

HOUSE BILL 364

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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and Art De La Cruz and Antonio Maestas

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING THE REQUIREMENTS FOR
AN ALCOHOLIC BEVERAGE DELIVERY PERMIT; MAKING THE REQUIREMENTS
GENERALLY APPLICABLE TO LICENSE HOLDERS; PROHIBITING THE
ACCEPTANCE OF ADVERTISING MONEY TO PREFERENTIALLY LIST A
PRODUCT.

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

SECTION 1. Section 60-6A-37 NMSA 1978 (being Laws 2021,
Chapter 7, Section 4) is amended to read:

"60-6A-37. ALCOHOLIC BEVERAGE DELIVERY PERMIT--THIRD-
PARTY DELIVERY LICENSE.--

A. A person otherwise qualified pursuant to the
provisions of the Liquor Control Act may apply for and the
department may issue an alcoholic beverage delivery permit
authorizing the person to deliver alcoholic beverages if:

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1 (1) the applicant holds a valid retailer's,
2 dispenser's, craft distiller's, winegrower's, small brewer's or
3 restaurant license; [~~provided, however, that if the licensed~~
4 ~~premises has indoor retail space greater than ten thousand~~
5 ~~square feet in size and is located within a class A county, the~~
6 ~~department may issue an alcoholic beverage delivery permit if:~~

7 ~~(1)~~] (2) the license holder uses an
8 identification verification system that meets the department's
9 requirements to establish that the identification of the
10 purchaser was checked, scanned and stored for each delivery
11 transaction;

12 ~~[(2) no spirituous liquors are included in~~
13 ~~deliveries of alcoholic beverages;]~~

14 (3) the liquor liability endorsement required
15 pursuant to Paragraph (2) of Subsection H of this section is in
16 an amount of not less than five million dollars (\$5,000,000);
17 and

18 (4) [~~deliveries of alcoholic beverages are not~~
19 ~~made using a third-party alcohol delivery service pursuant to~~
20 ~~Subsection G of this section]~~ the license holder agrees not to
21 accept advertising money to preferentially list a product in
22 the license holder's delivery ordering system; provided that
23 this paragraph shall not apply to internal promotions sponsored
24 by the license holder.

25 B. An alcoholic beverage delivery permit issued to

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1 a valid restaurant licensee shall only convey the authority to
2 deliver alcoholic beverages concurrently with the delivery of a
3 minimum of ten dollars (\$10.00) worth of food; provided that
4 under no circumstances shall the delivery of alcoholic
5 beverages be more than seven hundred fifty milliliters of wine,
6 six twelve-ounce containers of prepackaged wine, beer, cider or
7 spirituous liquors or one locally produced growler.

8 C. An alcoholic beverage delivery permit is not
9 transferable from person to person or from one location to
10 another.

11 D. An alcoholic beverage delivery permit issued
12 pursuant to this section is valid for one year from the date of
13 issuance. An alcoholic beverage delivery permittee may renew
14 an alcoholic beverage delivery permit annually as required by
15 the department.

16 E. The director shall promulgate rules to implement
17 the provisions of this section, which shall include the
18 following requirements and restrictions:

19 (1) an alcoholic beverage delivery permittee
20 shall deliver alcoholic beverages only in unbroken packages or
21 growlers;

22 (2) payment for alcoholic beverages shall be
23 received only at the licensed premises of the selling licensee
24 personally or by other means, including telephonically,
25 electronically, via website, application or internet platform;

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1 (3) a licensee shall not change the price
2 charged for an alcoholic beverage because that beverage is
3 purchased for delivery; provided that a separate fee may be
4 charged for delivery; and further provided that the fee shall
5 be disclosed to the customer at the time of the purchase;

6 (4) deliveries of alcoholic beverages shall
7 occur only during the hours the selling licensee is authorized
8 to sell alcoholic beverages;

9 (5) an alcoholic beverage delivery permittee
10 shall not deliver an alcoholic beverage to a business, a
11 commercial establishment, a college or university campus or a
12 school campus that is not a home school;

13 (6) an alcoholic beverage delivery permittee
14 delivering alcoholic beverages shall obtain valid proof of the
15 recipient's identity and age;

16 (7) deliveries of alcoholic beverages shall
17 not be made to an intoxicated person in violation of Section
18 60-7A-16 NMSA 1978 or to a minor in violation of Section
19 60-7B-1 NMSA 1978;

20 (8) while delivering alcoholic beverages, an
21 alcoholic beverage delivery permittee shall have in the
22 permittee's possession only alcoholic beverages that have been
23 purchased for delivery; and

24 (9) while delivering alcoholic beverages, an
25 alcoholic beverage delivery permittee shall have in the

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1 permittee's possession the original or an electronic or
2 physical copy of the permittee's alcoholic beverage delivery
3 permit.

4 F. A licensee that holds an alcoholic beverage
5 delivery permit issued pursuant to this section may utilize an
6 employee who is at least twenty-one years of age and who holds
7 a valid server permit to deliver alcoholic beverages.

8 G. A licensee that holds an alcoholic beverage
9 delivery permit issued pursuant to this section may contract
10 with a third-party alcohol delivery service licensed by the
11 department; provided that the licensee, the third-party alcohol
12 delivery service and the server who delivers alcohol may be
13 separately liable for violations of the Liquor Control Act,
14 including for the delivery of alcohol to an intoxicated person
15 or to a minor.

16 H. The department, by rule, shall create a third-
17 party alcohol delivery permit and, at a minimum, condition the
18 issuance of a third-party alcohol delivery permit on:

19 (1) requiring that all delivery employees or
20 independent contractors of the third-party alcohol delivery
21 service hold a valid New Mexico alcohol server permit; and

22 (2) requiring proof of general liability
23 insurance coverage with a liquor liability endorsement in an
24 amount not less than one million dollars (\$1,000,000) per
25 occurrence, which endorsement shall provide coverage for

1 employees or independent contractors of the third-party alcohol
2 delivery service.

3 I. A person, company or licensee that wishes to
4 deliver retail sales of alcohol in New Mexico on behalf of
5 valid retailer's, dispenser's, craft distiller's, winegrower's,
6 small brewer's or restaurant licensees that also hold a valid
7 alcoholic beverage delivery permit shall obtain a third-party
8 alcohol delivery license from the department.

9 J. An applicant for a third-party alcohol delivery
10 license is required to be authorized to do business in this
11 state, may not share in the profits of the sale of alcohol with
12 a licensee and may only charge a delivery fee that is disclosed
13 to the buyer at the time of sale.

14 K. A third-party alcohol delivery licensee shall
15 not have the ability to buy, hold or deliver alcohol under its
16 own license but to only allow for delivery of alcohol from a
17 licensed premises and from a qualified licensee with a valid
18 alcoholic beverage delivery permit to the buyer.

19 L. A third-party alcohol delivery licensee shall be
20 independently liable for the delivery of alcoholic beverages to
21 an intoxicated person or to a minor or for any violation of the
22 Liquor Control Act and be subject to suspension, revocation or
23 administrative fine pursuant to Sections 60-6C-1 through
24 60-6C-6 NMSA 1978.

25 M. A third-party alcohol delivery license shall be

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valid for one year and may be renewed."

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