfuge, own,

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1 operate or control any interest in a wholesale liquor
2 establishment or liquor manufacturing or wine bottling firm;
3 provided that this section shall not prevent:

4 (1) a dispenser from owning an interest in a
5 legal entity, directly or indirectly or through an affiliate,
6 that wholesales alcoholic beverages and that operates or
7 controls an interest in an establishment operating pursuant to
8 the provisions of Subsection B of Section 60-7A-10 NMSA 1978;
9 or

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

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

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

24 F. employ or engage a person to sell, serve,
25 deliver or dispense alcoholic beverages during a period when

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1 the server permit of that person is suspended or revoked."

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

4 "60-7A-16. SALE TO INTOXICATED PERSONS.--It is a
5 violation of the Liquor Control Act for a person to sell,
6 deliver or serve alcoholic beverages to or to procure or aid in
7 the procurement of alcoholic beverages for an intoxicated
8 person if the person selling, delivering, serving, procuring or
9 aiding in procurement knows or has reason to know that [~~he~~] the
10 person is selling, delivering, serving, procuring or aiding in
11 procurement of alcoholic beverages for a person [~~that~~] who is
12 intoxicated."

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

15 "60-7B-5. REFUSAL TO SELL, [~~OR~~] SERVE OR DELIVER
16 ALCOHOLIC BEVERAGES TO PERSON UNABLE TO PRODUCE IDENTITY
17 CARD.--[~~Any~~] A person licensed pursuant to the provisions of
18 the Liquor Control Act or any employee, agent or lessee of that
19 person or any person delivering alcoholic beverages on behalf
20 of that person shall refuse to sell, deliver or serve alcoholic
21 beverages to any person who is unable to produce an identity
22 card as evidence that [~~he~~] the person is twenty-one years of
23 age or over."

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

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