

# NEW MEXICO STATE STATUTES

## ANNOTATED 1978

---

### CHAPTER 60 BUSINESS LICENSES

INCLUDES THE FOLLOWING AMENDED SECTIONS PERTAINING  
TO ALCOHOL AND GAMING DIVISION:

§60-3A-3            §60-6A-10  
§60-6A-31        §60-6B-19



### 2016 SUPPLEMENT TO STATUTES

THIS SUPPLEMENT, ISSUED FEBRUARY 9<sup>TH</sup>, 2017,  
BY RLD ALCOHOL AND GAMING DIVISION,  
**SERVES TO UPDATE THE 2015 NMSA BOOKLET,**  
AND INCLUDES ALL APPLICABLE AMENDED LAWS  
ENACTED THROUGH THE SECOND SESSION  
OF THE FIFTY-SECOND LEGISLATURE (2016),  
EFFECTIVE MAY 26, 2016

### **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 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 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.

**History:** Laws 1981, ch. 39, §3; 1984, ch. 58, §1; 1987, ch. 254, §23; 1998, ch. 109, §1; 1999, ch. 64, §1; 2001, ch. 86, §2; 2004, ch. 22, §1; 2009, ch. 139, §1; 2012, ch. 25, §1; 2015, ch. 3, §28; 2015, ch. 102, §2; 2016, ch. 73, §1; 2016, ch. 76, §1.

### **60-6A-10. Governmental license.**

A. A governmental entity may sell alcoholic beverages directly or through its lessee at a governmental facility if the governing body applies to the director for a governmental license. The governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for its operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises. On the licensed premises of a municipal baseball park, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a municipal baseball park. A server as defined in Section [60-6E-3](#) NMSA 1978 is not required to be present in a skybox to serve alcoholic beverages to the person leasing the skybox or the person's guests.

C. A governmental entity holding a governmental license shall annually and not less than sixty days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, the director shall notify the governing body of the decision and shall conduct a hearing as provided by law. If the director finds that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license.

D. The provisions of Section [60-6A-18](#) NMSA 1978 shall not apply to governmental licenses.

E. For the purposes of this section:

(1) "governmental entity" means a municipality, a county, a state fair that is held for less than ten days per year, the state fair commission, a state museum, a state university or the spaceport authority;

(2) "governmental facility" means locations on property owned or operated by a governmental entity, including county fairs; state fairs held for less than ten days per year; convention centers; airports; civic centers; food service facilities in state museums; auditoriums; all facilities on the New Mexico state fairgrounds; facilities used for athletic competitions; golf courses, including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee; other facilities used for cultural or artistic performances; and all spaceport authority facilities, but "governmental facility" does not include tennis facilities;

(3) "lessee" means an individual, corporation, partnership, firm or association that fulfills the requirements set forth in Subsections A through D of Section [60-6B-2](#) NMSA 1978;

(4) "municipal baseball park" means a governmental facility owned by a governmental entity in a class A county having a population of three hundred fifty thousand or more pursuant to the most recent federal decennial census that is the home stadium of an affiliate of a professional baseball team and that may be used throughout the year for baseball games and other events; and

(5) "skybox" means a room or area of seating of a municipal baseball park, separated from the general seating and usually located in the upper decks of the park, leased to a person for that person's exclusive use during baseball games and at any other time throughout the year.

F. The provisions of Section [60-6B-10](#) NMSA 1978, with respect to golf courses owned by a governmental entity and civic centers owned and operated by a governmental entity, shall not apply to governmental licenses. **History:** Laws 1981, ch. 39, §27; 1989, ch. 379, §1; 1992, ch. 14, §1; 2002, ch. 108, §1; 2003, ch. 117, §1; 2015, ch. 117, §1; 2016, ch. 68, §1.

### **60-6A-31. State fair; golf courses; ski areas; alcoholic beverage sales restrictions.**

Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair, on the grounds of golf courses, on the grounds of ski areas and on the grounds and in the vineyards of a winery only on the licensed premises in controlled access areas of the state fair, golf courses, ski areas and wineries, the designation of which has been negotiated as part of the license application or renewal process.

**History:** Laws 1993, ch. 68, § 37; 1999, ch. 64, § 2; 2009, ch. 139, § 2; 2016, ch. 76, § 2.

### **60-6B-19. Retailers and dispensers; segregated sales; table wines excepted.**

A. Except as provided in Subsection B of this section, the director shall by rule develop procedures for segregated alcohol sales by every retailer or dispenser who sells alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises and whose sales are less than sixty percent of their total sales, giving serious consideration to the potentially adverse impact of segregated sales on different sizes of the establishments of the retailer or dispenser. The rules shall include:

(1) a provision to allow segregated sales of beer or cider that is packaged in a growler;

(2) a procedure by which a retailer or dispenser may fill or refill a growler and allow the growler to be removed from the licensed premises after the growler is sealed with a tamper-proof seal and the customer's sales receipt is attached to the growler; and

(3) a requirement that a retailer or dispenser shall sterilize a growler provided by a customer before the growler is refilled and sealed.

B. There shall not be segregated sales of table wine by retailers or dispensers who sell alcoholic beverages in the manner described in Subsection A of this section.

C. For purposes of this section, "table wine" means wine containing fourteen percent or less alcohol by volume when bottled or packaged by the manufacturer, but may also include:

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

(2) wine that contains more than fourteen percent alcohol by volume produced solely as a result of the natural fermentation process and not produced with the addition of wine spirits, brandy or alcohol; or

(3) vermouth and sherry.

**History:** Laws 1993, ch. 68, §36; 2003, ch. 376, §1; 2016, ch. 73, §2.