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SENATE BILL 92

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO LICENSING; AMENDING DEFINITIONS IN THE LIQUOR CONTROL ACT; CLARIFYING THE REQUIREMENT THAT A BUSINESS SELLING ALCOHOL CANNOT BE WITHIN THREE HUNDRED FEET OF A CHURCH OR SCHOOL.

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

SECTION 1. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended by Laws 2019, Chapter 29, Section 2 and by Laws 2019, Chapter 229, Section 3) is amended to read:

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

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, powdered alcohol, frozen or freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic

1 bitters bearing the federal internal revenue strip stamps or
2 any similar alcoholic beverage, including blended or fermented
3 beverages, dilutions or mixtures of one or more of the
4 foregoing containing more than one-half percent alcohol, but
5 excluding 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. "brewer" means a person who owns or operates a
11 business for the manufacture of beer;

12 D. "cider" means an alcoholic beverage made from
13 the normal alcoholic fermentation of the juice of sound, ripe
14 apples or pears that contains not less than one-half of one
15 percent alcohol by volume and not more than eight and one-half
16 percent alcohol by volume;

17 E. "club" means:

18 (1) any nonprofit group, including an
19 auxiliary or subsidiary group, organized and operated under the
20 laws of this state, with a membership of not less than fifty
21 members who pay membership dues at the rate of not less than
22 five dollars (\$5.00) per year and who, under the constitution
23 and bylaws of the club, have all voting rights and full
24 membership privileges, and which group is the owner, lessee or
25 occupant of premises used exclusively for club purposes and

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1 which group the director finds:

2 (a) is operated solely for recreation,
3 social, patriotic, political, benevolent or athletic purposes;
4 and

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

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

21 F. "commission" means the secretary of public
22 safety when the term is used in reference to the enforcement
23 and investigatory provisions of the Liquor Control Act and
24 means the superintendent of regulation and licensing when the
25 term is used in reference to the licensing provisions of the

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1 Liquor Control Act;

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

9 H. "director" means the chief of the New Mexico
10 state police division of the department of public safety when
11 the term is used in reference to the enforcement and
12 investigatory provisions of the Liquor Control Act and means
13 the director of the alcoholic beverage control division of the
14 regulation and licensing department when the term is used in
15 reference to the licensing provisions of the Liquor Control
16 Act;

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

23 J. "distiller" means a person engaged in
24 manufacturing spirituous liquors;

25 K. "golf course" means a tract of land and

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1 facilities used for playing golf and other recreational
2 activities that includes tees, fairways, greens, hazards,
3 putting greens, driving ranges, recreational facilities,
4 patios, pro shops, cart paths and public and private roads that
5 are located within the tract of land;

6 L. "governing body" means the board of county
7 commissioners of a county or the city council or city
8 commissioners of a municipality;

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

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

19 O. "licensed premises" means the contiguous areas
20 or areas connected by indoor passageways of a structure and the
21 outside dining, recreation and lounge areas of the structure
22 and the grounds and vineyards of a structure that is a winery
23 that are under the direct control of the licensee and from
24 which the licensee is authorized to sell, serve or allow the
25 consumption of alcoholic beverages under the provisions of its

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

16 P. "local option district" means a county that has
17 voted to approve the sale, serving or public consumption of
18 alcoholic beverages, or an incorporated municipality that falls
19 within a county that has voted to approve the sale, serving or
20 public consumption of alcoholic beverages, or an incorporated
21 municipality of over five thousand population that has
22 independently voted to approve the sale, serving or public
23 consumption of alcoholic beverages under the terms of the
24 Liquor Control Act or any former act;

25 Q. "manufacturer" means a distiller, rectifier,

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1 brewer or winer;

2 R. "minor" means a person under twenty-one years of
3 age;

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

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

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

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

25 W. "retailer" means a person licensed under the

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1 provisions of the Liquor Control Act selling, offering for sale
2 or having in the person's possession with the intent to sell
3 alcoholic beverages in unbroken packages, including growlers,
4 for consumption and not for resale off the licensed premises;

5 X. "school" means a supervised program of
6 instruction designed to educate a student in a particular
7 place, manner and subject area and includes a building,
8 structure, parking lot or any property used in the operation of
9 instruction and necessary for the travel and well-being of a
10 student, except for any vehicle used for the transportation of
11 a student;

12 [~~X.~~] Y. "ski area" means a tract of land and
13 facilities for the primary purpose of alpine skiing,
14 snowboarding or other snow sports with trails, parks and at
15 least one chairlift with uphill capacity and may include
16 facilities necessary for other seasonal or year-round
17 recreational activities;

18 [~~Y.~~] Z. "spirituous liquors" means alcoholic
19 beverages as defined in Subsection A of this section except
20 fermented beverages such as wine, beer, cider and ale;

21 [~~Z.~~] AA. "wholesaler" means a person whose place of
22 business is located in New Mexico and who sells, offers for
23 sale or possesses for the purpose of sale any alcoholic
24 beverages for resale by the purchaser;

25 [~~AA.~~] BB. "wine" includes the words "fruit juices"

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1 and means alcoholic beverages obtained by the fermentation of
2 the natural sugar contained in fruit or other agricultural
3 products, with or without the addition of sugar or other
4 products, that do not contain less than one-half percent nor
5 more than twenty-one percent alcohol by volume;

6 ~~[BB.]~~ CC. "wine bottler" means a New Mexico
7 wholesaler who is licensed to sell wine at wholesale for resale
8 only and who buys wine in bulk and bottles it for wholesale
9 resale;

10 ~~[GG.]~~ DD. "winegrower" means a person who owns or
11 operates a business for the manufacture of wine or cider;

12 ~~[DD.]~~ EE. "winer" means a winegrower; and

13 ~~[EE.]~~ FF. "winery" means a facility in which a
14 winegrower manufactures and stores wine or cider."

15 **SECTION 2.** Section 60-6B-10 NMSA 1978 (being Laws 1981,
16 Chapter 39, Section 45, as amended) is amended to read:

17 "60-6B-10. LOCATIONS NEAR CHURCH OR SCHOOL--RESTRICTIONS
18 ON LICENSING.--

19 A. No license shall be issued by the director for
20 the sale of alcoholic beverages at a licensed premises where
21 alcoholic beverages were not sold prior to July 1, 1981 that is
22 located on property within three hundred feet of [any] the
23 property on which a church or school is located.

24 B. A license may be granted for a proposed licensed
25 premises if the owner or lessee has, prior to establishment of

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1 a church or school located within three hundred feet of the
2 proposed licensed premises, applied for, been granted and
3 maintained a valid building permit for the construction or
4 renovation of the proposed licensed premises and has filed on a
5 form prescribed by the director a notice of intention to apply
6 for transfer of a license to the proposed licensed premises.

7 C. A license may be granted for a proposed licensed
8 premises if a person has obtained a waiver from a local option
9 district governing body for the proposed licensed premises.

10 D. For the purposes of this section ~~[all]~~:

11 (1) measurements taken in order to determine
12 the location of licensed premises in relation to churches or
13 schools shall be the straight line distance from the ~~[property~~
14 ~~line-of]~~ outer bounds of the property on which the licensed
15 premises is located to the ~~[property line-of]~~ outer bounds of
16 the property on which the church or school ~~[This provision]~~ is
17 located;

18 (2) the outer bound of the property on which a
19 church or school is located is not limited to those activities
20 associated with a church or school;

21 (3) determinations of property may include the
22 outer bounds of the lot or legal boundary of a parcel of land
23 on which a licensed premises, church or school may be located;
24 and

25 (4) notwithstanding the provisions of Section

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1 60-3A-3 NMSA 1978, "licensed premises" includes the property
2 outside of the area in which the licensee can sell, serve or
3 allow the consumption of alcoholic beverages under the
4 provisions of the licensee's license.

5 E. The provisions of this section shall not apply
6 to ~~[any]~~ a church that has been designated as ~~[an]~~ a historical
7 site by the cultural properties review committee and ~~[which]~~
8 that does not have a regular congregation.

9 F. The provisions of this section shall not apply
10 to a licensee who possessed a license prior to the effective
11 date of this act."