

1 SENATE BILL 258

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO LIQUOR CONTROL; DEFINING "GROWLER"; PROVIDING FOR  
12 BEER, WINE AND CIDER TO BE SOLD IN GROWLERS BY CERTAIN LIQUOR  
13 LICENSEES; RECONCILING CONFLICTING AMENDMENTS TO THE SAME  
14 SECTION OF LAW BY REPEALING LAWS 2001, CHAPTER 248, SECTION 2.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 60-3A-3 NMSA 1978 (being Laws 1981,  
18 Chapter 39, Section 3, as amended) is amended to read:

19 "60-3A-3. DEFINITIONS.--As used in the Liquor Control  
20 Act:

21 A. "alcoholic beverages" means distilled or  
22 rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
23 and aromatic bitters bearing the federal internal revenue strip  
24 stamps or any similar alcoholic beverage, including blended or  
25 fermented beverages, dilutions or mixtures of one or more of

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1 the foregoing containing more than one-half percent alcohol,  
2 but excluding medicinal bitters;

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

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

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

14 [~~D.~~] E. "club" means:

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

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

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1 and

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

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

18 [~~F.~~] F. "commission" means the secretary of public  
19 safety when the term is used in reference to the enforcement  
20 and investigatory provisions of the Liquor Control Act and  
21 means the superintendent of regulation and licensing when the  
22 term is used in reference to the licensing provisions of the  
23 Liquor Control Act;

24 [~~F.~~] G. "department" means the special  
25 investigations division of the department of public safety when

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1 the term is used in reference to the enforcement and  
2 investigatory provisions of the Liquor Control Act and means  
3 the director of the alcohol and gaming division of the  
4 regulation and licensing department when the term is used in  
5 reference to the licensing provisions of the Liquor Control  
6 Act;

7 ~~[G.]~~ H. "director" means the director of the  
8 special investigations division of the department of public  
9 safety when the term is used in reference to the enforcement  
10 and investigatory provisions of the Liquor Control Act and  
11 means the director of the alcohol and gaming division of the  
12 regulation and licensing department when the term is used in  
13 reference to the licensing provisions of the Liquor Control  
14 Act;

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

21 ~~[I.]~~ J. "distiller" means a person engaged in  
22 manufacturing spirituous liquors;

23 ~~[J.]~~ K. "golf course" means a tract of land and  
24 facilities used for playing golf and other recreational  
25 activities that includes tees, fairways, greens, hazards,

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1 putting greens, driving ranges, recreational facilities,  
2 patios, pro shops, cart paths and public and private roads that  
3 are located within the tract of land;

4 ~~[K-]~~ L. "governing body" means the board of county  
5 commissioners of a county or the city council or city  
6 commissioners of a municipality;

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

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

17 ~~[M-]~~ O. "licensed premises" means the contiguous  
18 areas or areas connected by indoor passageways of a structure  
19 and the outside dining, recreation and lounge areas of the  
20 structure and the grounds and vineyards of a structure that is  
21 a winery that are under the direct control of the licensee and  
22 from which the licensee is authorized to sell, serve or allow  
23 the consumption of alcoholic beverages under the provisions of  
24 its license; provided that in the case of a restaurant,  
25 "licensed premises" includes a restaurant that has operated

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

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

23 ~~[O-]~~ Q. "manufacturer" means a distiller,  
24 rectifier, brewer or winer;

25 ~~[P-]~~ R. "minor" means a person under twenty-one

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1 years of age;

2 [Q-] S. "package" means an immediate container of  
3 alcoholic beverages that is filled or packed by a manufacturer  
4 or wine bottler for sale by the manufacturer or wine bottler to  
5 wholesalers;

6 [R-] T. "person" means an individual, corporation,  
7 firm, partnership, copartnership, association or other legal  
8 entity;

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

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

24 [U-] W. "retailer" means a person licensed under  
25 the provisions of the Liquor Control Act selling, offering for

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1 sale or having in the person's possession with the intent to  
2 sell alcoholic beverages in unbroken packages for consumption  
3 and not for resale off the licensed premises;

4 [~~V.~~] X. "spirituous liquors" means alcoholic  
5 beverages as defined in Subsection A of this section except  
6 fermented beverages such as wine, beer and ale;

7 [~~W.~~] Y. "wholesaler" means a person whose place of  
8 business is located in New Mexico and who sells, offers for  
9 sale or possesses for the purpose of sale any alcoholic  
10 beverages for resale by the purchaser;

11 [~~X.~~] Z. "wine" includes the words "fruit juices"  
12 and means alcoholic beverages obtained by the fermentation of  
13 the natural sugar contained in fruit or other agricultural  
14 products, with or without the addition of sugar or other  
15 products, that do not contain less than one-half percent nor  
16 more than twenty-one percent alcohol by volume;

17 [~~Y.~~] AA. "wine bottler" means a New Mexico  
18 wholesaler who is licensed to sell wine at wholesale for resale  
19 only and who buys wine in bulk and bottles it for wholesale  
20 resale;

21 [~~Z.~~] BB. "winegrower" means a person who owns or  
22 operates a business for the manufacture of wine;

23 [~~AA.~~] CC. "winer" means a winegrower; and

24 [~~BB.~~] DD. "winery" means a facility in which a  
25 winegrower manufactures and stores wine."

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1           SECTION 2. Section 60-6A-11 NMSA 1978 (being Laws 1981,  
2 Chapter 39, Section 28, as amended) is amended to read:

3           "60-6A-11. WINEGROWER'S LICENSE.--

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

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

21                   (1) manufacture or produce wine, including  
22 blending, mixing, flavoring, coloring, bottling and labeling,  
23 whether the wine is manufactured or produced for a winegrower  
24 or an out-of-state wine producer holding a permit issued by the  
25 federal alcohol tax unit of the internal revenue service and a

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1 valid license in a state that authorizes the wine producer to  
2 manufacture, produce, store or sell wine;

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

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

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

10 (5) deal in warehouse receipts for wine;

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

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

19 (8) conduct wine tastings and sell, by the  
20 glass or by the bottle or sell in unbroken packages for  
21 consumption off the premises but not for resale, wine of the  
22 winegrower's own production or wine produced by another New  
23 Mexico winegrower on the winegrower's premises;

24 (9) at no more than three off-premises  
25 locations, conduct wine tastings, sell by the glass and sell in

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1 unbroken packages for consumption off premises, but not for  
2 resale, wine of the winegrower's own production or wine  
3 produced by another New Mexico winegrower after the director  
4 has determined that the off-premises locations meet the  
5 requirements of the Liquor Control Act and the department rules  
6 for new liquor license locations;

7 (10) be deemed a manufacturer for purposes of  
8 the Gross Receipts and Compensating Tax Act; ~~[and]~~

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

15 (12) sell wine or cider in a growler for  
16 consumption off premises.

17 C. Sales of wine as provided for in this section  
18 shall be permitted between the hours of 7:00 a.m. and midnight  
19 Monday through Saturday, and the holder of a winegrower's  
20 license or public celebration permit may conduct wine tastings  
21 and sell, by the glass or bottle or in unbroken packages for  
22 consumption off premises but not for resale, wine of the  
23 winegrower's own production on the winegrower's premises  
24 between the hours of 12:00 noon and midnight on Sunday.

25 D. At public celebrations off the winegrower's

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

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

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

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

25 (3) over one hundred thousand gallons per

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1 year, two hundred fifty dollars (\$250) per year."

2 SECTION 3. Section 60-6A-26.1 NMSA 1978 (being Laws 1985,  
3 Chapter 217, Section 5, as amended by Laws 2001, Chapter 248,  
4 Section 2 and by Laws 2001, Chapter 260, Section 2) is amended  
5 to read:

6 "60-6A-26.1. SMALL BREWER'S LICENSE.--

7 A. In ~~[any]~~ a local option district, a person  
8 qualified under the provisions of the Liquor Control Act,  
9 except as otherwise provided in the Domestic Winery, ~~[and]~~  
10 Small Brewery and Craft Distillery Act, may apply for and be  
11 issued a small brewer's license.

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

14 (1) ~~[become a manufacturer or producer of]~~  
15 manufacture or produce beer;

16 (2) package, label and export beer, whether  
17 manufactured, bottled or produced by ~~[him]~~ the licensee or any  
18 other person;

19 (3) sell only beer that is packaged by or for  
20 ~~[him]~~ the licensee to a person holding a wholesaler's license  
21 or a small brewer's license;

22 (4) deal in warehouse receipts for beer;

23 (5) conduct beer tastings and sell for  
24 consumption on or off premises, but not for resale, beer  
25 produced and bottled by, or produced and packaged for, the

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1 licensee or produced and bottled by or for another New Mexico  
2 small brewer on the small brewer's premises;

3 (6) be deemed a manufacturer for purposes of  
4 the Gross Receipts and Compensating Tax Act;

5 (7) at public celebrations off the small  
6 brewer's premises, after the small brewer has paid the  
7 applicable fee for a small brewer's public celebration permit,  
8 conduct tastings and sell by the glass or in unbroken packages,  
9 but not for resale, beer produced and bottled by or for the  
10 small brewer;

11 (8) at no more than two other locations off  
12 the small brewer's premises, after the small brewer has paid  
13 the applicable fee for a small brewer's off-premises permit,  
14 after the director has determined that the off-premises  
15 locations meet the requirements of the Liquor Control Act and  
16 department rules for new liquor license locations and after the  
17 director has issued a small brewer's off-premises permit for  
18 each off-premises location, conduct beer tastings and sell by  
19 the glass or in unbroken packages for consumption off the small  
20 brewer's off-premises location, but not for resale, beer  
21 produced and bottled by or for the small brewer or beer  
22 produced and bottled by or for another New Mexico small brewer;  
23 [~~and~~]

24 (9) allow members of the public, on the  
25 licensed premises and under the direct supervision of the

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1 licensee, to manufacture beer for personal consumption and not  
2 for resale using the licensee's equipment and ingredients; and  
3 (10) sell beer in a growler for consumption  
4 off premises.

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

20 D. Sales and tastings of beer authorized in this  
21 section shall be permitted during the hours set forth in  
22 Subsection A of Section 60-7A-1 NMSA 1978 and between the hours  
23 of noon and midnight on Sunday and shall conform to the  
24 limitations regarding Christmas and voting-day sales found in  
25 Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales

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1 hours to 2:00 a.m. on January 1, when December 31 falls on a  
2 Sunday."

3 SECTION 4. REPEAL.--Laws 2001, Chapter 248, Section 2 is  
4 repealed.

5 SECTION 5. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2015.