

**NEW MEXICO STATUTES ANNOTATED  
1978 COMPILATION**

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**CHAPTER 60 BUSINESS LICENSES**

**As pertaining to Alcohol and Gaming Division**

**INCLUDES THE FOLLOWING SECTIONS:**

**§60-3A-1 – 60-3A-12;      §60-5A-1 – 60-5A-2**  
**§60-6A-1 – 60-6A-35;      §60-6B-1 – 60-6B-21**  
**§60-6C-1 – 60-6C-9;      §60-6E-1 – 60-6E-12**  
**§60-7A-1 – 60-7A-25;      §60-7B-1 – 60-7B-13**  
**§60-8A-1 – 60-8A-19;**



Current through the Second Session of the Fifty-Second Legislature (2016)  
Includes Rules effective May 24, 2016

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## **ARTICLE 3A | General Provisions**

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### **60-3A-1. Short title.**

Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978 may be cited as the "Liquor Control Act". **History:** Laws 1981, ch. 39, §1; 1984, ch. 85, §9; 2015, ch. 3, §27; 2015, ch. 102, §1.

### **60-3A-2. Liquor policy of state; investigation of applicants; responsibility of licensees.**

A. It is the policy of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state; and it is the responsibility of the director to investigate the qualifications of all applicants for licenses under that act, to investigate the conditions existing in the community in which the premises for which any license is sought are located before the license is issued, to the end that licenses shall not be issued to persons or for locations when the issuance is prohibited by law or contrary to the public health, safety or morals.

B. It is the intent of the Liquor Control Act that each person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act and for all taxes charged against the license.

**History:** Laws 1981, ch. 39, § 2.

### **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.

#### **60-3A-4. Storage permitted.**

Nothing in the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] shall be construed to prohibit the storage of alcoholic beverages in bona fide public warehouses or guardian warehouses by nonresident licensees or wholesalers for usual and ordinary commercial purposes. **History:** Laws 1981, ch. 39, § 72.

#### **60-3A-5. Exemptions from act.**

Nothing in the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] applies to:

- A. the transportation of alcoholic beverages through New Mexico;
- B. the transportation of alcoholic beverages into a United States customs bonded warehouse located in New Mexico;
- C. ethyl alcohol intended for or used for any of the following purposes:
  - (1) scientific, mechanical, industrial, medical, chemical or culinary purposes;
  - (2) use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder; or
  - (3) in the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder; or
- D. the sale, service, possession or public consumption of alcoholic beverages by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction if the alcoholic beverages are purchased from New Mexico wholesalers and if the sale, service, possession or public consumption of alcoholic beverages is authorized by the laws of the Indian nation, tribe or pueblo having jurisdiction over those lands and is consistent with the ordinance of the Indian nation, tribe or pueblo certified by the secretary of the interior and published in the federal register according to the laws of the United States. **History:** Laws 1981, ch. 39, §112; 1995, ch. 203, §1.

#### **60-3A-6. Authority of department of public safety.**

The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department.

**History:** 1978 Comp., § 60-3A-6, enacted by Laws 1987, ch. 254, § 24; 2001, ch. 86, § 3.

#### **60-3A-6.1. Local law enforcement; department of public safety; reporting requirements; authority to request investigations.**

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.

B. The director of the alcohol and gaming division of the regulation and licensing department may request the investigators of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act. **History:** 1978 Comp., §60-4B-4.1, enacted by Laws 1993, ch. 329, §1; recompiled and amended as §60-3A-6.1 by Laws 2015, ch. 3, §29.

### **60-3A-7. Authority of the alcohol and gaming division.**

The alcohol and gaming 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 [<sup>60-3A-1 NMSA 1978</sup>]. 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.

**History:** 1978 Comp., §60-3A-7, enacted by Laws 1987, ch. 254, §25; 2001, ch. 86, §4.

### **60-3A-8. Powers and duties of the director of the alcohol and gaming division.**

The director of the alcohol and gaming division of the regulation and licensing department is responsible for the operation of the division. It is his duty to supervise all operations of the division and to:

A. administer the laws that the division administers, including the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>]. 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 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 verbal and written instructions by whatever disciplinary means appropriate. **History:** Laws 2001, ch. 86, § 5.

#### **60-3A-8.1. Investigative authority and powers.**

A. For the purpose of enforcing the provisions of the Liquor Control Act, the director is authorized to examine and to require the production of pertinent records, books, information or evidence, to require the presence of any person and to require the person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. Any subpoena issued by the director shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon a person, if the person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce the person's books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The director may exchange identification records and information with law enforcement agencies for official use. Identification records received from the United States department of justice, including identification records based on fingerprints, shall be used only to effectuate the licensing purposes and provisions of the Liquor Control Act. The department shall not disseminate such information except to other law enforcement agencies for official use only.

F. For the purposes of this section, "director" means the director of the alcohol and gaming division of the regulation and licensing department. **History:** Laws 1981, ch. 39, §7; 1978 Comp., §60-4B-4 recompiled and amended as §60-3A-8.1 by Laws 2015, ch. 3, §30.

### **60-3A-9. Administrative authority and powers.**

A. For the purpose of administering the licensing provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978], the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the alcohol and gaming division of the regulation and licensing department, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the legal counsel for the alcohol and gaming division of the regulation and licensing department shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The alcohol and gaming division of the regulation and licensing department shall require criminal history background checks for purposes of administering the licensing provisions of the Liquor Control Act. For purposes of conducting the criminal history background check, the alcohol and gaming division shall require the fingerprinting of applicants for liquor licenses as required by the Liquor Control Act. Fingerprint cards shall be submitted by the director to the department of public safety records bureau for processing through the federal bureau of investigation. The director shall establish procedures within the alcohol and gaming division to maintain the confidentiality of information received from the department of public safety and the federal bureau of investigation. **History:** Laws 2001, ch. 86, §6.

### **60-3A-10. Administrative rules and orders; presumption of correctness.**

A. The director shall issue and file as required by law all rules and orders necessary to administer the licensing provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978].

B. Directives issued by the director shall be in form substantially as follows:

(1) rules are written statements of the director, of general application to licensees, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and

(3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, a rule shall first be issued as a proposed rule and filed for public inspection in the office of the director. Distribution of the rule shall be made to interested persons and their

comments shall be invited. After the proposed rule has been on file for thirty days and a public hearing has been held, the director may issue it as a final rule by filing as required by law.

D. The director shall furnish a copy of the rules to all licensees and other interested persons at a nominal cost.

E. A rule or order issued by the director is presumed to be a proper implementation of the licensing provisions of the Liquor Control Act.

F. All rules and orders shall be applied prospectively only. **History:** Laws 2001, ch. 86, §7.

### **60-3A-11. Written decisions by director.**

Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license, or other disposition of a charge against a licensee, shall be accompanied by a written order containing findings of fact and the specific grounds relied upon for the decision. **History:** Laws 2001, ch. 86, §8.

### **60-3A-12. Partially consumed bottle of wine; licensed premises.**

A. Notwithstanding any other provision of law, a dispenser, canopy licensee or restaurant licensee may permit a customer of the licensee to remove from the licensed premises one opened bottle of partially consumed wine; provided that:

(1) the customer has purchased a full-course meal and a bottle of wine and consumed a portion of the bottle of wine with the meal on the licensed premises; and

(2) the dispenser, canopy licensee or restaurant licensee or an agent or employee of the dispenser, canopy licensee or restaurant licensee attaches the customer receipt issued for the bottle of wine and reseals the bottle of partially consumed wine by reinserting a cork and sealing the bottle in a tamper-proof bag.

B. When operating a motor vehicle, the customer shall possess and transport the partially consumed bottle of wine in accordance with §66-8-138 NMSA 1978. **History:** Laws 2007, ch. 78, §1.

## **ARTICLE 4 – Department of Alcoholic Beverage Control- Repealed**

### **ARTICLE 5A | Local Option**

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#### **60-5A-1. Elections for local option.**

Any municipality containing over five thousand population according to the latest United States census, whether the county in which that municipality is situated has adopted the local option provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any former act or not, or any county in the state may adopt local option in the county or municipality upon the following terms and conditions:

A. at any time after the effective date of the Liquor Control Act, the registered qualified electors of any proposed local option district may petition the governing body by filing one or more petitions in the appropriate office to hold an election for the purpose of determining whether the county or municipality shall adopt the local option provisions of the Liquor Control Act. If the aggregate of the signatures of such elector on all the petitions equals or exceeds five percent of the number of registered voters of the district, the governing body shall call an election within seventy-five days of the verification of the petition. The date of the filing of the petition shall be the date of the filing of the last petition which brings the number of signatures up to the required five percent; provided, however, that the governing body shall refuse to recognize the petition if

more than three months have elapsed between the date of the first signature and the filing of the last petition necessary to bring the number of signatures on the petition up to five percent;

B. the election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections within the municipality, except as otherwise provided in this section;

C. the votes at the election shall be counted, returned and canvassed as provided for in the case of general elections within the county or special municipal elections within the municipality;

D. except as otherwise provided in this section, contests, recounts and rechecks shall be permitted as provided for in the case of candidates for county office in general elections or as provided for in the case of special municipal elections within the municipality. Applications for contests, recounts or rechecks may be filed by any person who voted in the election, and service shall be made upon the county clerk or municipal clerk as the case may be;

E. if a majority of all the votes cast at the election are cast in favor of the sale, service or public consumption of alcoholic beverages in the county or municipality, the chairman of the governing body shall declare by order entered upon the records of the county or municipality that the county or municipality has adopted the local option provisions of the Liquor Control Act and shall notify the department of such results;

F. no election held pursuant to this section shall be held within forty-two days of any primary, general, municipal or school district election. If, within sixty days from the verification of any petition as provided in Subsection A of this section, a primary, general, municipal or school election is held, the governing body may call an election for a day not less than sixty days after the primary, general, municipal or school election;

G. if an election is held under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] in any county which contains within its limits any municipality of more than five thousand persons according to the last United States census, it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of adopting the local option provisions of the Liquor Control Act by the municipality. The election in the county shall be conducted so as to separate the votes in the municipality from those in the remaining parts of the county. If a majority of the voters in the county, including the voters in the municipality, vote against the sale, service or public consumption of alcoholic beverages in the county, the county shall not adopt the local option provisions of the Liquor Control Act; but if a majority of the votes in the municipality are in favor of the sale, service or public consumption of alcoholic beverages, the municipality shall have adopted the local option provisions of the Liquor Control Act. Nothing contained in this subsection shall prevent any municipality from having a separate election under the terms of this section;

H. any county or municipality composing a local option district under the provisions of the Liquor Control Act or any former act may vote to discontinue the sale, service or public consumption of alcoholic beverages in the local option district; the discontinuance shall become effective on the ninetieth day after the local option election is held; and

I. nothing in this section shall invalidate any local option election held pursuant to any former act prior to July 1, 1981. **History:** Laws 1981, ch. 39, §15; 1985, ch. 208, §124; 1987, ch. 323, §27.

## **60-5A-2. Resubmission of local option question.**

In any local option district in which the local option provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] or former act have been rejected by the voters, it shall be permissible after the expiration of two years from the date of the election at which the local option provisions of the Liquor Control Act or any former act were rejected, to have another local option election in the district by following the procedure provided for in Section 15 [<sup>60-5A-1</sup>NMSA 1978] of the Liquor Control Act. At the option of the petitioners referred to in Subsection A of Section 15 of that act, it shall be permissible to resubmit to the voters of one district not only the question of the sale, service or public consumption of alcoholic beverages, but it shall also be permissible to petition for a local option election for the purpose of submitting to the voters of the district the question of permitting the sale of alcoholic beverages by retailers only in the district. **History:** Laws 1981, ch. 39, §16.

## **ARTICLE 6 – Powers of Municipalities and Counties to Regulate Sales-Repealed**

### **ARTICLE 6A | State Licenses**

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#### **60-6A-1. Wholesaler's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license. As used in this section, "received at and shipped from" means that all alcoholic beverages shall be unloaded at the wholesaler's licensed premises and placed into inventory before being sold and shipped to a licensed retailer.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license, a governmental licensee or its lessee or an enterprise owned, operated or licensed by an Indian nation, tribe or pueblo within the state in conformity with an ordinance duly adopted by the Indian nation, tribe or pueblo having jurisdiction over the situs of the transaction within the area of Indian country, certified by the secretary of the interior, published in the federal register, according to the laws of the United States. **History:** Laws 1981, ch. 39, §18; 1993, ch. 68, §5; 1995, ch. 203, §2.

#### **60-6A-2. Retailer's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] may apply for and be issued a retailer's license for the retail sale of alcoholic beverages.

B. A retailer's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act. **History:** Laws 1981, ch. 39, §19.

#### **60-6A-3. Dispenser's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] may apply for and be issued a dispenser's license for the sale of alcoholic beverages.

B. A dispenser's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act. **History:** Laws 1981, ch. 39, §20.

#### **60-6A-4. Restaurant license.**

A. At any time after the effective date of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978], a local option district may approve the issuance of restaurant licenses for the sale of beer and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the governing body of the local option district without a petition from registered qualified electors having been submitted.

B. After the approval of restaurant licenses by the registered qualified electors of the local option district and upon completion of all requirements in the Liquor Control Act for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant license to sell, serve or allow the consumption of beer and wine subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that he has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from meals and not from the sale of beer and wine;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of meals;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of meals and from beer and wine sales;

(5) restaurant licensees shall not sell beer and wine for consumption off the licensed premises;

(6) all sales, services and consumption of beer and wine authorized by a restaurant license shall cease at the time meals [meal] sales and services cease or at 11:00 p.m., whichever time is earlier;

(7) if Sunday sales have been approved in the local option district, a restaurant licensee may serve beer and wine on Sundays until the time meals [meal] sales and services cease or 11:00 p.m., whichever time is earlier; and

(8) a restaurant license shall not be transferable from person to person or from one location to another.

C. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to restaurant licenses.

D. Nothing in this section shall prevent a restaurant licensee from receiving other licenses pursuant to the Liquor Control Act. **History:** Laws 1981, ch. 39, §21; 2003, ch. 103, §1.

#### **60-6A-5. Club licenses.**

A. In any local option district, a club qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] may apply for and be issued a club license.

B. Club licenses shall not be transferred from one owner to another. A club license may be transferred from one location to another upon compliance with the provisions of the Liquor Control Act. A club license shall not be leased.

C. The provisions of Section 35 [<sup>60-6A-18</sup>NMSA 1978] of the Liquor Control Act shall not apply to club licenses. **History:** Laws 1981, ch. 39, §22.

#### **60-6A-6. Manufacturer's license.**

In any local option district, a person qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] may apply for and be issued a manufacturer's license. **History:** Laws 1981, ch. 39, §23.

### **60-6A-6.1. Craft distiller's license.**

A. In any local option district, a person qualified pursuant to the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act, may apply for and be issued a craft distiller's license subject to the following conditions:

(1) the applicant submits evidence to the department that the applicant has a valid and appropriate permit issued by the federal government to be a craft distiller;

(2) renewal of the license shall be conditioned upon:

(a) no less than sixty percent of the gross receipts from the sale of spirituous liquors for the preceding twelve months of the licensee's operation being derived from the sale of spirituous liquors produced by the licensee;

(b) the manufacture of no less than one thousand proof gallons of spirituous liquors per license year at the licensee's premises; and

(c) submission to the department by the licensee of a report showing the number of proof gallons of spirituous liquors manufactured by the licensee at the licensee's premises and the annual gross receipts from the sale of spirituous liquors produced by the licensee and from the licensee's sale of distilled spirituous liquors produced by other New Mexico licensed craft distillers;

(3) a craft distiller's license shall not be transferred from person to person or from one location to another;

(4) the provisions of ~~§60-6A-18~~ NMSA 1978 shall not apply to a craft distiller's license; and

(5) nothing in this section shall prevent a craft distiller from receiving other licenses pursuant to the Liquor Control Act.

B. A person to whom a craft distiller's license is issued pursuant to this section may do any of the following:

(1) manufacture or produce spirituous liquors, including aging, filtering, blending, mixing, flavoring, coloring, bottling and labeling;

(2) store, transport, import or export spirituous liquors;

(3) sell only spirituous liquors that are packaged by or for the craft distiller to a person holding a wholesaler's license, a craft distiller's license or a manufacturer's license;

(4) deal in warehouse receipts for spirituous liquors;

(5) buy spirituous liquors from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, flavoring, mixing or bottling of spirituous liquors;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [<sup>Chapter 7, Article 9 NMSA 1978</sup>];

(7) conduct spirituous liquor tastings and sell, by the glass or by the bottle, or in unbroken packages for consumption off the premises but not for resale, spirituous liquors of the craft distiller's own production or spirituous liquors produced by another New Mexico craft distiller or New Mexico manufacturer on the craft distiller's premises; and

(8) at no more than three other locations off the craft distiller's premises, after the craft distiller has paid the applicable fee for a craft distiller's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a craft distiller's off-premises permit for each off-premises location, conduct spirituous liquor tastings and sell by the glass, or in unbroken packages for consumption and not for resale, spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer.

C. For a public celebration off the craft distiller's premises in any local option district permitting the sale of alcoholic beverages, a craft distiller shall pay ten dollars (\$10.00) to the

department for a "craft distiller's public celebration permit" to be issued under rules adopted by the director. Upon request, the department may issue to a craft distiller a public celebration permit for a location at the public celebration that is to be shared with other craft distillers, small brewers and winegrowers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or other activity held on an intermittent basis.

D. Sales and tastings of spirituous liquors authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas day sales and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday as set forth in Section 60-7A-1 NMSA 1978. **History:** Laws 2011, ch. 110, § 3; 2015, ch. 102, § 3.

### **60-6A-7. Nonresident license.**

A. A nonresident manufacturer or wholesaler who qualifies may apply for and be issued a nonresident license.

B. No nonresident wholesaler or manufacturer shall, directly or indirectly or through an affiliate or subsidiary, apply for, be granted or hold a license under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] as a New Mexico wholesaler, manufacturer, dispenser or retailer; provided that a nonresident wholesaler may be granted and hold a New Mexico wholesaler's license only if the business operated, and the New Mexico wholesaler's license, was purchased from an existing wholesaler and is operated as a separate and distinct business from all other businesses of the nonresident wholesaler, including for the purpose of Section 60-8A-6 NMSA 1978, and no alcoholic beverages are transshipped between any of the other businesses and the business operated under that license.

C. Nonresident licensees may sell, offer for sale or ship into the state alcoholic beverages only to licensed New Mexico manufacturers and wholesalers.

D. Every nonresident licensee or every New Mexico wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler shall mail to the department one duplicate invoice covering all shipments into or sales in the state, stating the prices, together with all terms, concessions, allowances, forbearances and deductions. In cases of shipments, a copy of the bill of lading or way bill shall accompany the invoice mailed to the department. On each invoice for alcoholic beverages, the total number of cases and the total number of liters of alcoholic beverage shall also be noted by the shipper or vendor. The invoice of all shipments or sales shall also state the brand, labels and size of containers of each item, unless shipped or sold in bulk to be bottled by a licensed rectifier or wine bottler using his own label and brand; provided, however, this section shall not apply to intrastate sales and shipments from one New Mexico wholesaler to another wholesaler.

E. The director may suspend or revoke the license of a nonresident licensee or wholesaler who does not comply with the provisions of Subsections B through D of this section.

**History:** Laws 1981, ch. 39, § 24; 1984, ch. 54, § 1.

### **60-6A-8. Wine bottler's license.**

Before any wholesaler whose license permits the sale of wine for resale packages wine for resale, he shall procure from the department a wine bottler's license.

**History:** Laws 1981, ch. 39, §25; 1988, ch. 60, §2.

### **60-6A-9. Public service license.**

A. Every person selling alcoholic beverages to travelers on trains or airplanes within the state shall secure a public service license from the department on or before July 1 of each year.

B. A photostatic copy of the license shall be posted in each train car from which alcoholic beverages are sold, or on the premises at each airport where alcoholic beverages are stored and issued to airplanes. **History:** Laws 1981, ch. 39, § 26.

### **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-11. Winegrower's license.**

A. A person in this state who produces wine is exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director; provided, however, that, for purposes of determining annual production and compliance with the fifty percent New Mexico grown provision of this subsection, the calculation of a winegrower's overall annual production of wine shall not include the winegrower's production of wine for out-of-state wine producer license holders.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced for a winegrower or an out-of-state wine producer holding a permit issued pursuant to the Federal Alcohol Administration Act and a valid license in a state that authorizes the wine producer to manufacture, produce, store or sell wine;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than two hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of a license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) buy or otherwise obtain beer from a small brewer for the purposes described in this subsection;

(9) conduct wine tastings and sell, by the glass or by the bottle, or sell in unbroken packages for consumption off the premises, but not for resale, wine of the winegrower's own

production, wine produced by another New Mexico winegrower on the winegrower's premises or beer produced and bottled by or for a small brewer pursuant to Section 60-2A-26.1 [60-6A-26.1] NMSA 1978;

(10) at no more than three off-premises locations, conduct wine tastings, sell by the glass and sell in unbroken packages for consumption off premises, but not for resale, wine of the winegrower's own production, wine produced by another New Mexico winegrower or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(11) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(12) at public celebrations on or off the winegrower's premises, after the winegrower has paid the applicable fees and been issued the appropriate permit, to conduct wine tastings, sell by the glass or the bottle, or sell in unbroken packages, for consumption off premises, but not for resale, wine produced by or for the winegrower;

(13) sell wine or cider in a growler for consumption off premises; and

(14) in accordance with the provisions of this section that relate to the sale of wine, accept and fulfill an order for wine that is placed via an internet web site, whether the financial transaction related to the order is administered by the licensee or the licensee's agent.

C. Sales of wine or beer as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle, or sell in unbroken packages for consumption off premises, but not for resale, wine of the winegrower's own production or beer produced and bottled by or for a small brewer pursuant to §60-6A-26.1 NMSA 1978 on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars (\$10.00) to the alcohol and gaming division of the regulation and licensing department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars (\$25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars (\$100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars (\$250) per year.

**History:** Laws 1981, ch. 39, §28; 1985, ch. 15, §1; 1987, ch. 98, §2; 1988, ch. 60, §3; 1993, ch. 329, §2; 1995, ch. 122, §1; 1998, ch. 109, §2; 1999, ch. 211, §1; 2001, ch. 248, §1; 2001, ch. 260, §1; 2005, ch. 216, §1; 2011, ch. 71, §1; 2015, ch. 102, §4; 2015, ch. 105, §1; 2015, ch. 124, §1.

### **60-6A-11.1. Direct wine shipment permit; authorization; restrictions.**

A. A licensee with a winegrower's license or a person licensed in a state other than New Mexico that holds a winery license may apply to the director for and the director may issue to the applicant a direct wine shipment permit. An application for a direct wine shipment permit shall include:

- (1) contact information for the applicant in a form required by the department;
- (2) an annual application fee of fifty dollars (\$50.00) if the applicant does not hold a winegrower's license;
- (3) the number of the applicant's winegrower's license if the applicant is located in New Mexico or a copy of the applicant's winery license if the applicant is located in a state other than New Mexico; and
- (4) any other information or documents required by the director. Upon approval of an applicant for a permit, the director shall forward to the taxation and revenue department the name of each permittee and the contact information for the permittee.

B. A direct wine shipment permit shall be valid for a permit year. A permittee shall renew a direct wine shipment permit annually as required by the department to continue making direct shipments of wine to New Mexico residents.

C. A permittee may ship:

- (1) not more than two nine-liter cases of wine monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and
- (2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED FOR DELIVERY".

D. A permittee shall:

- (1) register with the taxation and revenue department for the payment of liquor excise tax and gross receipts taxes due on the sales of wine pursuant to the permittee's activities in New Mexico;
- (2) submit to the jurisdiction of New Mexico courts to resolve legal actions that arise from the shipping by the permittee of wine into New Mexico to New Mexico residents;
- (3) monthly, by the twenty-fifth day of each month following the month in which the permittee was issued a direct wine shipment permit, pay to the taxation and revenue department the liquor excise tax due and the gross receipts tax due; and
- (4) submit to an audit by an agent of the taxation and revenue department of the permittee's records of the wine shipped pursuant to this section to New Mexico residents upon notice and during usual business hours.

E. As used in this section:

- (1) "permit year" means the period between July 1 and June 30 of a year; and
- (2) "permittee" means a person that is the holder of a direct wine shipment permit.

**History:** 1978 Comp., § 60-6A-11.1, enacted by Laws 2011, ch. 109, § 1.

### **60-6A-12. Special dispenser's permits; state and local fees.**

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving written approval from the governing body in charge of the public celebration and upon the payment of fifty dollars (\$50.00) to the department for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars (\$25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities. All fees collected by the governing body of the local option district may be used to fund free ride home programs.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business, provided the governing body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars (\$25.00) together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function for which the permit was sought. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

F. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted pursuant to the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section.

G. Any person holding a dispenser's license who dispenses alcoholic beverages at a church's public celebration under a special dispenser's permit pursuant to this section may donate to the church holding the public celebration any portion of the profits from the sale of alcoholic beverages at that public celebration. Employees of that dispenser or other individuals who have completed a certified alcohol server training program may donate to the church holding a public celebration their services as servers of alcoholic beverages at that public celebration.

**History:** Laws 1981, ch. 39, § 29; 1989, ch. 144, § 1; 1993, ch. 68, § 6; 1997, ch. 265, § 1; 1998, ch. 79, § 1.

### **60-6A-13. Registration to transport.**

For the renewal year beginning on July 1, 1998 and every three years thereafter, every common carrier transporting alcoholic beverages into and for delivery within the state shall register with the department and pay a registration fee of fifty dollars (\$50.00). **History:** Laws 1981, ch.39, §30; 1998, ch.79, §2.

### **60-6A-14. Sacramental wine.**

No license shall be required of any person to sell wine for use in this state which is to be used exclusively for sacramental or religious purposes when the wine is consigned to any bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel of any religious faith or denomination and the container, barrel, case or carton is plainly and legibly labeled: "Wine To Be Used Exclusively For Sacramental And Religious Purposes"; no licenses or transportation permit or other permit shall be required for the importation, delivery, transportation or distribution of any such wine when it is consigned to any such bona fide priest, pastor, bishop, rabbi, preacher or

minister of the gospel, and the container, barrel, case or carton thereof is plainly and legibly labeled as provided in this section. **History:** Laws 1981, ch. 39, § 31.

**60-6A-15. License fees.**

Every application for the issuance or renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

- A. manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars (\$3,000);
- B. manufacturer's license as a brewer, three thousand dollars (\$3,000);
- C. manufacturer's license as a rectifier, one thousand fifty dollars (\$1,050);
- D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars (\$2,500);
- E. wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars (\$1,750);
- F. wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars (\$1,500);
- G. wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars (\$1,500);
- H. wholesaler's license to sell beer for resale only, one thousand dollars (\$1,000);
- I. wholesaler's license to sell wine for resale only, seven hundred fifty dollars (\$750);
- J. retailer's license, one thousand three hundred dollars (\$1,300);
- K. dispenser's license, one thousand three hundred dollars (\$1,300);
- L. canopy license, one thousand three hundred dollars (\$1,300);
- M. restaurant license, one thousand fifty dollars (\$1,050);
- N. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars (\$1,250), and for clubs with two hundred fifty members or fewer, two hundred fifty dollars (\$250);
- O. wine bottler's license to sell to wholesalers only, five hundred dollars (\$500);
- P. public service license, one thousand two hundred fifty dollars (\$1,250);
- Q. nonresident licenses, for a total billing to New Mexico wholesalers:
  - (1) in excess of:

	\$3,000,000	annually	\$10,500;
	1,000,000	annually	5,250;
	500,000	annually	3,750;
	200,000	annually	2,700;
	100,000	annually	1,800; and,
	50,000	annually	900; and,
(2)	of \$50,000 or less		\$300;

R. wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars (\$25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars (\$100); and

S. beer bottler's license, two hundred dollars (\$200).

**History:** Laws 1981, ch. 39, §32; 1983, ch. 280, §1; 1988, ch. 60, §5; 1989, ch. 241, §1; 1993, ch. 68, §7; 1998, ch. 79, §3; 1999, ch. 276, §1; 2000, ch. 13, §1; 2003, ch. 246, §1.

### **60-6A-16. Proration of fees.**

- A. License fees for new licenses issued after the beginning of the license year shall be prorated.
- B. Dispenser, retailer, restaurant, club and public service license fees shall be prorated as follows:
- (1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;
  - (2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;
  - (3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and
  - (4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.
- C. License fees for all new licenses not provided for in Subsection B of this section, except nonresident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.
- D. Nonresident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for nonresident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Nonresident licenses and common carrier registrations issued at any time during the:
- (1) first license year shall be subject to payment of the full amount of the three-year license fee;
  - (2) second license year shall be subject to payment of two-thirds of the three-year license fee; and
  - (3) third license year shall be subject to payment of one-third of the three-year license fee.

**History:** Laws 1981, ch. 39, §33; 1998, ch. 79, §4; repealed and reenacted by Laws 2015, ch. 86, §1.

### **60-6A-17. Issuance of licenses and collection of fees.**

All licenses provided for pursuant to the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] shall be issued by the director in strict compliance with the provisions of that act, and license fees shall be collected by the director and remitted to the state treasurer. **History:** Laws 1981, ch. 39, §34.

### **60-6A-18. Limitation on number of licenses; exceptions.**

A. The maximum number of licenses to be issued under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978 shall be as follows:

- (1) in incorporated municipalities, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof; and
- (2) in unincorporated areas of each county, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof, excluding the population of incorporated municipalities within the county.

B. For the purpose of this section, the number of inhabitants of a local option district shall be determined by annual population estimates published by the economic development department.

C. Subsection A of this section shall not be construed to prevent any licensee holding a valid license issued under the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>], or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Liquor Control Act and department regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted in Subsection A of this section.

**History:** Laws 1981, ch. 39, §35; 1988, ch. 12, §1; 1991, ch. 21, §39.

### **60-6A-19. No property right in license; exception.**

A. The holder of any license issued under the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] or any former act has no vested property right in the license, which is the property of the state; provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16NMSA 1978:

(1) shall be considered property subject to execution, attachment, a security transaction, liens, receivership and all other incidents of tangible personal property under the laws of this state, except as otherwise provided in the Liquor Control Act;

(2) may be assigned, transferred from person to person or leased, provided all requirements of the Liquor Control Act and department regulations are fulfilled; and

(3) shall be transferred as personal property upon attachment, execution, repossession by a secured party or lienor, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee. The director may by rule or regulation determine any application or notice requirement for a person who temporarily holds a license pursuant to this subsection.

B. Any license issued under the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] may be transferred to any location not otherwise contrary to law within the same local option district where the license is then located, provided all requirements of the Liquor Control Act and department regulations are fulfilled. **History:** Laws 1981, ch. 39, §36; 1991, ch. 257, §1.

### **60-6A-20. Vested rights of licensees operating breweries, distilleries, rectifying plants or wineries.**

If a permit or license is issued to a person for the operation of a brewery, distillery, rectifying plant or winery, and the permittee or licensee has commenced the operation of the brewery, distillery, rectifying plant or winery under the terms of the permit or license, the permit or license shall be construed to constitute a contract vesting in the licensee, for a period of fifty years from the date of the original issuance of the license or permit, a right to operate the business, which right shall not be impaired by any subsequent legislation or local option election. This section shall not be construed to permit the licensee or permittee to sell its products in this state contrary to the current laws of this state. **History:** Laws 1981, ch. 39, §17.

### **60-6A-21. Short title.**

Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery, Small Brewery and Craft Distillery Act".

**History:** 1978 Comp., §60-6A-21, enacted by Laws 1983, ch. 280, §2; 1993, ch. 68, §8; 2011, ch. 110, §1.

### **60-6A-22. Definitions.**

As used in the Domestic Winery, Small Brewery and Craft Distillery Act:

A. "brandy" means an alcoholic liquor distilled from wine or from fermented fruit juice;

B. "beer" means any fermented beverage containing more than one-half percent alcohol obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereal in water, and includes porter, beer, ale and stout;

C. "craft distiller" means a person licensed as a craft distiller who owns or operates a business for the manufacture of spirituous liquors but who does not manufacture more than one hundred fifty thousand proof gallons per license year;

D. "small brewer" means any person who owns or operates a business for the manufacture of beer but does not manufacture more than two hundred thousand barrels of beer per year;

E. "proof gallon" means a gallon of liquid at sixty degrees Fahrenheit that contains fifty percent ethyl alcohol by volume or its equivalent;

F. "public celebration" means any state fair, county fair, community fiesta or cultural or artistic performance;

G. "wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar, or any such alcoholic beverage to which is added grape brandy, fruit brandy or spirits of wine that is distilled from the particular agricultural products of which the wine is made, and other rectified wine products by whatever name that do not contain more than fifteen percent added flavoring, coloring and blending material and that contain not more than twenty-four percent alcohol by volume, and includes vermouth;

H. "wine blender" means a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the internal revenue laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities; provided that any person who produces or blends not to exceed three hundred gallons of wine per year shall not, because of such production or blending, be considered a wine blender; and

I. "winer" means a person licensed as a winegrower.

**History:** 1978 Comp., §60-6A-22, enacted by Laws 1983, ch. 280, §3; 1985, ch. 217, §1; 1998, ch. 109, §3; 2011, ch. 110, §2.

### **60-6A-23. Repealed.**

### **60-6A-24. Wine blender's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978], except as otherwise provided in the Domestic Winery and Small Brewery Act [<sup>60-6A-21 to 60-6A-28</sup>NMSA 1978], may apply for and be issued a wine blender's license.

B. A wine blender's license authorizes the person to whom it is issued to:

(1) package, rectify, blend, mix, flavor, color, label and export wine, whether manufactured or produced by him or any other person;

(2) sell only wine packaged by or for him to a person holding a New Mexico wine wholesaler's, wholesaler's, winegrower's or wine exporter's license or to a winegrower's agent;

(3) deal in warehouse receipts for wine; and

(4) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [<sup>Chapter 7, Article 9</sup>NMSA 1978].

C. A wine blender's license does not authorize the person to whom it is issued:

(1) to crush, ferment and produce wine from grapes, berries and other fruits;

(2) to obtain or be issued a winer's license, a retailer's license or a dispenser's license;

(3) to buy, sell, receive or deliver wine from persons other than authorized licensees; or

(4) to conduct wine tastings or sell for consumption off premises, at retail, or to sponsor wine tastings, either on or off the wine blender's premises.

**History:** 1978 Comp., §60-6A-24, enacted by Laws 1983, ch. 280, §5; 1985, ch. 217, §3; 1998, ch. 109, §4.

### **60-6A-25. Brandy manufacturer's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [~~60-3A-1~~ NMSA 1978], except as otherwise provided in the Domestic Winery and Small Brewery Act [~~60-6A-21 to 60-6A-28~~ NMSA 1978], may apply for and be issued a brandy manufacturer's license.

B. A brandy manufacturer is authorized to engage in the manufacture of brandy only and no other distilled spirits.

C. A brandy manufacturer shall sell only such brandy as is manufactured by him to persons holding a wholesaler's license or a winer's license or to a licensed wine exporter.

**History:** 1978 Comp., § 60-6A-25, enacted by Laws 1983, ch. 280, § 6; 1985, ch. 217, § 4.

### **60-6A-26. Wine exporter's license.**

A wine exporter's license authorizes the person to whom it is issued, and under regulations prescribed by the director, to sell, deliver or consign wine or brandy manufactured or produced within this state for delivery, use or sale without the state.

**History:** 1978 Comp., § 60-6A-26, enacted by Laws 1983, ch. 280, § 7.

#### **60-6A-26.1. Small brewer's license.**

A. In a local option district, a person qualified pursuant to the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

- (1) manufacture or produce beer;
- (2) package, label and export beer, whether manufactured, bottled or produced by the licensee or any other person;
- (3) sell only beer that is packaged by or for the licensee to a person holding a wholesaler's license or a small brewer's license;
- (4) deal in warehouse receipts for beer;
- (5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee, beer produced and bottled by or for another New Mexico small brewer on the small brewer's premises or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;
- (6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;
- (7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;
- (8) buy or otherwise obtain wine from a winegrower;
- (9) for the purposes described in this subsection, at no more than three other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer, beer produced and bottled by or for another New Mexico small brewer or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;

(10) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients; and

(11) sell beer in a growler for consumption off premises.

C. At public celebrations off the small brewer's premises in a local option district permitting the sale of alcoholic beverages, the holder of a small brewer's license shall pay ten dollars (\$10.00) to the alcohol and gaming division of the regulation and licensing department for a "small brewer's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a small brewer's license a public celebration permit for a location at the public celebration that is to be shared with other small brewers and winegrowers. As used in this subsection, "public celebration" includes a state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

D. Sales and tastings of beer or wine authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday.

**History:** 1978 Comp., § 60-6A-26.1, enacted by Laws 1985, ch. 217, § 5; 1993, ch. 68, § 9; 1997, ch. 229, § 1; 1998, ch. 111, § 1; 1999, ch. 160, § 1; 2001, ch. 260, § 2; 2015, ch. 102, § 5; 2015, ch. 124, § 2.

### **60-6A-26.2. Beer bottler's license.**

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], before he bottles beer for a person holding a small brewer's license, shall procure from the department a beer bottler's license.

B. A beer bottler's license authorizes the person to whom it has been issued to do the following:

- (1) bottle beer for the holder of a small brewer's license;
- (2) hold or store beer in bulk that was produced by a small brewer until it is bottled; and
- (3) hold or store beer that he has bottled on his premises.

C. A beer bottler's license shall not authorize the person to whom it has been issued to sell, serve, deliver or allow consumption of beer in unopened packages or by the drink at wholesale or retail on his licensed premises. **History:** Laws 1993, ch. 68, § 10.

### **60-6A-27. License fees.**

Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

- A. brandy manufacturer's license, seven hundred fifty dollars (\$750);
- B. small brewer's license, seven hundred fifty dollars (\$750);
- C. wine blender's license, seven hundred fifty dollars (\$750);
- D. wine exporter's license, five hundred dollars (\$500);
- E. small brewer's public celebrations permit, ten dollars (\$10.00) for each public celebration;
- F. small brewer's off-premises permit, two hundred dollars (\$200) for each off-premises location;
- G. craft distiller's license, seven hundred fifty dollars (\$750); and
- H. craft distiller's off-premises permit, two hundred dollars (\$200) for each off-premises location.

**History:** 1978 Comp., §60-6A-27, enacted by Laws 1983, ch.280, §8; 1985, ch. 217, §6; 1997, ch. 229, §2; 1998, ch. 109, §5; 1998, ch. 111, §2; 2011, ch. 110, §4.

### **60-6A-28. Nonresident licenses.**

Notwithstanding the provisions of Sections 60-6B-1 and 60-6B-2 NMSA 1978, a person not a citizen of the United States may apply for and be granted, subject to other qualifications required by the Liquor Control Act [60-3A-1 NMSA 1978], any license established by the provisions of the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978]; provided that the director of the department of alcoholic beverage control, in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act. **History:** 1978 Comp., § 60-6A-28, enacted by Laws 1983, ch. 280, § 9; 1985, ch. 217, § 7.

### **60-6A-29. Wine wholesaler's license.**

A. In any local option district, a winegrower licensed under the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a license as a wine wholesaler of wines produced by or for New Mexico winegrowers.

B. No wine wholesaler shall sell, offer for sale or ship wine not received at and shipped from the premises specified in the wine wholesaler's license.

C. No wine wholesaler shall sell or offer for sale wine to any person other than the holder of a New Mexico wine wholesaler's, wholesaler's, retailer's, dispenser's, canopy, restaurant or club license or a governmental licensee or its lessee.

D. Nothing contained in this section shall prevent the sale, transportation or shipment of wine by a wine wholesaler to any person outside the state when shipped under permit from the department. **History:** Laws 1988, ch. 60, § 1; 1998, ch. 109, § 6.

### **60-6A-30. Posting of warnings.**

Any licensee holding a license pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978 or Section 60-6B-16 NMSA 1978 shall post in a conspicuous place a sign in both English and Spanish that reads as follows:

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

The director shall prescribe the form of such warning and shall make warning signs available to all such license holders. **History:** Laws 1991, 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.

### **60-6A-32. Interstate wine tastings; competitions; permits.**

A. Exempt from the procurement of any other license or permit issued pursuant to the terms of the Liquor Control Act [60-3A-1 NMSA 1978], but not exempt from the procurement of a competition permit, is a winemaker or winery licensed outside of New Mexico that desires to participate in a regional wine tasting or competition within New Mexico. One permit shall be issued by the director to an out-of-state winemaker or winery for the duration of the wine tasting or competition.

B. A person issued a competition permit pursuant to this section may do any of the following:

- (1) bring no more than twenty-five cases of wine into New Mexico after indicating on his permit application the number of cases to be brought into the state;
- (2) participate in the regional competition and any wine tastings associated with the competition for which the competition permit is issued;
- (3) participate in the regional wine tasting for which the competition permit is issued; and
- (4) at a wine tasting for which he is issued the permit, conduct tasting of wine and sell by the glass or bottle or in unbroken packages for consumption off the wine tasting premises but not for resale, wine brought into the state by him for the wine tasting or competition.

C. Every application for the issuance of a competition permit shall be on a form prescribed by the director and accompanied by a permit fee of twenty-five dollars (\$25.00).

D. As used in this section:

- (1) "competition" means an event at which a jury of wine tasters compares the quality of the wines entered for judging and at which prizes are offered for the wines judged to be of the best quality;
- (2) "regional competition" means a competition at which the wines to be judged are from more than one state or country;
- (3) "regional wine tasting" means a wine tasting at which the wines offered for tasting are from more than one state or country;
- (4) "winemaker" means a person who manufactures or produces wine;
- (5) "winery" means an establishment at which wine is manufactured or produced and that is licensed for that purpose by the state or country in which it is located; and
- (6) "wine tasting" means an event at which wines are offered for tasting but not necessarily for sale and not for comparison for the purpose of awarding prizes to the wines of the best quality. **History:** Laws 1998, ch. 109, § 7.

### **60-6A-33. Tasting permit; fees.**

A. The director is authorized to issue a tasting permit to a licensed dispenser, retailer, resident manufacturer, nonresident manufacturer, wholesaler or winegrower or an agent of any such licensed entity to conduct tastings of wine, beer, cider or spirituous liquor on a licensed premises in accordance with rules promulgated by the director to protect public health and safety. A person serving wine, beer, cider or spirituous liquor at a tasting event permitted pursuant to this section shall have a server permit.

B. To apply for a tasting permit, the holder of a license described in Subsection A of this section shall submit to the department a tasting permit fee of one hundred dollars (\$100) and such information as the director may require. A tasting permit shall be valid for one year from the date that it is issued and may be renewed upon application to the department and payment of the tasting permit fee of one hundred dollars (\$100). A person permitted to hold tastings pursuant to this section shall notify the director no less than forty-eight hours before a tasting event of the person's intent to hold the event. Notification shall include the times and locations of, and the types of products to be included in, the tasting event. Upon receipt of notification, the director shall

forward the notice to the appropriate staff member of the special investigations division [New Mexico state police division] of the department of public safety.

C. The director may impose the following administrative penalties on a person who holds a tasting permit for violations of the Liquor Control Act that occur during tastings conducted pursuant to the person's tasting permit:

(1) for a first violation, a fine no greater than one thousand dollars (\$1,000) or a restriction on issuance of tasting permits to the person for a period of two months, or both;

(2) for a second violation within a year of the first violation, a fine no greater than two thousand dollars (\$2,000) or a restriction on issuance of tasting permits to the person for a period of six months, or both; and

(3) for a third violation within a year of the first violation, a citation against the license held by the person, a fine no greater than five thousand dollars (\$5,000) and a restriction on issuance of tasting permits to the person for a period of one year. **History:** Laws 2013, ch.148, §1; 2015, ch.77, §1.

### **60-6A-34. Special bed and breakfast dispensing license; fees; limitations.**

A. The director is authorized to issue a special bed and breakfast dispensing license to an owner or operator of a bed and breakfast in accordance with rules promulgated by the director to protect public health and safety. The license shall be limited to the serving of wine and beer in conjunction with food to the guests of the bed and breakfast.

B. A bed and breakfast establishment may apply for a special bed and breakfast dispensing license by submitting to the department a fee of one hundred dollars (\$100) and such information as the director may require. A license shall be valid for one year from the date that it is issued and may be renewed for a fee of one hundred dollars (\$100). The license shall allow the owner, operator or employee of a bed and breakfast who holds a server permit to dispense only wine or beer only to guests of the bed and breakfast in conjunction with the serving of food in a common area of the bed and breakfast.

C. The issuance of a bed and breakfast license for beer and wine service shall be contingent on the approval of the local public governing body or local option district of the jurisdiction in which the business is domiciled.

D. Service of beer or wine with food to guests at a bed and breakfast shall be limited to two twelve-ounce servings of beer or two six-ounce servings of wine per guest.

E. A special bed and breakfast dispensing license shall not be transferable from person to person or from one location to another.

F. An owner, operator or employee of a bed and breakfast who holds a server permit shall comply with the provisions of the Alcohol Server Education Article of the Liquor Control Act [Chapter 60, Article 6E NMSA 1978].

G. For the purposes of this section, "bed and breakfast" means a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons. **History:** Laws 2013, ch. 150, §1 and Laws 2013, ch. 159, §1.

### **60-6A-35. Small brewer and winegrower limited wholesaler's license.**

In any local option district, a small brewer or a winegrower that is licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act and that also holds a restaurant license or a dispenser's license may apply for and be issued a small brewer and winegrower limited wholesaler's license. A small brewer that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship beer manufactured by the small brewer. A winegrower that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship wine manufactured by the winegrower. **History:** Laws 2015, ch. 113, § 2.

## ARTICLE 6B | License Provisions

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### 60-6B-1. Persons prohibited from receiving or holding licenses.

The following classes of persons shall be prohibited from receiving or holding licenses under the provisions of the Liquor Control Act [~~60-3A-1~~ NMSA 1978]:

A. a person who has been convicted of two separate misdemeanor or petty misdemeanor violations of the Liquor Control Act in any calendar year or of any felony, unless the person is restored to the privilege of receiving and holding licenses by the governor or unless the director determines that the person merits the public trust, in which case the person shall receive licenses under reasonable terms and conditions fixed by the director, which shall include that the person pay an administrative penalty of two thousand five hundred dollars (\$2,500) for each license held by that person;

B. a person whose spouse had been convicted of a felony unless the person demonstrates that the convicted spouse will have no involvement in the operation of the license;

C. a minor; or

D. a corporation that is not duly qualified to do business in New Mexico, unless the licensee holds a public service license or a nonresident license issued under Section 60-6A-7 NMSA 1978; provided, however, that a corporation that owns stock in a corporation that owns a New Mexico liquor license does not need to be qualified to do business in New Mexico regardless of the size of the ownership interest.

**History:** Laws 1981, ch. 39, §37; 1987, ch. 198, §1; 1989, ch. 292, §1; 1991, ch. 119, §6; 1993, ch. 329, §3.

### 60-6B-1.1. Licenses held by noncitizens.

A person not a citizen of the United States may apply for and be granted any license, subject to other qualifications required by the Liquor Control Act [~~60-3A-1~~ NMSA 1978]; provided that the director of the department of alcoholic beverage control in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act. **History:** 1978 Comp., §60-6B-1.1, enacted by Laws 1989, ch. 292, §2.

### 60-6B-2. Applications.

A. Before a new license authorized by the Liquor Control Act [~~60-3A-1~~ NMSA 1978] may be issued by the director, the applicant for the license shall:

(1) submit to the director a **written application** for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of two hundred dollars (\$200);

(2) submit to the director for approval a **description, including floor plans**, in a form prescribed by the director, that shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) **submit the name and street address of a New Mexico resident** who is not a felon, who has power of attorney and authority to bind the applicant to matters related to liquor sales and operations and upon whom the director may serve any notice related to ownership or operation of the license, including any notice of charge pursuant to Chapter 60, Article 6C NMSA 1978;

(4) if the applicant is a **corporation**, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than a ten percent interest in the applicant entity would not be eligible to hold a license pursuant to the Liquor Control Act; and

(c) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(5) if the applicant is a **limited partnership**, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. A limited partnership shall not receive a license if a partner or holder of a ten percent or greater interest in the applicant entity designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility;

(6) if the applicant is a **limited liability company**, submit as part of its application the following:

(a) a copy of the articles of organization, with a copy of the certificate of filing with the public regulation commission;

(b) the name and addresses of all the managing members and all of the nonmanaging members that own a greater than ten percent interest in the limited liability company. Any direct or indirect parent entity of the limited liability company with an interest of ten percent or more in the applicant entity shall submit application forms and qualify to hold a license; and

(c) such additional information regarding the limited liability company as the director may require to assure full disclosure of the limited liability company's structure and financial responsibility;

(7) if the applicant is a **trust**, submit as part of its application:

(a) the names and addresses of the trustees;

(b) the names and addresses of any beneficiaries having control over the property of the trust or receiving regular and substantial distributions of principal and income from the trust. Any beneficiary receiving regular and substantial distributions from the trust shall qualify to hold a license. The director may request a copy of the trust agreement for review, which trust agreement need not become part of the application. Affidavits as to the operation and distribution of the principal and income may be requested in lieu of, or in addition to, the copy of the trust agreement that is supplied for review by the department; and

(c) such additional information regarding the trust as the director may require to assure full disclosure of the trust's structure and financial responsibility; and

(8) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Except for individual officers, directors, shareholders, members or partners of entities that are publicly traded on a national stock exchange and for individuals who have been fingerprinted

for another New Mexico license and had no prior criminal or arrest record, every applicant for a new license or for a transfer of ownership of a license shall file with the application two complete sets of fingerprints taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff, a municipal chief of police, a police officer in a foreign country or an individual qualified to take fingerprints by virtue of training or experience, for each of the following individuals:

- (1) if the applicant is a person, for the applicant;
- (2) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a corporation, for each principal officer, for each member of the board of directors and for each stockholder with a ten percent or greater interest in the applicant entity;
- (3) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a general partnership, for each partner;
- (4) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited partnership, for each general partner, for each limited partner holding a ten percent or greater interest in the applicant entity and for any principal officers of the limited partnership;
- (5) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited liability company, for each managing member, for each member who owns a ten percent or greater interest in the applicant entity and for any principal officer of the limited liability company; and
- (6) if the applicant is a trust, for each trustee and for each beneficiary who has control over trust property and income or who receives substantial and regular distributions from the trust.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, the director shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection K of this section.

**G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license.** It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. **A license shall not be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance** of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The

random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in a calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. A person shall not file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before a new license is issued for a location, the director shall cause a notice of the application for the license to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license. The director shall prescribe the manner in which the posting may be accomplished by the licensee, the licensee's representative or the director's designee.

N. A license shall not be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for a person to remove or deface a notice posted in accordance with this section. A person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. A person aggrieved by a decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-

1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to an appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court.

**History:** Laws 1981, ch. 39, §38; 1983, ch. 6, §1; 1989, ch. 118, §1; 1993, ch. 329, §4; 1998, ch. 55, §1; 1998, ch. 93, §1; 1999, ch. 265, §74; 2003, ch. 246, §2; 2007, ch. 220, §1.

### **60-6B-3. Wholesaler's lien.**

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

**History:** 1978 Comp., §60-6B-3, enacted by Laws 1991, ch. 257, §2.

### **60-6B-4. Issuance or transfer of license; approval of appropriate governing body.**

A. Prior to the approval of the issuance of a new license, and prior to the approval of a transfer permitted by Section 60-6B-3 or 60-6B-12 NMSA 1978, the director shall notify the governing body of the director's preliminary approval of the issuance or transfer of the license. Notice to the governing body shall be by certified mail.

B. A governing body that has received a notice of preliminary approval of the issuance or transfer of a license from the department may approve or disapprove the issuance or transfer of the license in accordance with the provisions of this section.

C. Within forty-five days after receipt of a notice of preliminary approval from the department, the governing body shall hold a public hearing on the question of whether the department should approve the proposed issuance or transfer.

D. The governing body shall give notice of the public hearing, as required by Subsection C of this section, and the notice shall:

(1) be published at least twice, with the initial notice published at least thirty days before the hearing, in a newspaper of general circulation within the territorial limits of the governing body;

(2) in addition to required print publication, be published on a local option district's web site, if the district has a web site;

(3) set forth:

(a) the date, time and place of the hearing;

(b) the name and address of the licensee;

(c) the action proposed to be taken by the department;

(d) the location of the licensee's premises; and

(e) such other information as may be required by the department; and

(4) be sent by certified mail to the applicant.

E. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

F. The governing body may disapprove the issuance or transfer of the license if:

(1) the proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico;

(2) the issuance or transfer would be in violation of a zoning or other ordinance of the governing body; or

(3) the issuance or transfer would be detrimental to the public health, safety or morals of the residents of the local option district.

G. Within thirty days after the public hearing, the governing body shall notify the department as to whether the governing body has approved or disapproved the proposed issuance or transfer of the license. If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

H. If the governing body disapproves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the department by the governing body with the notice of disapproval. If the governing body disapproves of the issuance or transfer of the license, the director shall disapprove the issuance or transfer of the license.

I. If the governing body approves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section of its approval. If the governing body approves of the issuance or transfer of the license, the director shall approve the issuance or transfer of the license. **History:** Laws 1981, ch. 39, §40; 2015, ch. 102, §6.

### **60-6B-5. Expiration and renewal of licenses.**

A. All licenses provided for in the Liquor Control Act, except for nonresident licenses and common carrier registrations, shall be issued for a one-year period except for new licenses issued after the beginning of the license year. Nonresident licenses and common carrier registrations shall be issued for a three-year period.

B. The license year for dispenser, retailer and canopy licenses shall end on June 30 of each year. All dispenser, retailer and canopy licenses shall expire on June 30 unless renewed. The annual renewal application and renewal fee are due on April 1 of each year.

C. The license year for restaurant, club, wholesaler and manufacturer licenses shall end on October 31 of each year. All restaurant, club, wholesaler and manufacturer licenses shall expire on October 31 unless renewed. The annual renewal application and renewal fee are due on August 1 of each year.

D. All licenses not provided for in Subsections B and C of this section, except nonresident licenses and common carrier registrations, shall expire on February 28 of each year. The annual renewal application and renewal fee are due on December 1 of each year.

E. Nonresident licenses and common carrier registrations shall expire on June 30 every three years. The renewal application and renewal fee are due on April 1 of each third year.

F. A license shall not be issued or renewed if the applicant or licensee is delinquent in payment of any taxes administered by the taxation and revenue department.

G. The director shall also determine whether there exists any other reason why a license should not be renewed.

H. If the director determines that the license should not be renewed, the director shall enter an order requiring the licensee, after notice, to show cause why the license should be renewed, and the director shall conduct a hearing on the matter. If, after the hearing, the director finds that no reason exists why the license should not be renewed, the director shall renew the license.

**History:** Laws 1981, ch. 39, §41; 1998, ch. 79, §5; repealed and reenacted by Laws 2015, ch. 86, §2.

### **60-6B-6. Corporate licensees; limited partnership licensees; reporting.**

A. A **corporation** that holds a license issued under the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] shall notify the director within thirty days after the occurrence of any change in the officers, directors or holders of more than ten percent of the voting stock of the corporation, giving the names and addresses of the new officers, directors or stockholders. A corporate licensee shall also notify the director immediately of a change of agent by filing a new power of attorney. The director shall by regulation define what corporate changes, including but not limited to transfer of stock, merger and consolidation, constitute transfers of ownership of corporate licenses and shall, upon making such a determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a corporate license shall not be deemed to occur where ultimate ownership of the corporation does not change.

B. A **limited partnership** that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change of general partners or of limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The director shall by regulation define what limited partnership changes constitute transfers of ownership of limited partnership licenses and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee that is a limited partnership shall not be deemed to occur where ultimate ownership of the limited partnership does not change.

C. A **legal entity** that is not a corporation or limited partnership and that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the trustees, partners, owners or members of more than a ten percent interest in the entity, giving the names and addresses of the new trustees, partners or owners. The director shall by regulation define what entity changes constitute a transfer of ownership of such entity's license and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee shall not be deemed to occur where there is no change in the ultimate ownership of the legal entity.

**History:** Laws 1981, ch. 39, §42; 1984, ch. 58, §3; 2007, ch. 220, §2.

### **60-6B-7. Cancellation of license for failure to engage in business.**

A. Any license issued under the provisions of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] shall be canceled if the licensee fails to commence operation of the licensed business within one hundred twenty days after the license is issued and to continuously operate during customary hours and days of operation for that type of business; provided, however, the director may extend that period for a length of time determined by the director.

B. If after the one-hundred-twenty-day period or additional extension period specified in Subsection A of this section the licensee ceases to operate the licensed business during customary hours and days for that type of business for more than ten days, he shall notify the director in writing within five days of the cessation.

C. The director may grant temporary suspensions in the operation of the licensed business upon receipt of the notice provided in Subsection B of this section. A temporary suspension shall be for a period determined appropriate by the director.

D. The license of any person failing to comply with any provision of this section shall be canceled after notice and hearing complying with the provisions of Section 60-6C-4 NMSA 1978. **History:** Laws 1981, ch. 39, §43; 1984, ch. 58, §4; 1998, ch. 93, §2.

## **60-6B-8. Repealed.**

## **60-6B-9. Discontinuance of business or death of licensee; judicial sales.**

A. If a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee discontinues business for any reason or the licensee dies, the stock of alcoholic beverages owned at the time of the discontinuation of business or the death of the licensee may be sold in whole or in part to any other retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee or to a New Mexico wholesaler without the selling incurring criminal or civil liability under the provisions of the Liquor Control Act [<sup>60-3A-1</sup> NMSA 1978].

B. If the stock of alcoholic beverages is sold under execution or attachment or by order of a court, the stock shall be sold only to other New Mexico retailers, dispensers, canopy licensees, restaurant licensees, club licensees, governmental licensees or their lessees or to a New Mexico wholesaler. **History:** Laws 1981, ch. 39, §75.

## **60-6B-10. Locations near church or school; restrictions on licensing.**

No license shall be issued by the director for the sale of alcoholic beverages at a licensed premises where alcoholic beverages were not sold prior to July 1, 1981 that is within three hundred feet of any church or school. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the director a notice of intention to apply for transfer of a license to the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a waiver from a local option district governing body for the proposed licensed premises. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall be the straight line distance from the property line of the licensed premises to the property line of the church or school. This provision shall not apply to any church that has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation.

**History:** Laws 1981, ch. 39, §45; 1986, ch. 29, §1; 1997, ch. 223, §1.

## **60-6B-11. Locations near military installations; restrictions on licensing.**

Except for licenses issued prior to July 1, 1981, the director **shall not issue retailer's or dispenser's licenses** where the licensed premises would be **within one and one-half miles** in any direction measured from the exterior boundaries of a United States military installation where United States military troops are domiciled. Provided, however, such licenses may be issued or transferred subject to the discretion of the director for operation in an area within the one-and-one-half-mile limitation if a portion of the area lies within the incorporated limits of any municipality, **but no license shall be issued for or transferred to a location within two hundred yards of any entrance** to the military installation. **History:** Laws 1981, ch. 39, §46.

## **60-6B-12. Inter-local option district and inter-county transfers.**

A. Dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section ~~60-6B-16~~ NMSA 1978, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven

thousand according to the 1980 federal decennial census, the municipalities located within those class B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law, subject to the approval of transferring locations of those liquor licenses by the governing body for that location; provided that the requirements of the Liquor Control Act [60-3A-1 NMSA 1978] and department regulations for the transfer of licenses are fulfilled; and provided further that:

(1) beginning in calendar year 1997, no more than ten dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year; and

(2) the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection H of Section 60-6B-2 NMSA 1978.

B. Transfer of location of a liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district. Notice of such election shall be published as provided in Section 3-8-35 NMSA 1978, and the election shall be held within sixty days after the date the petition is verified or it may be held in conjunction with a regular election of the governing body if such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that district, unless a petition is filed requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

C. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises.

D. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; provided that they shall not be transferred to any location within ten miles of another licensed premises; and provided further that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled. **History:** Laws 1981, ch. 39, §113; 1984, ch. 58, §5; 1985, ch. 183, §1; 1991, ch. 257, §3; 1997, ch. 55, §1; 2015, ch. 114, §1.

### **60-6B-13. Repealed.**

#### **60-6B-14. Canopy license definition.**

As used in the Liquor Control Act [<sup>60-3A-1</sup> NMSA 1978], "canopy license" means a license which was initially issued prior to January 1, 1988 pursuant to Laws 1981, Chapter 39, Section 117 and which permits the licensee to dispense alcoholic beverages in the same manner as permitted by a dispenser's license, subject to the provisions of Section 60-6B-16 NMSA 1978.

**History:** 1978 Comp., §60-6B-14, enacted by Laws 1988, ch. 12, §2.

#### **60-6B-15. Purpose.**

The legislature determines that the economic development of the state will be best served by not terminating the existing eighty-six canopy licenses but rather by replacing the canopy licenses with dispenser's licenses as provided in this act in order to increase state revenues, to avoid the loss of state and local tax and license fee revenues, to avoid the loss of many jobs and to help promote a stable business climate in the state. **History:** 1978 Comp., §60-6B-15, enacted by Laws 1988, ch. 12, §3.

#### **60-6B-16. Special provisions for replacement of canopy licenses; transfer tax.**

A. On July 1, 1988, notwithstanding the provisions of Section 60-6A-18 NMSA 1978, each canopy license, upon the payment to the department of a one-time transfer tax of five thousand dollars (\$5,000) and the applicable annual license renewal fee, shall become a dispenser's license.

B. The location of a dispenser's license issued pursuant to this section may only be transferred within the local option district in which the replaced canopy license was located on January 1, 1988 subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of location as provided in this subsection, the license shall be operated by the person who transfers the location of the license for a period of at least one year from the date of approval of the transfer by the department.

C. Ownership of a dispenser's license issued pursuant to this section may be transferred in the same manner as provided for the transfer of ownership of dispenser's licenses issued under any former act to the Liquor Control Act [<sup>60-3A-1</sup> NMSA 1978] subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of ownership as provided in this subsection, the location of the license shall not be transferred for a period of at least one year from the date of approval of the transfer of ownership by the department.

D. A dispenser's license issued pursuant to this section may be leased in the same manner as provided for the lease of dispenser's licenses issued under any former act to the Liquor Control Act subject to approval of the department and the limitations set forth in Subsection E of this section.

E. If the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 by a person who applies to the department to acquire ownership of the license after January 1, 1988 or if the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 pursuant to a lease agreement entered into after January 1, 1988, the license shall only entitle the licensee or his lessee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises. Sale of alcoholic beverages in unbroken packages for consumption off the licensed premises shall not be permitted after a transfer described in this subsection.

F. Any canopy license for which the transfer tax imposed by this section is not paid to the department by August 31, 1988 shall be subject to cancellation by the director as provided in Section 60-6B-5 NMSA 1978.

G. The department shall deposit all transfer taxes collected as provided in this section in the general fund. **History:** 1978 Comp., §60-6B-16, enacted by Laws 1988, ch. 12, §4.

## **60-6B-17, 60-6B-18 Repealed.**

### **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.

### **60-6B-20. Licensed production facilities; alternating proprietorship.**

With the approval of the alcohol and tobacco tax and trade bureau of the United States department of the treasury, and subject to the provisions of the Liquor Control Act, an alternating proprietorship may be established so that the manufacturing facilities and equipment of a person who holds:

- A. a craft distiller's license may be used by another person who holds a craft distiller's license to manufacture or produce spiritous liquors;
- B. a winegrower's license may be used by another person who holds a winegrower's license to manufacture or produce wine; and
- C. a small brewer's license may be used by another person who holds a small brewer's license to manufacture or produce beer. **History:** Laws 2015, ch. 102, §7.

### **60-6B-21. Licensed retailer cooperatives.**

A. A person who holds a retailer's license or a person who holds a dispenser's license and who is allowed to sell alcoholic beverages in unbroken packages that are for consumption off premises and are not for resale may form a cooperative with one or more other persons who hold a retailer's or dispenser's license for the purposes of the advertisement or purchase of alcoholic beverages for retail sale.

B. The director shall promulgate rules to implement the provisions of this section, including the form for cooperative agreements. **History:** Laws 2015, ch. 102, §8.

## ARTICLE 6C | Suspension and Revocation of Licenses

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### **60-6C-1. Grounds for suspension, revocation or administrative fine; reporting requirement.**

A. The director may suspend or revoke the license or permit or fine the licensee in an amount not more than ten thousand dollars (\$10,000), or both, when he finds that any licensee has:

(1) violated any provision of the Liquor Control Act [~~60-3A-1~~ NMSA 1978] or any regulation or order promulgated pursuant to that act;

(2) been convicted of a felony pursuant to the provisions of the Criminal Code [~~30-1-1~~ NMSA 1978], the Liquor Control Act or federal law; or

(3) permitted his licensed premises to remain a public nuisance in the neighborhood where it is located after written notice from the director that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.

B. The director shall suspend or revoke the license or permit and may fine the licensee in an amount not to exceed ten thousand dollars (\$10,000), or both, when he finds that any licensee or:

(1) his employee or agent knowingly has sold, served or given any alcoholic beverage to a minor in violation of Section 60-7B-1 NMSA 1978 or to an intoxicated person in violation of Section 60-7A-16 NMSA 1978, on two separate occasions within any twelve-month period; or

(2) his agent has made any material false statement or concealed any material facts in his application for the license or permit granted him pursuant to the provisions of the Liquor Control Act [~~60-3A-1~~ NMSA 1978].

C. Any licensee aggrieved by a revocation, suspension or fine proposed to be imposed by the director pursuant to this section shall be entitled to the hearing procedures set forth in Chapter 60, Article 6C NMSA 1978 before the revocation, suspension or fine shall be effective.

D. Any charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the department of public safety and local law enforcement agencies whose jurisdictions include the licensed establishment. **History:** Laws 1981, ch.39, §97; 1993, ch.68, §11; 1998 (1st S.S.), ch.16, §1.

### **60-6C-2. Hearings; location; open to public; hearing officer.**

All hearings held pursuant to the provisions of the Liquor Control Act [~~60-3A-1~~ NMSA 1978] shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensed premises that are the subject matter of the hearing are located. All such hearings shall be open to the public. **History:** Laws 1981, ch.39, §98; 1987, c.255, §1; 1993, ch.68, §12.

### **60-6C-3. Repealed.**

### **60-6C-4. Administrative proceedings; complaints; investigation; order to show cause; service; hearings.**

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act [~~60-3A-1~~ NMSA 1978], unless the complaint is deficient on its face, the director shall request that the department of public safety investigate the complaint.

B. The department of public safety shall investigate the complaint and make a written report to the director.

C. If the director believes from the report that probable cause exists for filing charges against the licensee for the revocation or suspension of his license or permit or for fining him, or for both, he or his designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. After charges have been filed, the director shall issue a signed order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

E. The director shall keep the original of the charge and the order to show cause on file in his office.

F. The director shall appoint a hearing officer no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why his license should not be revoked or suspended or why the licensee should not be fined, or both.

G. The director shall have a copy of the charge and a copy of the order to show cause sent to the licensee or the licensee's resident agent at the agent's last known address by certified mail at least fourteen days before the date set for the hearing on the order to show cause.

H. At any hearing on an order to show cause, the director shall cause a record of hearing to be made, which shall record:

- (1) the style of the proceedings;
- (2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3) the place, date and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the licensee;
- (5) if the licensee appears with an attorney, the name and address of the attorney;
- (6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7) the findings of fact and law as to whether or not the licensee has violated the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] as set out in the charge; and
- (8) the decision of the director.

I. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the director shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license revoked or suspended or the licensee fined, or both, on all the grounds alleged in the charge, and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings.

J. If the licensee admits guilt on all grounds set out in the charge, the director shall order the revocation or suspension of the license or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of his order of revocation or suspension of the license or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

K. If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

- (1) the director or the hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the director shall allow the licensee or his attorney to cross-examine all witnesses;
- (2) the licensee shall be allowed to present testimony and evidence he may have in denial or in mitigation of the grounds set out in the charge;
- (3) the department shall have the right to cross-examine the licensee or any witness testifying in his favor;
- (4) the department shall present any evidence or testimony in rebuttal of that produced by the licensee;
- (5) the director or the hearing officer shall make a finding on each ground alleged and a finding of the guilt or innocence of the licensee on each ground;
- (6) if the licensee is found guilty on any ground alleged and proved, the director shall make his order of revocation or suspension of the license or fine of the licensee, or both; and
- (7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

L. No admission of guilt, admission against interest or transcript of testimony made or given in any hearing pursuant to this section shall be received or used in any criminal proceedings wherein the licensee is a defendant; provided, however, if the licensee commits perjury in a hearing, the evidence shall be admissible in a perjury trial if otherwise competent and relevant.

M. The director shall adopt reasonable regulations setting forth uniform standards of penalties concerning fines and suspensions imposed by the director. **History:** Laws 1981, ch. 39, §100; 1993, ch. 68, §13.

### **60-6C-5. Administration of oaths; production of documents; witnesses.**

The director shall have the power to administer oaths and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing held under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] by the issuance and service of subpoenas and subpoenas duces tecum. The hearing officer shall have authority to rule upon offers of proof and receive relevant evidence, take, allow or cause depositions to be taken, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests or similar matters and reopen the hearing for the taking of additional evidence at any time prior to the taking of an appeal. **History:** Laws 1981, ch. 39, §101; 1993, ch. 329, §5.

### **60-6C-6. No injunction or mandamus permitted; appeal.**

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee" includes a person issued a server permit pursuant to the Alcohol Server Education Article of the Liquor Control Act [<sup>Chapter 60, Article 6E</sup>NMSA 1978].

**History:** Laws 1981, ch.39, §102; 1987, ch.255, §2; 1993, ch.329, §6; 1998, ch.55, §72; 1999, ch.265, §75; 1999, ch.277, §1.

### **60-6C-7. Repealed.**

### **60-6C-8. Restriction on license after revocation.**

If a license is revoked under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978], the licensee shall not be issued or be the transferee of a license within two years of the date of the revocation.

**History:** Laws 1981, ch. 39, §104.

### **60-6C-9. Compromising liability.**

The director is authorized to compromise the penalty for any violations of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] or of any department regulation or order when he deems it is in the best interest of the state. **History:** Laws 1981, ch. 39, §105.

## **ARTICLE 6D Alcohol Server Education Article - Repealed**

## ARTICLE 6E | Alcohol Server Education

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### 60-6E-1. Article designation; alcohol server education.

Chapter 60, Article 6E NMSA 1978 may be cited as the "Alcohol Server Education Article of the Liquor Control Act". **History:** 1978 Comp., §60-6D-11, enacted by Laws 1999, ch. 277, §2; recompiled as 1978 Comp., §60-6E-1; 2013, ch. 213, §1.

### 60-6E-2. Purpose.

The purpose of Chapter 60, Article 6D [6E] NMSA 1978 is to:

A. enhance the professionalism of persons employed in the alcoholic beverage service industry;

B. establish a program for servers, licensees and their lessees that includes the study of:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(4) methods of identifying false drivers' licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(5) prevention of fetal alcohol syndrome;

C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and

D. reduce the frequency of alcohol-related birth defects.

**History:** 1978 Comp., §60-6D-12, enacted by Laws 1999, ch. 277, §3; recompiled as 1978 Comp., §60-6E-2.

### 60-6E-3. Definitions.

As used in Chapter 60, Article 6D [6E] NMSA 1978:

A. "director" means the director of the division;

B. "division" means the alcohol and gaming division of the regulation and licensing department;

C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] to sell, serve or dispense alcoholic beverages for consumption and not for resale;

D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;

E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;

F. "server" means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol. "Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale or service of alcohol; and

G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages.

**History:** 1978 Comp., §60-6D-13, enacted by Laws 1999, ch. 277, §4; recompiled as 1978 Comp., §60-6E-3.

#### **60-6E-4. Server training required; alcohol service or sales.**

No person shall be employed as a server on a licensed premises unless that person obtains within thirty days of employment alcohol server training pursuant to the provisions of Chapter 60, Article 6E NMSA 1978. **History:** 1978 Comp., §60-6D-4, enacted by Laws 1999, ch. 277, §5, recompiled as 1978 Comp., §60-6E-4; Laws 2000, ch. 46, §1.

#### **60-6E-5. Programs required; approval by director; content of program; surety bond.**

A. The director shall have the authority to approve programs offered by providers.

B. The program curriculum shall include the following subjects:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) the effect alcohol has on a person when used in combination with legal or illegal drugs;

(3) state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(4) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(6) the incidence of alcohol-related birth defects.

C. The director shall require each provider to post a surety bond in the amount of five thousand dollars (\$5,000). The director may, in the director's discretion, allow a provider to submit other evidence of financial responsibility satisfactory to the director in lieu of posting a surety bond in the amount of five thousand dollars (\$5,000).

**History:** 1978 Comp., §60-6D-15, enacted by Laws 1999, ch. 277, §6; recompiled as 1978 Comp., §60-6E-5.

#### **60-6E-6. Server permits; failure to produce proof.**

A. Every licensee shall maintain on the licensed premises copies of the server permits of the licensee, his lessee, if any, and each server then employed by the licensee or lessee at all times and make copies available to the director and to the agents or employees of the department of public safety upon request.

B. Failure to produce a copy of a server permit is prima facie evidence that a server permit has not been issued and shall subject the licensee to fines and penalties as determined by rule adopted by the director.

**History:** 1978 Comp., § 60-6D-16, enacted by Laws 1999, ch. 277, § 7; recompiled as 1978 Comp., § 60-6E-6.

#### **60-6E-7. Server permits; issuance; ownership; fees.**

A. The director shall issue a server permit to each applicant who obtains a certificate of program completion and provides such other information as may be required by the director. The director may, in the director's discretion, issue temporary server permits if circumstances warrant such issuance.

B. Server permits shall not be issued to graduates of programs that are not approved by the director.

C. A server permit is the property of the server to whom it is issued.

D. The director may charge a fee for the issuance of the server permit.

E. Server permits shall be valid for a period of three years from the date the server permit was issued.

F. A certificate of completion of an alcohol server education program issued pursuant to previous law shall remain valid until the date of its expiration.

**History:** 1978 Comp., §60-6D-17, enacted by Laws 1999, ch. 277, §8; recompiled as 1978 Comp., §60-6E-7; 2013, ch. 213, §2.

### **60-6E-8. Server permit; suspension; revocation; administrative fines; penalties.**

In addition to any other penalties available, the following penalties may be imposed for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or rules of the division:

A. The director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars (\$500), or both, when he finds that the server is guilty of a first offense of selling, serving or dispensing an alcoholic beverage to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

B. The director shall suspend a server's server permit for a period of one year when he finds that the server is guilty of a second offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incident giving rise to his first offense;

C. The director shall permanently revoke a server's server permit when he finds that the server is guilty of a third offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to his first and second offenses.

D. No person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises during the period of suspension or revocation.

E. No person whose server permit is suspended may serve alcoholic beverages on or after the date of suspension unless the person obtains a new server permit in accordance with the provisions of Article 6D [6E] of Chapter 60.

F. Nothing in this act shall be interpreted to waive any license holder's liability that may arise pursuant to the provisions of this act.

**History:** 1978 Comp., §60-6D-18, enacted by Laws 1999, ch. 277, §9; recompiled as 1978 Comp., §60-6E-8.

### **60-6E-9. Alcohol server education; required for license renewal.**

A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, his lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served or dispensed.

**History:** 1978 Comp., §60-6D-19, enacted by Laws 1999, ch. 277, §10; recompiled as 1978 Comp., §60-6E-9.

### **60-6E-10. Administrative proceedings; hearings.**

A. Hearings for the suspension or revocation of any server's server permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

B. The director may suspend or revoke a server permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978.

**History:** 1978 Comp., §60-6D-20, enacted by Laws 1999, ch. 277, §11; recompiled as 1978 Comp., §60-6E-10.

### **60-6E-11. Advisory committee created; members; meetings.**

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The membership of the committee shall consist of:

- (1) the director;
- (2) the secretary of public safety or his designee;
- (3) the secretary of health or his designee;
- (4) the chief of the traffic safety bureau of the state highway and transportation department or his designee;
- (5) three representatives from the retail liquor industry;

- (6) a representative from the wholesale liquor industry;
- (7) a representative from the insurance industry; and
- (8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chair of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum.

**History:** 1978 Comp., §60-6D-21, enacted by Laws 1999, ch. 277, §12; recompiled as 1978 Comp., §60-6E-11.

### **60-6E-12. Advisory committee; duties.**

The alcohol server education advisory committee shall assist the division with development of:

- A. standards, course requirements and materials for the program;
- B. procedures attendant to the program;
- C. certification standards for providers and instructors; and
- D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee.

**History:** 1978 Comp., §60-6D-22, enacted by Laws 1999, ch. 277, §13; recompiled as 1978 Comp., §60-6E-12.

## **ARTICLE 7 - State Licenses –Repealed**

### **ARTICLE 7A | Offenses**

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#### **60-7A-1. Hours and days of business; Sunday sales; Christmas day sales; Sunday sales for consumption off the licensed premises; elections.**

A. Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels, alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

- (1) on Mondays from 7:00 a.m. until midnight;
- (2) on Tuesdays through Saturdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section; and
- (3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and E of this section and Section 60-7A-2 NMSA 1978.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on Mondays through Saturdays from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section.

C. A dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars (\$100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays, subject to approval obtained pursuant to the process set forth in Subsection E of this section. Alcoholic beverages may be sold, served and consumed from 11:00 a.m. until midnight as set forth in the licensee's Sunday sales permit, except as otherwise provided for a restaurant licensee in Section 60-6A-4 NMSA 1978. The Sunday sales permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection G of this section shall be called "Sunday sales".

D. Retailers, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or their lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after Christmas, except as permitted pursuant to Subsection F of this section.

E. Sunday sales pursuant to the provisions of Subsection C of this section are permitted in a local option district that voted to permit them. If in that election a majority of the voters in a local option district voted "no" on the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?", Sunday sales are unlawful in that local option district upon certification of the election returns unless the provisions of Subsection J of this section apply. The question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

(2) a petition is filed with the local governing body bearing the signatures of registered qualified electors of the local option district equal in number to ten percent of the number of votes cast and counted in the local option district for governor in the last preceding general election in which a governor was elected. The signatures on the petition shall be verified by the clerk of the county in which the local option district is situated.

F. On and after July 1, 2002, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees; provided that the licensees have current, valid food service establishment permits, may sell, serve or allow the consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code [Chapter 1 NMSA 1978] or for special municipal elections in a municipality under the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

G. Notwithstanding the provisions of Subsection E of this section, any Indian nation, tribe or pueblo whose lands are wholly situated within the state that has, by statute, ordinance or resolution, elected to permit the sale, possession or consumption of alcoholic beverages on lands within the territorial boundaries of the Indian nation, tribe or pueblo may, by statute, ordinance or resolution of the governing body of the Indian nation, tribe or pueblo, permit Sunday sales by the drink on the licensed premises of licensees on lands within the territorial boundaries of the Indian nation, tribe or pueblo; provided that a certified copy of such enactment is filed with the office of the director and with the secretary of state.

H. Subject to the provisions of Subsection I of this section, a dispenser or retailer, upon payment of an additional fee of one hundred dollars (\$100), may obtain a permit to sell alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays from noon until midnight, and in those years when December 31 falls on a Sunday, from noon on December 31 until 2:00 a.m. of the following day. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to the provisions of this subsection shall be called "Sunday package sales".

I. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body and that petition is signed by at least ten percent of the number of registered voters of the local option district and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date that the petition is verified, or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the election votes not to allow the Sunday package sales, then those Sunday package sales shall be prohibited commencing the first Sunday after the results of the election are certified. Following the election, the question of allowing the Sunday package sales shall not be submitted again to the voters within two years of the date of the last election on the question.

J. Sunday sales of alcoholic beverages shall be permitted at resorts and at horse racetracks statewide pursuant to the provisions of Section 60-7A-2 NMSA 1978.

**History:** Laws 1981, ch. 39, §47; 1984, ch. 58, §6; 1987, ch. 321, §1; 1989, ch. 331, §1; 1989, ch. 332, §1; 1991, ch. 255, §1; 1992, ch. 14, §2; 1993, ch. 68, §14; 1995, ch. 34, §1; 1998 (1st S.S.), ch. 16, §2; 1999, ch. 101, §1; 2002, ch. 104, §1; 2013, ch. 209, §1.

### **60-7A-2. Sunday sales at racetracks and resorts.**

A. Notwithstanding other provisions of the Liquor Control Act [60-3A-1 NMSA 1978], it is lawful for a dispenser:

(1) whose licensed premises are located on a horse racetrack licensed by the state racing commission, to sell, serve or permit the consumption of alcoholic beverages by the drink on Sunday during the racing season between the hours of 12:00 noon and 11:00 p.m.; or

(2) whose licensed premises are within a resort, to sell, serve or permit the consumption of alcoholic beverages by the drink on Sunday after midnight of the previous day until 2:00 a.m. and then from 12:00 noon until midnight.

B. As used in this section, "resort" means a lodging establishment or complex, open to the public, offering at least one hundred guest rooms or at least one hundred recreational vehicle parking or camping spaces and where meals are regularly furnished to the public. The establishment or complex shall:

(1) offer at least two of the following recreational activities:

- (a) nine or eighteen holes of golf;
- (b) tennis;
- (c) water park facilities;
- (d) horseback riding;
- (e) snow skiing;
- (f) water-skiing;
- (g) fishing;
- (h) hunting;
- (i) boating;
- (j) trap or skeet shooting; or
- (k) swimming; or

(2) be adjacent to or within a national park, national monument, national forest, state park or state monument. **History:** Laws 1981, ch. 39, §48; 2002, ch. 104, §2.

### **60-7A-3. Transportation into state without permit; exportation of alcoholic beverages without permit; importation for private use; reciprocal shipping; when unlawful.**

A. Except as provided in Subsections E and F of this section, it is a violation of the Liquor Control Act [~~60-3A-1~~ NMSA 1978] for a registered common carrier to knowingly deliver a shipment of alcoholic beverages from another state to a person in this state without receiving at the time of delivery a permit issued by the department covering the quantity and class of alcoholic beverages to be delivered and requiring the shipment be transported from the shipper designated in the permit to the designated consignee and from the designated point of origin to the destination designated in the permit.

B. Except as provided in Subsections D through F of this section, it is a violation of the Liquor Control Act for a person other than a registered common carrier to knowingly transport from another state and deliver in this state alcoholic beverages, unless the person has in the person's possession on entering New Mexico a permit from the department for the quantity and class of alcoholic beverages to be delivered, designating the name of the shipper and consignee and the point of origin and destination of the alcoholic beverages.

C. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for a person to transport out of state alcoholic beverages on which the excise tax has not been paid, unless the shipment is accompanied by a permit issued by the department for the exact quantity and class transported, showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic beverages.

D. An individual not a minor may transport into or out of the state a reasonable amount of alcoholic beverages for the exclusive purpose of the individual's private use or consumption, and nothing in the Liquor Control Act limits or applies to such private actions.

E. An individual or licensee, except for a person holding a winery license, in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege may ship for personal use and not for resale not more than two cases of wine, each case containing no more than nine liters, per month to an individual not a minor in this state. Delivery of a shipment pursuant to this subsection shall not be deemed to constitute a sale in this state and nothing in the Liquor Control Act limits or applies to such shipments. The shipping container of wine sent into or out of this state under this subsection shall be labeled clearly to indicate that the package cannot be delivered to a minor or to an intoxicated person.

F. The holder of a direct wine shipment permit issued pursuant to Section 60-6A-11.1 NMSA 1978 may ship no more than two nine-liter cases of wine per month to a person living in New Mexico who is twenty-one years of age or older for the person's personal consumption and not for resale.

G. As used in this section, "in this state" means within the exterior boundaries of the state.

**History:** Laws 1981, ch. 39, §49; 1987, ch. 96, §1; 2011, ch. 109, §2.

### **60-7A-4. Sale, shipment and delivery unlawful.**

A. It is unlawful for any person on his own behalf or as the agent of another person, except a licensed New Mexico wholesaler or manufacturer or the agent of either, to directly or indirectly sell or offer for sale for shipment into the state or ship into the state, except as provided in Section 60-7A-3 NMSA 1978, any alcoholic beverages unless such person or his principals has secured a nonresident license as provided in Section 60-7A-7 NMSA 1978.

B. It is a violation of the Liquor Control Act [~~60-3A-1~~ NMSA 1978] to deliver any alcoholic beverages transported into the state unless the delivery is made in accordance with Section 60-7A-3 NMSA 1978.

C. As used in this section, "into the state of New Mexico" means into the exterior boundaries of the state. **History:** Laws 1981, ch. 39, §50; 1987, ch. 96, §2.

#### **60-7A-4.1. Unlawful sale of alcoholic beverages; criminal penalty; forfeiture.**

A. It is unlawful for any person to sell or attempt to sell alcoholic beverages at any place other than a licensed premises or as otherwise provided by the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony.

C. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages or money which is the fruit or instrumentality of the crime is subject to forfeiture, and the provisions of the Forfeiture Act [<sup>31-27-1</sup>NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

**History:** 1978 Comp., §60-7A-4.1, enacted by Laws 1985, ch.179, §1; 1989, ch.254, §1; 1993, ch.68, §15; 2002, ch.4, §19.

#### **60-7A-4.2. Record of sales; administrative penalties.**

A. It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for any person licensed pursuant to the provisions of that act and any employee, agent or lessee of that person to fail to maintain a record of sales of distilled spirits, wine and beer in quantities of twenty gallons or more to a single purchaser. The record shall contain the following information:

- (1) the date of the sale;
- (2) the name and address of the purchaser;
- (3) a description of the quantity and type of liquor sold; and
- (4) when a full case of distilled spirits is included in the sale, the serial number of the case.

B. Any person who violates the provisions of Subsection A of this section by failing to maintain a record of sales may be assessed an administrative penalty by the director not to exceed one thousand dollars (\$1,000).

C. Any person who violates the provisions of Subsection A of this section by failing to maintain, with the intent to defraud, a record of sales may be assessed an administrative penalty by the director not to exceed ten thousand dollars (\$10,000). **History:** 1978 Comp., §60-7A-4.2, enacted by Laws 1993, ch. 68, §16.

#### **60-7A-5. Manufacture, sale or possession for sale when not permitted by Liquor Control Act; criminal penalty; forfeiture.**

A. It is unlawful for any person to manufacture for the purpose of sale, possess for the purpose of sale, offer for sale or sell any alcoholic beverages in the state except under the terms and conditions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or sale of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or sale of alcoholic beverages is subject to forfeiture, and the provisions of the Forfeiture Act [<sup>31-27-1</sup>NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

**History:** Laws 1981, ch. 39, §51; 1993, ch. 68, §17; 2002, ch. 4, §20.

#### **60-7A-6. Possession of liquor manufactured or shipped in violation of law; fourth degree felony; penalty; forfeiture.**

A. It is unlawful for any person to have in his possession with the intent to sell or resell any alcoholic beverages which to that person's knowledge have been manufactured or transported into this state in violation of the laws of this state.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or transportation of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or transportation of alcoholic beverages is subject to forfeiture, and the provisions of the Forfeiture Act [<sup>31-27-1</sup>NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

**History:** Laws 1981, ch. 39, §52; 1993, ch. 68, §18; 2002, ch. 4, §21.

### **60-7A-7. Manufacture of spirituous liquors; felony.**

It is a felony for any person other than a licensed distiller or rectifier to manufacture any spirituous liquors in the state. **History:** Laws 1981, ch. 39, §53.

### **60-7A-8. Sales to wholesalers.**

Unless he has a wholesaler's license, no New Mexico manufacturer shall sell or offer for sale any alcoholic beverages manufactured within this state to any person in New Mexico other than wholesalers licensed under the provisions of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978]. **History:** Laws 1981, ch. 39, §59.

### **60-7A-9. Credit extension by wholesalers.**

It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for any wholesaler to extend credit or to agree to extend credit for the sale of alcoholic beverages to any retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for any period more than thirty calendar days from the date of the invoice required under the provisions of Section 60-8A-3 NMSA 1978. A violation of this section does not bar recovery by the wholesaler for the total indebtedness of the retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee.

**History:** Laws 1981, ch. 39, §71; 1985, ch. 39, §1.

### **60-7A-10. Wholesalers prohibited from owning retailer's or dispenser's establishment.**

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for a wholesaler, directly or indirectly or through an affiliate, to own, either in whole or in part, a business operated under a retailer's or dispenser's license.

B. This section shall not prevent a wholesaler from owning a dispenser's license directly or indirectly or through an affiliate and operating a business itself or through an affiliate or a lessee under a dispenser's license if:

(1) the wholesaler directly or indirectly operates or controls an interest in an establishment or complex maintaining a minimum of one hundred sleeping rooms and 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; and

(2) the sale of alcoholic beverages under the dispenser's license is restricted to their consumption on the licensed premises. **History:** Laws 1981, ch. 39, §74; 1991, ch. 5, §1.

### **60-7A-11. Offenses by retailers.**

It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for any retailer to:

A. allow or permit any alcoholic beverages to be consumed on his licensed premises;

B. maintain or keep in close proximity to the licensed premises any place for the consumption of alcoholic beverages purchased from him;

C. sell any alcoholic beverages at any place other than his licensed premises;

D. sell, possess for the purpose of sale or to have, possess or keep on his licensed premises alcoholic beverages not contained in the unopened, original package;

E. buy or receive any alcoholic beverages from any person other than a duly licensed New Mexico wholesaler, or wine wholesaler for the purpose of or with the intent of reselling the alcoholic beverages; or

F. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided, that this subsection shall not prevent a retailer from owning stock in any corporation which wholesales, manufactures or bottles alcoholic beverages when he owns the stock for investment purposes only.  
**History:** Laws 1981, ch. 39, §77; 1988, ch. 60, §6.

### **60-7A-12. Offenses by dispensers, canopy licensees, restaurant licensees, governmental licensees or their lessees and clubs.**

It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose or with the intent of reselling the alcoholic beverages from any person unless the person is duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell; possess for the purpose of sale; or bottle bulk wine for sale other than by the drink for immediate consumption on its licensed premises;

C. directly, indirectly or through subterfuge, own, operate or control any interest in a wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent:

(1) a dispenser from owning an interest in a legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978; or

(2) a small brewer or winegrower licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act from holding an interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant or a dispenser's license and a small brewer and winegrower limited wholesaler's license issued pursuant to the Liquor Control Act;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except its licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not received alcohol server training within thirty days of employment; or

F. employ or engage a person to sell, serve or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked.

**History:** Laws 1981, ch. 39, §78; 1991, ch. 5, §2; 1999, ch. 277, §14; 2000, ch. 46, §2; 2015, ch. 113, §1.

### **60-7A-13. Sales by clubs.**

A. Any club licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall only have the right to sell alcoholic beverages by the drink and wine by the bottle for consumption on the premises.

B. Except as otherwise provided in this section, it is unlawful and grounds for suspension or revocation of its license for a club to:

(1) solicit by advertising or any other means public patronage of its alcoholic beverage facilities. In the event the club solicits public patronage of its other facilities, alcoholic beverages shall not be sold, served or consumed on the premises while the other facilities are being used by or operated for the benefit of the general public, unless the alcoholic beverage facilities are separate from the other facilities and the general public is not permitted to enter any part of the facilities where alcoholic beverages are being sold, served or consumed; or

(2) serve, sell or permit the consumption of alcoholic beverages to persons other than members and their bona fide guests.

C. A club licensed pursuant to the provisions of the Liquor Control Act may allow its facilities, including its licensed premises, to be used, for activities other than its own, no more than two times in a calendar year for fundraising events held by other nonprofit organizations.

D. For the purposes of this section:

(1) "bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility; and

(2) "member" includes the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues or a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club. **History:** Laws 1981, ch. 39, §79; 1987, ch. 13, §1; 1999, ch. 114, §1.

#### **60-7A-14. Filling bottles; misrepresentation of alcoholic beverages.**

It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for any licensee to:

A. pour into any empty or partially empty bottle which contains or has contained any alcoholic beverage, alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter on the bottle;

B. have, allow or permit upon the licensed premises any bottle containing alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter appearing on the bottle;

C. expressly or impliedly misrepresent the kind, class, brand, proof or age of any alcoholic beverages served by the drink; or

D. pour into any empty or partially empty alcoholic beverage bottle, alcoholic beverages of the same kind, class, brand, proof or age as that represented by the label, indicia, legend and descriptive matter appearing on the bottle. **History:** Laws 1981, ch. 39, §80.

#### **60-7A-15. Public nuisance.**

A. Any premises used for the unlawful purpose of sale, manufacture, storage, possession or consumption of alcoholic beverages in violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] is a public nuisance.

B. The district attorney in the county in which the nuisance exists is authorized to maintain an action to abate and temporarily and permanently enjoin the nuisance. The district attorney shall not be required to post bond.

C. Upon final judgment, the court shall enjoin the owner, lessee, tenant or occupant from maintaining or assisting in maintaining the nuisance, and shall order the premises to be closed until bond is furnished with sufficient surety in such sum as the court in its discretion shall be order and judgment provide, conditioned that the premises will not be maintained as a public nuisance. **History:** Laws 1981, ch. 39, §92.

#### **60-7A-16. Sale to intoxicated persons.**

It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for a person to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding in procurement, knows or has reason to know that he is selling, serving, procuring or aiding in procurement of alcoholic beverages for a person that is intoxicated. **History:** Laws 1981, ch. 39, §93; 1993, ch. 68, §19.

#### **60-7A-17. Prostitution; loitering; promoting.**

A. It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for a licensee to knowingly:

(1) allow prostitution on the licensed premises;

(2) allow or permit the loitering of or solicitation by known prostitutes on the licensed premises; or

(3) procure a prostitute for a patron, solicit a patron for a prostitute or solicit for a house of prostitution.

B. No municipality shall enact any ordinance or resolution inconsistent with the provisions of Subsection A of this section. **History:** Laws 1981, ch. 39, §94.

### **60-7A-18. Hours for public dances.**

A dispenser who in connection with his licensed establishment maintains dancing facilities for use by his patrons shall be allowed to keep such facilities open and permit dancing on the licensed premises during the same hours as he is allowed by law to sell alcoholic beverages.

**History:** Laws 1981, ch. 39, § 95.

### **60-7A-19. Commercial gambling on licensed premises.**

A. It is a violation of the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, a person who violates Subsection A of this section may have the person's license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. As used in this section:

(1) "commercial gambling" means:

- (a) participating in the earnings of or operating a gambling place;
- (b) receiving, recording or forwarding bets or offers to bet;
- (c) possessing facilities with the intent to receive, record or forward bets or offers to bet;
- (d) for gain, becoming a custodian of anything of value bet or offered to be bet;
- (e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or
- (f) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game; and

(2) "commercial gambling" does not mean:

- (a) activities authorized pursuant to the New Mexico Lottery Act [<sup>6-24-1</sup>NMSA 1978];
- (b) the conduct of activities pursuant to Subsection B of Section 30-19-6 NMSA 1978 on the licensed premises of the holder of a club license; and
- (c) gaming authorized pursuant to the Gaming Control Act [<sup>60-2E-1</sup>NMSA 1978] on the premises of a gaming operator licensee licensed pursuant to that act.

**History:** Laws 1981, ch. 39, § 96; 1997, ch. 190, § 68; 2011, ch. 176, § 1.

### **60-7A-20. False complaints; misdemeanor.**

Any person who lodges or intentionally causes or conspires to cause a complaint to be lodged knowing the complaint to be unfounded in actual fact, he [sic] shall, upon conviction thereof, be guilty of a misdemeanor. **History:** Laws 1981, ch. 39, § 106.

### **60-7A-21. Possession or display of United States license.**

Possession or display of a license from the United States to sell alcoholic beverages in New Mexico by a person not licensed under the Liquor Control Act [<sup>60-3A-1</sup>NMSA 1978] to sell alcoholic beverages or issuance of such a license by the district director of the internal revenue service shall be prima facie evidence that the person possessing or displaying the license, or to whom it was issued, is engaged in the business of selling alcoholic beverages, at the place for which it was issued or where it is displayed, in violation of the laws of New Mexico, and a certified copy of the records of the district director of the internal revenue service showing the issuance of the license or the payment of the tax therefor shall be admissible as evidence in any prosecution.

**History:** Laws 1981, ch. 39, § 107.

**60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments; selling or delivering alcoholic beverages from a drive-up window.**

A. It is a violation of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act for any person not a licensee to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

C. It is a violation of the Liquor Control Act for any licensee to sell or deliver alcoholic beverages from a drive-up window. **History:** Laws 1981, ch. 39, §108; 1991, ch. 257, §4; 1998 (1st S.S.), ch. 16, §3.

**60-7A-23. Possession of wine as prima facie evidence.**

In any proceedings under the provisions of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>], the possession of more than one thousand two hundred liters of wine by any person who is not a public warehouseman, registered carrier or licensee shall be prima facie evidence that the person has manufactured the wine for the purpose of sale and possesses the wine for the purpose of sale in violation of the Liquor Control Act. **History:** Laws 1981, ch. 39, §109.

**60-7A-24. Obstruction of the administration of the Liquor Control Act; criminal penalty; sentencing.**

A. Any person who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any licensee who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act is guilty of violating the Liquor Control Act and shall be punished by fine, suspension or revocation under the procedures of the Liquor Control Act. **History:** Laws 1981, ch. 39, §110; 1993, ch. 68, §20.

**60-7A-25. Criminal penalties.**

A. A person who violates any provision of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] or any rule or regulation promulgated by the department that is not declared by the Liquor Control Act to be a felony is guilty of a misdemeanor and, upon conviction thereof, the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person convicted of a violation of the Liquor Control Act which is declared by the Liquor Control Act to be a fourth degree felony shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. **History:** Laws 1981, ch. 39, §111; 1991, ch. 119, §1; 1993, ch. 68, §21.

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**ARTICLE 7B | Regulation of Sales and Service to Minors**

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**60-7B-1. Selling or giving alcoholic beverages to minors; possession of alcoholic beverages by minors.**

A. It is a violation of the Liquor Control Act [<sup>Chapter 60, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978</sup>] for a person, including a person licensed pursuant to the provisions of the Liquor Control Act, or an employee, agent or lessee of that person, if the person knows or has reason to know that the person is violating the provisions of this section, to:

(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises;

(2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

(3) deliver alcoholic beverages to a minor; or

(4) aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is not a violation of the Liquor Control Act, as provided in Subsection A or C of this section, when:

(1) a parent, legal guardian or adult spouse of a minor serves alcoholic beverages to that minor on real property, other than licensed premises, under the control of the parent, legal guardian or adult spouse; or

(2) alcoholic beverages are used in the practice of religious beliefs.

C. It is a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit the minor's self to be served with alcoholic beverages.

D. When a person other than a minor procures another person to sell, serve or deliver alcoholic beverages to a minor by actual or constructive misrepresentation of facts or concealment of facts calculated to cause the person selling, serving or delivering the alcoholic beverages to the minor to believe that the minor is legally entitled to be sold, served or delivered alcoholic beverages and actually deceives that person by that misrepresentation or concealment, then the procurer and not the person deceived shall have violated the provisions of the Liquor Control Act.

E. As used in the Liquor Control Act, "minor" means a person under twenty-one years of age.

F. In addition to the penalties provided in Section 60-6C-1 NMSA 1978, a violation of the provisions of Subsection A of this section is:

(1) a fourth degree felony for an offender, other than a server certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to Section 31-18-15 NMSA 1978;

(2) a misdemeanor for a first violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(3) a fourth degree felony for a second or subsequent violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. A violation of the provisions of Subsection C of this section is a misdemeanor and the offender shall be punished as follows:

(1) for a first violation, the offender shall be:

(a) fined an amount not more than one thousand dollars (\$1,000); and

(b) ordered by the sentencing court to perform thirty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor;

(2) for a second violation, the offender shall:

(a) be fined an amount not more than one thousand dollars (\$1,000);

(b) be ordered by the sentencing court to perform forty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and

(c) have the offender's driver's license suspended for a period of ninety days. If the minor is too young to possess a driver's license at the time of the violation, then ninety days shall be added to the date the offender would otherwise become eligible to obtain a driver's license; and

(3) for a third or subsequent violation, the offender shall:

(a) be fined an amount not more than one thousand dollars (\$1,000);

(b) be ordered by the sentencing court to perform sixty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and

(c) have the offender's driver's license suspended for a period of two years or until the offender reaches twenty-one years of age, whichever period of time is greater.

H. A violation of the provisions of Subsection D of this section is a fourth degree felony and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** 1978 Comp., §60-7B-1, enacted by Laws 1993, ch.68, §22; 1998, ch.80, §1; 1998, ch.101, §1; 2004, ch.43, §1; 2013, ch.213, §3.

### **60-7B-1.1. Repealed.**

### **60-7B-2. Documentary evidence of age and identity.**

Evidence of the age and identity of the person may be shown by any document which contains a picture of the person issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle operator's license or an identification card issued to a member of the armed forces. **History:** Laws 1981, ch.39, §82; 1985, ch.184, §1.

### **60-7B-3, 60-7B-4 Repealed**

### **60-7B-5. Refusal to sell or serve alcoholic beverages to person unable to produce identity card.**

Any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person shall refuse to sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that he is twenty-one years of age or over.

**History:** Laws 1981, ch. 39, §85; 1985, ch. 184, §2; 1993, ch. 68, §23.

### **60-7B-6. Demanding and seeing identity card before furnishing alcoholic beverages.**

In any criminal prosecution or in any proceedings for the suspension or revocation of a license, or in any proceeding for violation of a municipal or county ordinance prohibiting the gift, sale or service of alcoholic beverages to minors, proof that the accused licensee in good faith demanded and was shown an identity card before furnishing any alcoholic beverages to a minor shall be a defense to the prosecution or proceedings. **History:** Laws 1981, ch. 39, §86; 1985, ch. 184, §3.

### **60-7B-7. Presenting false evidence of age or identity.**

A minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. **History:** Laws 1981, ch. 39, §87; 1985, ch. 184, §4; 1991, ch. 119, §2; 1993, ch. 68, §24.

### **60-7B-8. Delivery of identity card to minor for use in obtaining alcoholic beverages.**

Any person who gives, loans, sells or delivers an identity card to a minor with the knowledge that the minor intends to use the identity card for the purpose of procuring or attempting to procure any alcoholic beverages is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. **History:** Laws 1981, ch. 39, §88; 1991, ch. 119, §3.

### **60-7B-9. Penalty.**

Unless otherwise provided for in Article 7B of Chapter 60, any violation of §60-7B-1 through 60-7B-8 NMSA 1978 by a minor is a petty misdemeanor, and the minor shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. **History:** Laws 1981, ch. 39, §89; 1991, ch. 119, §4.

### **60-7B-10. Minors in licensed premises; regulations.**

A. Any person licensed pursuant to the provisions of the Liquor Control Act <sup>[60-3A-1 NMSA 1978]</sup> or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act.

B. A minor shall not enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors, except as authorized by regulation or as necessitated by an emergency. A person who violates the provisions of this subsection is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. The director of the alcohol and gaming division of the regulation and licensing department shall adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present. The director shall require that signs issued by the division be posted by licensees to inform the public, including minors, of the areas in licensed premises that are open to minors. The regulations may allow minors in those areas of licensed premises where:

(1) the consumption of alcoholic beverages is the primary activity, when a minor is accompanied by a parent, adult spouse or legal guardian; or

(2) there is no consumption of alcoholic beverages.

**History:** Laws 1981, ch. 39, §90; 1991, ch. 119, §5; 1993, ch. 68, §25; 1994, ch. 50, §1.

### **60-7B-11. Employment of minors.**

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act <sup>[60-3A-1 NMSA 1978]</sup> for any person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages.

B. A person holding a dispenser's, restaurant or club license may employ persons nineteen years of age or older to sell or serve alcoholic beverages in an establishment that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, except that a person under the age of 21 years of age shall not be employed as a bartender.

**History:** Laws 1981, ch. 39, §91; 1993, ch. 68, §26; 1999, ch. 119, §1.

### **60-7B-12. Beer kegs; labeling; notice.**

A. Every keg which is sold by a retailer shall be labeled by the retailer in a manner prescribed by the superintendent of regulation and licensing with the name and address of the retailer and a control number assigned to that keg by the retailer. Retailers shall record the name and address and date of birth of the purchaser, the control number and the date of purchase for every keg sold on the notice form required by Subsection B of this section.

B. The superintendent of regulation and licensing shall prescribe a suitable notice form which shall include the pertinent provisions of Chapter 60, Article 7B NMSA 1978 and the penalty for violating the provisions of Chapter 60, Article 7B NMSA 1978. The notice form shall also contain a place for the name, address and driver's license number or other suitable identification for the person purchasing the keg. Every person who buys a keg at retail shall sign the form acknowledging that they have read the form. The signed forms shall be kept by the retailer until the keg is returned to that retailer, or six months, whichever is less, and shall be made available to law enforcement officials upon request.

C. As used in this section "keg" means a package of beer containing more than six gallons of beer at the time it is sold.

**History:** Laws 1989, ch. 140, §1.

### **60-7B-13. Stocking alcoholic beverages in wet bars in hotel guest rooms prohibited; room service.**

A. It is a violation of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>] for the proprietor or manager of a hotel to stock alcoholic beverages in a wet bar located in any guest room or sleeping room in the hotel unless the alcoholic beverages are contained in a locked compartment, the key to which may be made available to a guest after he has produced evidence of his age and identity by any document that contains a picture of the guest issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle driver's license or an identification card issued to a member of the armed forces.

B. Nothing in this section shall be construed to prevent:

(1) the consumption of alcoholic beverages by any person in a hotel guest room or sleeping room;

or

(2) the sale or delivery of alcoholic beverages through room service to persons in hotel guest rooms or sleeping rooms; provided any employee of a hotel proprietor or manager delivering alcoholic beverages to a sleeping room may require that an identity card showing proof of age be shown to assure that alcoholic beverages are not sold, delivered or served to a minor in violation of the Liquor Control Act.

C. As used in this section, "wet bar" means a refrigerator, ice chest, cabinet, cupboard, pantry or similar container or storage area that is customarily used to store alcoholic or nonalcoholic beverages for consumption. **History:** Laws 1993, ch. 68, §27.

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## **ARTICLE 8A | Trade Practices**

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### **60-8A-1. Unfair competition; exclusive outlet; tied house; consignment sales.**

It is unlawful for an importer, manufacturer, nonresident licensee or any kind or class of wholesaler, directly or indirectly, or through an affiliate:

A. to require by agreement or otherwise that a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of alcoholic beverages in the state purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons;

B. to induce through any of the following means, a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of any kind or class of alcoholic beverages to purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons:

(1) by acquiring or holding, after the expiration of an existing license, an interest in a license with respect to the premises of the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee;

(2) by acquiring an interest in real or personal property owned, occupied or used by a wholesaler, retailer, dispenser, restaurant licensee or club licensee in the conduct of the buying wholesaler's, retailer's, dispenser's, canopy licensee's, restaurant licensee's, club licensee's or governmental licensee's or its lessee's business, subject to exceptions that the director may prescribe, having due regard for the free flow of commerce, the purposes of this subsection and established trade customs not contrary to the public interest;

(3) by furnishing, giving, renting, lending or selling to a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee equipment, fixtures, signs, supplies, money, services or other thing of value, subject to exceptions that the director may by regulation prescribe, having due regard for public health and welfare, the quantity and value of the articles involved and established trade customs not contrary to the public interest and the purposes of this subsection;

(4) by paying or crediting the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for advertising, display or distribution services;

(5) by requiring a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee to take and dispose of a certain quota or combination of alcoholic beverages; or

(6) by commercial bribery by offering or giving a bonus, premium or compensation to an officer, employee, agent or representative of a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee; or

C. to sell, offer for sale or contract to sell to a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee alcoholic beverages of any kind or class on consignment or under a conditional sale or on a basis other than a bona fide sale; provided that this subsection shall not apply to transactions involving solely the bona fide return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, including a return of alcoholic beverages that are at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee's employees or customers. **History:** Laws 1981, ch. 39, §60; 2015, ch. 102, §9.

### **60-8A-2. Territorial designation for distribution of beer; agreement.**

Every brewer, whether located within or without New Mexico, may designate territorial limits in the state within which the brand or brands of beer manufactured by the manufacturer may be sold by wholesalers of beer to licensees. A wholesaler of beer may enter into written agreement with the manufacturer of the brand of beer to be sold by the wholesaler which sets forth the territorial limits within which the wholesaler may distribute the beer. A copy of the agreement and any amendments shall be filed with the department by the wholesaler.

**History:** Laws 1981, ch. 39, §61.

### **60-8A-3. Invoices.**

Whenever a New Mexico wholesaler delivers any item of alcoholic beverages to a New Mexico retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee, the delivery shall be accompanied by an invoice which accurately and clearly shows the date of the sale and the quantity of each item of merchandise delivered. The retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee receiving the alcoholic beverages shall retain the invoice for a period of two years. The invoices shall be open for inspection and examination by any employee of the department or the taxation and revenue department during all usual business hours. **History:** Laws 1981, ch. 39, §70.

### **60-8A-4. Returns.**

A. The return or repossession of any stock of alcoholic beverages to or by any licensed New Mexico wholesaler shall not be construed as a sale within the meaning of any provision of the Liquor Control Act [<sup>60-3A-1 NMSA 1978</sup>].

B. The provisions of Subsection A of this section shall apply in case of the return or repossession of any alcoholic beverages to or by a nonresident licensee by or from any New Mexico wholesaler.

**History:** Laws 1981, ch. 39, § 73.

### **60-8A-5. Debts for merchandise sold in violation of law unenforceable; no garnishment on sales by retailers and dispensers.**

No action shall be maintained or a garnishment or attachment be issued to collect any debt for merchandise sold, served or delivered in violation of the Liquor Control Act [<sup>60-3A-1</sup> NMSA 1978]. No writ of garnishment shall issue where the debt or obligation or the cause of action in the original suit or the garnishment action is founded upon the sale or purchase of alcoholic beverages by or from a retailer or dispenser as defined in Section 3 [<sup>60-3A-3</sup> NMSA 1978] of that act.

**History:** Laws 1981, ch. 39, §76.

### **60-8A-6. Primary American source of supply.**

For the purpose of tax revenue control, no holder of a nonresident license or resident broker license may solicit, accept or fill an order for distilled spirits or wine from a holder of any type of wholesaler's license unless the nonresident licensee or resident broker is the primary American source of supply for the brand of distilled spirits or wine that is ordered. As used in this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler or the exclusive agent of any of those. To be the "primary American source of supply," the nonresident licensee or resident broker must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

**History:** Laws 1981, ch. 39, §122.

### **60-8A-7. Franchises; definitions.**

As used in Sections 60-8A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either expressed or implied, whether written or oral, between a supplier and wholesaler, wherein:

(1) a commercial relationship of definite duration or continuing indefinite duration is involved; and

(2) the wholesaler is granted the right to buy and to offer, sell and distribute within this state or any designated area thereof such of the supplier's brand of packaged alcoholic beverages as may be agreed upon;

B. "good cause":

(1) includes failure by the wholesaler to substantially comply with the essential and reasonable provisions of a contract, agreement or understanding with a supplier;

(2) includes use of bad faith on the part of the wholesaler in carrying out the terms of the franchise; and

(3) does not include failure or refusal on the part of the wholesaler to engage in any trade practice, conduct or activity that may result in a violation of any federal law or regulation or any law or regulation of this state;

C. "supplier" means a person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, importer, broker, agent or its successors or assigns that distributes any or all of its brands of alcoholic beverages through licensed wholesalers in this state. "Supplier" does not include successors or assigns for spirituous liquors or wines;

D. "termination" includes any substantial alteration or modification of the provisions of the franchise; and

E. "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing in the trade as evidenced by all surrounding circumstances.

**History:** Laws 1981, ch. 39, § 54; 1987, ch. 263, § 1; 2003, ch. 100, § 1.

### **60-8A-8. Franchises; violations.**

A. The purpose of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 is to provide an equal bargaining position between the parties and to protect the health, safety and welfare of the citizens by ensuring that there is an orderly and fair distribution of alcoholic beverages in the state.

B. It is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier, directly or through any officer, agent or employee, to fail to act in good faith in performing or complying with any terms, provisions or conditions of the franchise, or in terminating, canceling or not renewing a franchise with a wholesaler, unless such termination, cancellation or failure to renew is done in good faith and for good cause. Good cause shall not include supplier mergers or acquisitions or consolidation of brands with one wholesaler.

C. If more than one franchise for the same brand or brands of alcoholic beverages is originally granted to different wholesalers in this state, it is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for any supplier to discriminate in any of the terms, provisions and conditions of the franchise between the wholesalers. It is not the purpose of this section to allow suppliers to unilaterally and without good cause or in violation of the contract change the terms of an existing franchise or exclusive distribution agreement by authorizing the transfer of brands to another wholesaler in violation of this act [60-8A-7 to 60-8A-11 NMSA 1978].

**History:** Laws 1981, ch. 39, § 55; 1993, ch. 57, § 1.

### **60-8A-9. Franchises; recovery of damages; injunction; remedies independent.**

A. Any wholesaler may bring an action against a supplier for violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 in any court of competent jurisdiction, and may recover damages, together with the costs of the action, including reasonable attorneys' fees.

B. Any wholesaler may bring an action against a supplier in any court of competent jurisdiction for injunctive relief against termination, cancellation or failure to renew a franchise in violation of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978.

C. The remedies provided in this section are independent of and supplemental to any other remedy available to the wholesaler in law or equity.

D. It is the intent of the legislature that the Liquor Control Act [60-3A-1 NMSA 1978] control contractual relations between suppliers and wholesalers in the state. Any contract provision which has the effect of circumventing the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, whether a "choice of law" provision, or other provision, shall be deemed null and void and not applicable to franchises between suppliers and wholesalers in the state.

E. In any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, if it is determined that the supplier terminated a franchise without good cause or not in good faith, such supplier shall be responsible to any wholesaler so aggrieved in damages in an amount not less than three times the annual gross profits derived by such wholesaler from the sale of any and all brands under such franchise.

**History:** Laws 1981, ch. 39, §56; 1993, ch. 57, §2.

### **60-8A-10. Franchises; actions; defense.**

In any action brought by a wholesaler against a supplier for termination, cancellation or failure to renew a franchise in violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978, it is a complete defense for the supplier to prove that the termination, cancellation or failure to renew was done in good faith and for good cause. It shall not be a defense to any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier to claim that the laws of another state control over those provisions or in any way make the cited provisions not applicable. **History:** Laws 1981, ch. 39, § 57; 1993, ch. 57, § 3.

### **60-8A-11. Franchises; time limit for bringing of action.**

Any action brought pursuant to Sections 54 through 58 [~~60-8A-7~~ to ~~60-8A-11~~ NMSA 1978] of the Liquor Control Act shall be forever barred unless commenced within one year after the cause of action has accrued. **History:** Laws 1981, ch. 39, § 58.

### **60-8A-12. Filing of schedules required.**

A. No brand of spirituous liquors shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a price and discount schedule is filed with the director and is then in effect.

B. Such schedule shall be filed by the owner of the brand who is the holder of a nonresident license issued by the department. **History:** Laws 1981, ch. 39, §62; 1985, ch. 5, §1.

### **60-8A-13. Selling to wholesalers at prices different than shown in schedule.**

A brand of spirituous liquors shall not be sold to wholesalers except at the price and discounts shown on the schedule unless prior written permission of the director is granted for reasons not inconsistent with the purposes of Sections 60-8A-12 through 60-8A-19 NMSA 1978.

**History:** Laws 1981, ch. 39, § 63; 1985, ch. 5, § 2.

### **60-8A-14. Form of schedule.**

The schedule of prices and discounts shall be in writing, duly verified and filed in the number of copies, form and at such time as required by the director. It shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents and age and proof where stated on the label; the number of bottles contained in each case; the bottle and case price to wholesalers, which shall be individual for each item; the discounts for quantity, if any; and the discounts for time of payment, if any. **History:** Laws 1981, ch. 39, § 64.

### **60-8A-15. Filing of affirmation.**

The owner of a brand of spirituous liquors shall file as part of the schedule a verified affirmation that the price to New Mexico wholesalers is no greater than the lowest price at which the item of spirituous liquors is sold by the brand owner or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section, "related person" means any person:

A. in any business in which the brand owner has an interest, direct or indirect, by stock or other security ownership, as lender or lienor or by interlocking director or officer;

B. in the exclusive, principal or substantial business of selling a brand of spirituous liquors purchased from the brand owner; or

C. who has an exclusive franchise or contract to sell the brand of spirituous liquors.

**History:** Laws 1981, ch. 39, § 65; 1985, ch. 5, § 3.

#### **60-8A-16. Failure to file; schedule deemed invalid.**

If an affirmation with respect to any item of spirituous liquors is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquors, and the item shall not be sold to or purchased by any wholesaler during the period covered by the schedule. **History:** Laws 1981, ch. 39, §66; 1985, ch. 5, §4.

#### **60-8A-17. Determination of lowest price.**

In determining the lowest price for which any item of spirituous liquors was sold in any other state or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under the schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing the item in the other state or in the District of Columbia. Nothing contained in Sections 60-8A-12 through 60-8A-19 NMSA 1978 shall prevent differentials in price which make only due allowance for differences in state taxes and fees and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, the liter of spirituous liquors. **History:** Laws 1981, ch. 39, §67; 1985, ch. 5, §5.

#### **60-8A-18. Violation; penalty.**

Any person who knowingly makes a false statement in any affirmation made and filed pursuant to Sections 62 through 69 [60-8A-12 to 60-8A-19 NMSA 1978] of the Liquor Control Act shall be liable for suspension of any license issued by the department for a period not to exceed five days for the first offense and thirty days for each offense thereafter. **History:** Laws 1981, ch. 39, § 68.

#### **60-8A-19. Authority to refuse affirmations.**

Upon finding that a person has violated the Liquor Control Act [60-3A-1 NMSA 1978] and after appeal or, in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the director may refuse to accept any affirmation required to be filed by such person for a period not to exceed three months. **History:** Laws 1981, ch. 39, §69.