



New Mexico Regulation and Licensing Department ALCOHOL AND GAMING DIVISION

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2019 Renewal Memorandum

To: All License Holders
From: Andrew Vallejos, Director
Date: June 2019
Re: Legislative Update

It is renewal time again, and I am writing to provide an update from the past legislative session. Renewal is always a good time to take stock of the past year, to think about what went well and what could be improved on in the future. To that end, take the time to insure that all your required posters are up, that your staff are trained on the importance of preventing over-consumption and under-age drinking. Also, take the time to revisit your security plans, and capital improvements that could help with liquor compliance.

2019 Legislation

Below is a summary of the 2019 liquor legislation that was signed into law by Governor Michelle Lujan Grisham:

SB 149 Rename Alcohol and Gaming Division

Senator Griggs and Senator Pirtle sponsored a bill to change the name of our division from the "Alcohol and Gaming Division" (AGD) to the "Alcoholic Beverages Control Division" (ABC). As many of you know, our division was previously named ("ABC"), until the legislature passed the Bingo and Raffle Act, which vested the division with regulating certain forms of gaming. However, several years ago most of our gaming regulation was transferred to the N.M. Gaming Control Board. Therefore, we will be returning to our original name. We will be phasing out materials with our old name as we go forward, but bear with us as we implement our new/old name "Alcoholic Beverages Control Division" (ABC). Please note that we will also be changing our website address. It will now be www.rld.state.nm.us/abc.

SB 143 Liquor Permit, Tax and Definition Change

Senator Mimi Stewart and Representative Javier Martinez sponsored legislation to address several issues relating to Small Brewery, Wine Growers and Craft Distiller licenses.

1. **Excise Tax:** Wholesalers of alcoholic beverages must pay an "excise tax." Previous to this legislation there had been a preferential excise tax on

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“Micro-brewers” of beer but was due for sunset in 2024. This bill removed the sunset clause on the excise tax and adjusted the excise tax as follows:

- a. **Craft Distilling**: Under current law Craft Distillers paid \$1.60 per liter which is the standard rate for spirituous liquors. SB 143 provides that for spirits up to 10% alcohol by volume, \$.08 per liter for the first 250,000 liters, \$.28 per liter for next 250,000 liters. For spirits over 10% by volume, \$.32 per liter on the first 175,000 liters and \$.65 per liter for next 175,000 liters.
- b. **“Micro-brewer”**: Under the Liquor Excise Act, N.M. Tax and Rev refer to small brewers of beer as “micro-brewers.” Under the Liquor Control Act, we define small brewers as operations that produce less than 200,000 barrels a year. Currently, the maximum production amount varies between 5000 and 15,000 barrels of beer to qualify for the special microbrewer excise tax rates. SB143 redefines a “micro-brewer” as a person who produces less than 200,000 barrels per year.

Under current law the standard excise tax on beer is \$.41 per gallon. For small brewers it is \$.08 per gallon on the first 10,000 barrels and \$.28 per gallon for volumes from 10,000 to 15,000 barrels.

SB 413 changed the excise tax as follows: \$.08 per gallon on the first 30,000 barrels, \$.28 per gallon for volumes from 30,000 to 60,000 barrels, and \$.41 for volumes from 60,000 to 200,000.

- c. **Cider**: Currently Cider is taxed at the standard rate of \$.41 per gallon. SB 413 changes the excise tax as follows: \$.08 per gallon on the first 30,000 barrels, \$.28 per gallon for volumes from 30,000 to 60,000 barrels, and \$.41 for volumes from 60,000 to 200,000.
 - d. **Wine Growers**: The excise tax on wine did not change. It remains \$.10 per liter on the first 80,000 liters sold; \$.20 per liter sold over 80,000 but not more than 950,000 liters; and \$.30 per liter on each liter sold over 950,000 and 1,500,000 liters sold.
2. **Definition of Cider**: SB 143 changed the definition of “Cider” to include cider made from pears and changed the allowable percent of alcohol by volume from 7% to 8.5%.
 3. **Private Celebration Permits**: Currently, Craft Distillers, Small Brewers, and winegrowers can obtain an off-premises permit for “public celebrations.” SB 143 would allow them to also obtain an “on or off” premises private celebration permit.

“Private celebrations” means any private or public venue not open to the general public and which is subject to invitation. Generally, these are private parties such as wedding receptions.

This is great news for areas of the State that don't have enough private alcohol catering options, but there are important caveats. If you are Winegrower seeking to obtain a private celebration permit you can only sell wine or cider produced by or for your wine growing operation. But you can supply any combination of beer produced by a small brewer.

If you are a small brewer seeking a private celebration permit you can only sell beer produced by or for your brewing operation. But you can serve any wines made by a New Mexico winegrower.

If you are a craft distiller seeking a private celebration permit you can only sell by the glass spirituous liquors produced by or for your distilling operation.

We anticipate having trainings for these new types of Special Dispensing Permits, but meanwhile if you have any questions please do not hesitate to contact us at ABC.

4. **Definition of Small Brewer:** In recent years we have seen an explosive growth in the small brewing community, but with it we have also seen an influx of small brewers who are not brewing significant volumes of beer but who are taking advantage of the reciprocity of small brewer taps to essentially operate taprooms with other people's beer as the primary products. To address this situation, SB 143 provides that renewal of a small brewer's license shall be conditioned on proof that:
- a. No less than 50% of the gross receipts from the sale of beer for the preceding 12 months are derived from the sale of beer produced by the licensee.
 - b. OR, the licensee manufactures no less than 50 barrels of beer per license year at the licensee's premises.

Because the legislature defined this as a renewal based provision, there cannot be "grandfathering" of current low volume brewers. It would be the exception swallowing the rule. However, affected small brewers might avail themselves of the "alternating proprietorship" statute 60-6B-20. Of course, the most favorable course of action would be to conform your business model to satisfy the requirements of deriving at least 50% of your beer sales from your own production or ramping up investment increasing capacity to brew more than 50 barrels per year.

If you feel that you might be affected by this new law, please do not hesitate to contact us at ABC.

HB 549 Removal of Partially Consumed Wine

Rep. Sweetser's bill allows a winery to permit a customer to remove a partially consumed bottle of wine. Much like transporting a partially consumed bottle of wine from a restaurant, the winery employee must attach the customer receipt, re-cork and seal in a tamper-proof bag. It is

very important to comply with all three requirements to avoid any potential open container violations for your customers.

HB 151 Liquor Deliveries by Licensed Minors

Rep. Ruiloba's bill allows persons with a N.M. Commercial Driver's License (CDL), who are over 18 years old but still considered "minors" under the Liquor Control Act (under 21) to be employed by liquor wholesalers to make deliveries.