SENNATE BILL 149

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

INTRODUCED BY

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AN ACT

RELATING TO EXECUTIVE REORGANIZATION; RENAMING THE ALCOHOL AND GAMING DIVISION; UPDATING STATUTORY REFERENCES; PROVIDING FOR TRANSFERS.

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

SECTION 1. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--[There is created in the executive branch] The "regulation and licensing department" is created in the executive branch. The department shall not be a cabinet department. The department shall consist of but not be limited to [six] the following divisions [as follows]:

A. the administrative services division;
B. the construction industries division;
C. the financial institutions division;
D. the securities division;
E. the manufactured housing division; and
F. the [alcohol and gaming] alcoholic beverage control division."

SECTION 2. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended by Laws 2016, Chapter 73, Section 1 and by Laws 2016, Chapter 76, Section 1) 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 bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but excluding medicinal bitters;

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

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

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

E. "club" means:

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

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

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

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

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

G. "department" means the New Mexico state police
division of the department of public safety when the term is
used in reference to the enforcement and investigatory
provisions of the Liquor Control Act and means the director of
the [alcohol and gaming] alcoholic beverage control division of
the regulation and licensing department when the term is used
in reference to the licensing provisions of the Liquor Control
Act;

H. "director" means the chief of the New Mexico
state police division of the department of public safety when
the term is used in reference to the enforcement and
investigatory provisions of the Liquor Control Act and means
the director of the [alcohol and gaming] alcoholic beverage
control division of the regulation and licensing department
when the term is used in reference to the licensing provisions
of the Liquor Control Act;

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

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

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

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

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

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

O. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure and the grounds and vineyards of a structure that is a winery that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, "licensed premises" includes a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district, hotel, golf course, ski area or racetrack and all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course, ski area or racetrack. "Licensed premises" also includes rural dispenser licenses located in the unincorporated areas of a
county with a population of less than thirty thousand, located
in buildings in existence as of January 1, 2012, that are
within one hundred fifty feet of one another and that are under
the direct control of the license holder;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DD. "winer" means a winegrower; and

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

SECTION 3. Section 60-3A-7 NMSA 1978 (being Laws 1987, Chapter 254, Section 25, as amended) is amended to read:

"60-3A-7. AUTHORITY OF THE [ALCOHOL AND GAMING] ALCOHOLIC BEVERAGE CONTROL DIVISION.--The [alcohol and gaming] alcoholic beverage control division of the regulation and licensing department has the authority over all matters relating to the
issuance, denial, suspension or revocation of licenses under
the Liquor Control Act. The director of the [alcohol and
gaming] division [of the regulation and licensing department]
may request the department of public safety to provide
investigatory and enforcement support as deemed necessary."

SECTION 4. Section 60-3A-8 NMSA 1978 (being Laws 2001,
Chapter 86, Section 5) is amended to read:

"60-3A-8. POWERS AND DUTIES OF THE DIRECTOR OF THE
[ALCOHOL AND GAMING] ALCOHOLIC BEVERAGE CONTROL DIVISION.--The
director of the [alcohol and gaming] alcoholic beverage control
division of the regulation and licensing department is
responsible for the operation of the division. It is [his] the
director's duty to supervise all operations of the division and
to:

A. administer the laws that the division
administrers, including the Liquor Control Act. The director
shall request the department of public safety to enforce the
provisions of the Liquor Control Act as deemed necessary;

B. exercise general supervisory authority over all
employees of the division;

C. organize the division into units to enable it to
function most effectively;

D. confer authority and delegate responsibility as
is necessary and appropriate;

E. employ, within the limitations of current

appropriations and personnel laws, persons as are required to
discharge [his] the director's duties;

F. undertake studies and conduct courses of
instruction for division employees that will improve the
operations of the division and advance its purposes; and

G. require compliance by employees of the division
with [his] the director's verbal and written instructions by
whatever disciplinary means appropriate."

SECTION 5. TEMPORARY PROVISION--TRANSFERS OF PROPERTY,
CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--On the
effective date of this act, all:

A. functions, personnel, appropriations, money,
records, furniture, equipment and other property of the alcohol
and gaming division of the regulation and licensing department
are transferred to the alcoholic beverage control division of
that department;

B. contractual obligations of the alcohol and
gaming division of the regulation and licensing department
shall be deemed to be references to the alcoholic beverage
control division of that department; and

C. references in law to the alcohol and gaming
division of the regulation and licensing department shall be
deemed to be references to the alcoholic beverage control
division of that department.