

Dear Licensees,

As you are probably aware there were important changes to the Liquor Control Act this past legislative session. The primary bill was HB 255, but SB 2 and HB 303 were also passed and signed by the Governor. The purpose of this letter is to inform you of the changes.

Some of these changes will necessitate a rule change and some changes can be implemented without a rule change. All the changes will take effect after July 1, 2021 which is the effective date of the legislation. If you would like to be notified of and to participate in the rule making process please email your contact info to Marlene.Romero1@state.nm.us.

1. RESTAURANT WITH SPIRITS LICENSES

One of the most significant changes this year was to create new restaurant liquor licenses. Currently, New Mexico restaurant licenses are limited to beer and wine service only. The new restaurant licenses will allow for the service of beer, wine and spirits.

Previously restaurants that sought to service spirits needed to obtain a dispenser type license (typically an on-premises "inter-local") which cost between \$300,000 to \$500,000 on the secondary resale market. This was a major impediment to economic development especially in smaller towns in New Mexico that don't have many dispenser licenses available. The new "restaurant with spirits" will provide restaurants new opportunities to improve their financial margins, and spur growth within the hospitality sector.

The new restaurant licenses substantially track the same application process and requirements of restaurant beer and wine licenses. They will still require a current food service permit, have no less than 60 % of annual gross receipts from the sale of food, and will have the same hours of operation (close at 11pm or when food service stops whenever is sooner.)

One of the key considerations in adopting the new restaurant with spirits licenses was to draw a distinction so that, as a practical matter, restaurants don't operate or morph into bars. Thus, the Restaurant B license that allows for service of beer, wine and spirits must limit their customers to a three drinks maximum of spirituous liquors, per visit.

Restaurant A Licenses (Beer and wine only) will continue to have an annual fee of \$1,050

Restaurant B License will have an application and annual fee of \$10,000.

In addition to Restaurant A and B licenses, the legislature also created a third restaurant license that allows for a restaurant after possessing a restaurant A license in good standing for a period of at least 12 consecutive months, upon payment of a \$500 fee, the licensee may be issued New Mexico spirituous liquors permit. Allowing the licensee to sell spirituous liquors produced or bottled by Craft Distiller licensees, in addition to beer and wine.



A. Implementation of Restaurant with spirits by Local Option Districts

Local Option Districts (LOD) who have approved, by special election, the issuance of restaurant licenses for the sale of beer and wine are deemed to have approved the issuance of restaurant licenses for the sale of beer, wine, and spirituous liquors, unless the LOD adopts an “opt-out” ordinance stating that such licenses are not allowed. Except for the LODs of McKinley County and municipalities located therein who cannot have restaurant with spirits unless they adopt an “opt-in” ordinance approving such licenses.

B. Conversion of Current Restaurant Beer and Wine to Restaurant with Spirits Licenses

ABC is looking at a process whereby current holders of Restaurant licenses can convert their license to a Restaurant Spirits license without having to submit a new application. One of the options is to allow for current licensees to upgrade on a pro-rata basis with an updated LOD zoning statement, but we will certainly let you know as soon as a decision is made. We don't anticipate that this would be part of the rule making process so we should be able provide advanced guidance prior to the July 1 effective date.

2. HOME DELIVERY OF ALCOHOL

Another significant modernization of the Liquor Control Act is the residential delivery of alcohol by certain licensees. If you are a holder of a Retailer's, Dispenser's, Craft Distiller's, Winegrower's, Small Brewers or Restaurant License, you may apply for an Alcoholic Beverage Delivery permit.

Please note that there are strict requirements with home delivery of alcohol:

Holders of an Alcoholic Beverage Delivery Permit:

- may only deliver alcoholic beverages in unbroken packages;
- must receive payment at the licensed premises either personally, telephonically, electronically, via website, application, or internet platform;
- cannot increase the price of an alcoholic beverage, but may charge a separate delivery fee disclosed to customers;
- may only deliver alcoholic beverages during the hours the licensee is authorized to sell alcoholic beverages pursuant to the Liquor Control Act;
- cannot deliver alcoholic beverages to a business, commercial establishment, college or university campus, or school;
- must obtain valid proof of a recipient's identity and age upon delivery of an alcoholic beverage no matter how old the recipient may appear; and
- shall not deliver alcoholic beverages to an intoxicated person or a minor.



Holders of an Alcoholic Beverage Delivery Permit must:

- Have the original, or an electronic or physical copy of the permittee's alcoholic beverage delivery permit.
- Maintain records of the name and address of purchaser; time, date, and place of delivery; type and quantity of alcoholic beverages delivered; name of person delivering; all invoices related to the sale and delivery of alcoholic beverages; and valid signature of the person accepting delivery.
- Must have all delivery employees hold a valid server's license.

The Alcoholic Beverage Delivery Permit will have an annual fee not to exceed \$300.

A. THIRD PARTY DELIVERY SERVICES

Please note that the "permit" model detailed above is for licensees that will be using their own employees for delivery services. If you are seeking to use a third party delivery service, or you want to operate a third party delivery service, you will need to obtain a separate "Third Party Delivery" license from ABC.

The Third-Party Alcohol Delivery License, allows licensed third-party delivery services to contract with the license types holding an Alcoholic Beverage Delivery Permit for the delivery of alcoholic beverages to customers.

- Third-Party Delivery Licensees are required to have all delivery employees hold an alcohol server permit; provide proof of general liability insurance with a liquor liability endorsement in minimum amount of \$1,000,000 per occurrence which endorsement will provide coverage for employees or independent contractors of the service; and disclose all agreements, in writing, with other licensees.
- Third-Party Delivery services will have to provide all agreements with licensees to ABC to ensure that there is not indemnification shifting so that if there is a violation of ABC rules all parties may be held separately liable.
- The Third-Party Alcoholic Delivery License will have an annual fee not to exceed \$1,000.

B. LIMITATIONS ON DELIVERY

In Class A Counties (Bernalillo, Dona Ana, San Juan, Sandoval, and Santa Fe), licensees with indoor retail space greater than ten thousand square feet will be required to use an identification verification system meeting department requirements, cannot deliver spirituous liquors, are required to hold a liquor liability endorsement of no less than \$5,000,000, and are not able to utilize third-party alcohol delivery services.

Restaurant Licensees are restricted to delivery of limited amounts of alcohol with a purchase of \$10 worth of food.

Please note that because of ambiguity in the enabling legislation and in some cases agency deference, ABC will need to clarify delivery limits and delivery areas by rule-making.



3. HOURS

Beginning on July 1, 2021 there will be a change in the hours of sales of alcoholic beverages –particularly on Sunday sales. The legislation removed the time restrictions on Sundays and Christmas Day. Thus, the hours of service will be 7am until midnight for package sales and 7am to 2am the following day for on-premises licensees. Restaurant alcohol service will be from 7am until 11pm or when food service stops whichever is earlier.

The restrictions on Sunday sales and having LOD elections on Sunday sales was removed and thus upon renewal you will no longer have to pay \$100 for Sunday sales by package or on-premises.

This will apply to the entire state, except for Local Option Districts in McKinley County which are allowed to enact ordinances restricting sales between 7am and 10am for package sales.

4. CRAFT DISTILLING CHANGES

The new legislation reduces the annual manufacturing requirements for Craft Distiller's licenses from 1,000 proof gallons of spirituous liquors to 500 proof gallons.

- allows for Craft Distiller's to buy, sell, conduct tastings, and possess beer, wine, and cider manufactured by Small Brewer's and Winegrower's licenses.
- allows Small Brewer's and Winegrower's licenses to buy, sell, conduct tastings, and possess spirituous liquors manufactured by Craft Distiller's licenses.

5. ASSISTANCE TO LICENSEES DUE TO COVID PANDEMIC

A. TAX DEDUCTION FOR CERTAIN LICENSEES

To mitigate the impact of COVID closures and the creation of the new restaurant licenses, the Legislature provided for tax deductions for dispenser license holders, whose sales of alcoholic beverages for consumption off-premises are less than fifty percent of their total alcoholic beverage sales. This generally would apply to "inter-local" licensees whose primary service is "on-premises" vs. package dispensing business models.

- It would allow liquor license lessors, who held the license on June 30, 2021, to claim a deduction from their net income in an amount equal to the gross receipts from the sales of alcoholic beverages made, by its lessee, in an amount not to exceed:
 - \$50,000 for each of the four taxable years, if the license is a dispenser's license.
- It would allow liquor license holders, who held the license on June 30, 2021, to deduct from gross receipts the following, not to exceed:
 - \$50,000 for each dispenser's license, for taxable years 2022 through 2025.

This provision is being administered by New Mexico Taxation and Revenue Department. Please direct any tax related inquiries to that department.



B. WAIVER OF RENEWAL FEES

In similar fashion, the legislation amended the Liquor Control Act to remove all renewal fees for the calendar years 2022 through 2031, for the holder of a license, if the licensee purchased the license between January 1, 2017, and December 31, 2021. The only licenses that can be “purchased” are Retailer’s (inclusive of Rural Retailer’s) and Dispenser’s (inclusive of Lottery, Canopy, Rural Dispenser’s and “inter-local”) licenses.

6. RESTRICTIONS ON MINATURES

Beginning July 1, 2021, the off premises sale of containers of fewer than 3 fluid ounces of spirits commonly referred to as “miniatures,” will be prohibited. They may be allowed for on-premises consumption in areas such as hotel mini-bars, golf cart service, airline or train service.

If you have an establishment that sells miniatures for off-premises consumption, please be aware that distributors may not take back unsold inventory. Thus, plan on liquidating your inventory of this container size well prior to July 1, 2021 lest you are stuck with unsaleable inventory.

7. MISCELLANEOUS CHANGES

A. ID Checking Requirements

The new legislation included language that servers need not ask for a person’s identification card if they appear to be over 35, and that an expired ID can be accepted as valid ID. Please be aware that it is always incumbent on the licensee and the server to check ID’s consistently. It is still both an administrative penalty and a criminal offense to serve or provide alcohol to minors. Reliance on this language will not be a complete defense to any violation. For your business, for your employees, for the safety of the community, always check ID’s to ensure an expired license isn’t being used as a fake ID, that the person isn’t a minor, and that the person when showing you an ID isn’t already impaired. You as the establishment can always refuse service to any person, especially if you don’t have trust that the license

B. Inducements (HB303)

As will be detailed more through rule-making, it will be a violation for a retailer, dispenser, restaurant, club or governmental licensee to provide anything of substantial value or accept anything of substantial value in order to induce someone to purchase or refrain from purchasing a particular brand of alcohol.

While it is common practice for wholesalers to provide de-minimus promotional material to retail and on-premises establishments, wholesalers providing items like electric coolers, fixtures, affixed signage, etc. are prohibited, especially when the goal is to induce the establishment to buy a particular brand of alcohol. This language provides equal accountability to both the wholesaler and the retail establishment.

C. Licensed Premises

The legislature loosened the requirements on the definition of licensed premises. These changes will be determined more specifically in the rule-making.



D. Regional Competitions

HB 255 will allow for more flexibility to participate in regional wine, cider, beer, or spirituous liquor tastings or competitions within the state.

E. Clubs

Allows a Club Liquor License holder to allow another non-profit organization to use their facilities four times per year for fundraising activities. Currently, Club licenses may allow the use of their facilities twice for fundraising purposes by other non-profit organizations.

8. McKinley County

The legislature made a few change specific to McKinley County:

1. Retailer's and Dispenser's license holders in McKinley County, who sell retail gasoline, are prohibited from selling alcoholic beverages other than beer, with less than 10% alcohol by volume.
2. Effective July 1, 2021, Dispenser's Licenses transferred out of McKinley County are no longer subject to NMSA 60-6B-12 and if transferred can keep package sales.

Wishing you all the best,



Andrew Vallejos

ABC Director

