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SENATE BILL 32

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF "CIDER" IN THE LIQUOR EXCISE TAX ACT AND THE LIQUOR CONTROL ACT TO MORE CLOSELY ALIGN WITH THE FEDERAL CIDER ACT; PROVIDING A TAX RATE DIFFERENTIAL FOR CIDER MANUFACTURED OR PRODUCED BY A SMALL WINEGROWER.

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

SECTION 1. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended by Laws 2013, Chapter 94, Section 1 and by Laws 2013, Chapter 95, Section 1) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin,

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1 aromatic bitters or any similar beverage, including blended or  
2 fermented beverages, dilutions or mixtures of one or more of  
3 the foregoing containing more than one-half of one percent  
4 alcohol by volume, but "alcoholic beverages" does not include  
5 medicinal bitters;

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

10 C. "cider" means an alcoholic beverage made from  
11 the normal alcoholic fermentation of the juice of sound, ripe  
12 apples or pears that contains not less than one-half of one  
13 percent of alcohol by volume and not more than [~~seven~~] eight  
14 and one-half percent of alcohol by volume;

15 D. "department" means the taxation and revenue  
16 department, the secretary of taxation and revenue or any  
17 employee of the department exercising authority lawfully  
18 delegated to that employee by the secretary;

19 E. "fortified wine" means wine containing more than  
20 fourteen percent alcohol by volume when bottled or packaged by  
21 the manufacturer, but "fortified wine" does not include:

22 (1) wine that is sealed or capped by cork  
23 closure and aged two years or more;

24 (2) wine that contains more than fourteen  
25 percent alcohol by volume solely as a result of the natural

1 fermentation process and that has not been produced with the  
2 addition of wine spirits, brandy or alcohol; or

3 (3) vermouth and sherry;

4 F. "microbrewer" means:

5 (1) for years prior to 2014, a person who  
6 produces [~~fewer~~] less than five thousand barrels of beer in a  
7 year;

8 (2) for years 2014 through 2023, a person who  
9 produces [~~fewer~~] less than fifteen thousand barrels of beer in  
10 a year; and

11 (3) for year 2024 and subsequent years, a  
12 person who produces [~~fewer~~] less than five thousand barrels of  
13 beer in a year;

14 G. "person" includes, to the extent permitted by  
15 law, a federal, state or other governmental unit or subdivision  
16 or an agency, department, institution or instrumentality  
17 thereof;

18 H. "small winegrower" means a winegrower who  
19 produces less than one million five hundred thousand liters of  
20 wine in a year;

21 I. "spirituous liquor" means alcoholic beverages,  
22 except fermented beverages such as wine, beer, cider and ale;

23 J. "wholesaler" means a person holding a license  
24 issued under Section 60-6A-1 NMSA 1978 or a person selling  
25 alcoholic beverages that were not purchased from a person

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1 holding a license issued under Section 60-6A-1 NMSA 1978;

2 K. "wine" means an alcoholic beverage other than  
3 cider that is obtained by the fermentation of the natural sugar  
4 contained in fruit or other agricultural products, with or  
5 without the addition of sugar or other products, and that does  
6 not contain more than twenty-one percent alcohol by volume; and

7 L. "winegrower" means a person licensed pursuant to  
8 Section 60-6A-11 NMSA 1978."

9 SECTION 2. Section 7-17-5 NMSA 1978 (being Laws 1993,  
10 Chapter 65, Section 8, as amended by Laws 2013, Chapter 94,  
11 Section 2 and by Laws 2013, Chapter 95, Section 2) is amended  
12 to read:

13 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

14 A. There is imposed on a wholesaler who sells  
15 alcoholic beverages on which the tax imposed by this section  
16 has not been paid an excise tax, to be referred to as the  
17 "liquor excise tax", at the following rates on alcoholic  
18 beverages sold:

19 (1) on spirituous liquors, one dollar sixty  
20 cents (\$1.60) per liter;

21 (2) on beer, except as provided in Paragraph  
22 (5) of this subsection, forty-one cents (\$.41) per gallon;

23 (3) on wine, except as provided in Paragraphs  
24 (4) and (6) of this subsection, forty-five cents (\$.45) per  
25 liter;

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1 (4) on fortified wine, one dollar fifty cents  
2 (\$1.50) per liter;

3 (5) on beer manufactured or produced by a  
4 microbrewer and sold in this state, provided that proof is  
5 furnished to the department that the beer was manufactured or  
6 produced by a microbrewer, eight cents (\$.08) per gallon on the  
7 first ten thousand barrels sold and twenty-eight cents (\$.28)  
8 per gallon for all barrels sold over ten thousand barrels but  
9 [~~fewer~~] less than fifteen thousand barrels;

10 (6) on wine manufactured or produced by a  
11 small winegrower and sold in this state, provided that proof is  
12 furnished to the department that the wine was manufactured or  
13 produced by a small winegrower:

14 (a) ten cents (\$.10) per liter on the  
15 first eighty thousand liters sold;

16 (b) twenty cents (\$.20) per liter on  
17 each liter sold over eighty thousand liters but not over nine  
18 hundred fifty thousand liters; and

19 (c) thirty cents (\$.30) per liter on  
20 each liter sold over nine hundred fifty thousand liters but not  
21 over one million five hundred thousand liters; [~~and~~]

22 (7) on cider, except as provided in Paragraph  
23 (8) of this subsection, forty-one cents (\$.41) per gallon; and

24 (8) on cider manufactured or produced by a  
25 small winegrower and sold in this state, provided that proof is

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1 furnished to the department that the cider was manufactured or  
2 produced by a small winegrower, eight cents (\$.08) per gallon  
3 on the first ten thousand barrels sold and twenty-eight cents  
4  (\$.28) per gallon for all barrels sold over ten thousand  
5 barrels but less than fifteen thousand barrels.

6 B. The volume of wine transferred from one  
7 winegrower to another winegrower for processing, bottling or  
8 storage and subsequent return to the transferor shall be  
9 excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable  
10 volume of wine of the transferee. Wine transferred from an  
11 initial winegrower to a second winegrower remains a tax  
12 liability of the transferor, provided that if the wine is  
13 transferred to the transferee for the transferee's use or for  
14 resale, the transferee then assumes the liability for the tax  
15 due pursuant to this section.

16 C. A transfer of wine from a winegrower to a  
17 wholesaler for distribution of the wine transfers the liability  
18 for payment of the liquor excise tax to the wholesaler upon the  
19 sale of the wine by the wholesaler."

20 SECTION 3. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
21 Chapter 39, Section 3, as amended by Laws 2016, Chapter 73,  
22 Section 1 and by Laws 2016, Chapter 76, Section 1) is amended  
23 to read:

24 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
25 Act:

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1           A. "alcoholic beverages" means distilled or  
2 rectified spirits, potable alcohol, powdered alcohol, frozen or  
3 freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic  
4 bitters bearing the federal internal revenue strip stamps or  
5 any similar alcoholic beverage, including blended or fermented  
6 beverages, dilutions or mixtures of one or more of the  
7 foregoing containing more than one-half percent alcohol, but  
8 excluding medicinal bitters;

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

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

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

20           E. "club" means:

21                   (1) any nonprofit group, including an  
22 auxiliary or subsidiary group, organized and operated under the  
23 laws of this state, with a membership of not less than fifty  
24 members who pay membership dues at the rate of not less than  
25 five dollars (\$5.00) per year and who, under the constitution

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1 and bylaws of the club, have all voting rights and full  
2 membership privileges, and which group is the owner, lessee or  
3 occupant of premises used exclusively for club purposes and  
4 which group the director finds:

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

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

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

24 F. "commission" means the secretary of public  
25 safety when the term is used in reference to the enforcement

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1 and investigatory provisions of the Liquor Control Act and  
2 means the superintendent of regulation and licensing when the  
3 term is used in reference to the licensing provisions of the  
4 Liquor Control Act;

5 G. "department" means the New Mexico state police  
6 division of the department of public safety when the term is  
7 used in reference to the enforcement and investigatory  
8 provisions of the Liquor Control Act and means the director of  
9 the alcohol and gaming division of the regulation and licensing  
10 department when the term is used in reference to the licensing  
11 provisions of the Liquor Control Act;

12 H. "director" means the chief of the New Mexico  
13 state police division of the department of public safety when  
14 the term is used in reference to the enforcement and  
15 investigatory provisions of the Liquor Control Act and means  
16 the director of the alcohol and gaming division of the  
17 regulation and licensing department when the term is used in  
18 reference to the licensing provisions of the Liquor Control  
19 Act;

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

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

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

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

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

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

22           O. "licensed premises" means the contiguous areas  
23 or areas connected by indoor passageways of a structure and the  
24 outside dining, recreation and lounge areas of the structure  
25 and the grounds and vineyards of a structure that is a winery

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1 that are under the direct control of the licensee and from  
2 which the licensee is authorized to sell, serve or allow the  
3 consumption of alcoholic beverages under the provisions of its  
4 license; provided that in the case of a restaurant, "licensed  
5 premises" includes a restaurant that has operated continuously  
6 in two separate structures since July 1, 1987 and that is  
7 located in a local option district that has voted to disapprove  
8 the transfer of liquor licenses into that local option  
9 district, hotel, golf course, ski area or racetrack and all  
10 public and private rooms, facilities and areas in which  
11 alcoholic beverages are sold or served in the customary  
12 operating procedures of the restaurant, hotel, golf course, ski  
13 area or racetrack. "Licensed premises" also includes rural  
14 dispenser licenses located in the unincorporated areas of a  
15 county with a population of less than thirty thousand, located  
16 in buildings in existence as of January 1, 2012, that are  
17 within one hundred fifty feet of one another and that are under  
18 the direct control of the license holder;

19 P. "local option district" means a county that has  
20 voted to approve the sale, serving or public consumption of  
21 alcoholic beverages, or an incorporated municipality that falls  
22 within a county that has voted to approve the sale, serving or  
23 public consumption of alcoholic beverages, or an incorporated  
24 municipality of over five thousand population that has  
25 independently voted to approve the sale, serving or public

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1 consumption of alcoholic beverages under the terms of the  
2 Liquor Control Act or any former act;

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

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

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

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

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

18 V. "restaurant" means an establishment having a New  
19 Mexico resident as a proprietor or manager that is held out to  
20 the public as a place where meals are prepared and served  
21 primarily for on-premises consumption to the general public in  
22 consideration of payment and that has a dining room, a kitchen  
23 and the employees necessary for preparing, cooking and serving  
24 meals; provided that "restaurant" does not include  
25 establishments as defined in rules promulgated by the director

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1 serving only hamburgers, sandwiches, salads and other fast  
2 foods;

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

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

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

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

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

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

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

6           DD. "winer" means a winegrower; and

7           EE. "winery" means a facility in which a winegrower  
8 manufactures and stores wine."

9           SECTION 4. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2018.