

AGD MEMORANDUM – 2013 RENEWAL UPDATE

To: Licensee

Cc: Director Bill Hubbard, Special Investigations Division; New Mexico Alcohol Server Training Providers

From: Division of Alcohol and Gaming (“AGD”)

NEW AGD DIRECTOR:

As of January 1, 2013 the new Director is Jennifer M. Anderson. Director Anderson was born and raised in Roswell where her parents still reside. She earned a Bachelor of Arts degree from the University of Denver where she majored in English and Spanish. Before law school, Anderson received a Fulbright Scholarship and lived in South Korea for a year as part of an immersion program. Anderson went on to graduate *magna cum laude* from the University of New Mexico School of Law.

Prior to joining the Regulation and Licensing Department, Anderson worked as an attorney at the law firm of Lewis and Roca LLP in Albuquerque where she practiced state regulatory law in the areas of water, telecommunications and energy. Anderson also worked as a legislative analyst for the Senate Minority during the 2004, 2005 and 2006 legislative sessions. As a legislative analyst, her job was to analyze and draft memoranda regarding the implications of proposed state legislation. She has been an active member of the State Bar of New Mexico, recently stepped down as co-chair of the Committee on Women and the Legal Profession.

2013 LEGISLATION:

HB 62 – Providing for Online Renewals [effective July 1, 2013]: Allows AGD and other licensing divisions and agencies to transition to allow applications to renew licenses to be submitted on-line. AGD will open up on-line renewals for beer & wine licenses in 2014 and plans to make renewals available to all licensees in the 2015 renewal cycle. As such, beer & wine licensees should expect to receive a postcard reminder in 2014, rather than a hardcopy renewal application, which will explain where to go to retrieve and submit your on-line renewal application. Hardcopy renewal applications will still be available upon request, but AGD strongly encourages licensees to submit their renewal applications and pay their renewal fees on-line once it becomes available.

SB 154 - Sunday Sales before Noon [effective June 14, 2013]: Allows alcohol to be served by the drink for on premises consumption beginning at 11:00 a.m. on Sundays, but only in local option districts that have voted to approve Sunday sales by the drink. Package sales still begin at noon on Sundays.

SB 259 - Increased Server Training Frequency/Decreased Criminal Penalty [effective June 14, 2013]: Increases the frequency of alcohol server training from 5 years to 3 years. Decreases the criminal penalty for selling alcohol to a minor from a 4th degree felony to a misdemeanor for the first offense – each subsequent offense remains a 4th degree felony.

SB 423 – New Sampling Permit [effective July 1, 2013]: Allows AGD to issue permits to current licensees for third party tastings to be conducted on a liquor licensed premises by dispenser’s, retailer’s, resident manufacturer’s, non-resident manufacturer, wholesaler’s or winegrower’s license holders. For example, a wholesaler can apply for a permit to do a sampling on a retailer’s licensed premises. Licensees holding a tasting permit are allowed to serve wine, beer or spirituous liquor in accordance with rules promulgated by AGD. All servers serving samples must hold a valid NM alcohol server permit. The sampling permit costs \$100 and is valid for one year. Notification of any tasting event must be given to AGD and SID at least 48 hours prior to the event. AGD will develop an application for tasting permits and will make it available on our website on or by July 1, 2013.

SB 424 –Bed and Breakfast Dispenser’s License [effective July 1, 2013]: Creates a new type of non-transferrable license which allows bed & breakfast establishments to serve a limited amount of beer and wine to their guests with food in a common area. Service is limited to a maximum of two 12 oz. servings of beer or two 6 oz. servings of wine per guest. The application for the permit requires a fee of \$100.00 and such information as the Director requires. The permit

must be renewed annually for a fee of \$100.00. The owner/operator of the bed & breakfast, as well as any employees serving alcohol, are required to hold a valid NM alcohol server permit. A bed & breakfast is defined as a business that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons. The application process will require approval by the local option district where the establishment is located. AGD is in the process of developing an application for the Bed & Breakfast Dispenser's License as well as drafting rules. The application will be available on our website on or by July 1, 2013.

SM 77 - Liquor Control Act Update Task Force: Senate Memorial 77 requests the Regulation and Licensing Department to convene a task force to undertake a comprehensive review of the Liquor Control Act and make recommendations to the NM legislature regarding amendments to update the Liquor Control Act so that it may better meet the needs of the public. The task force will convene in 2013 and 2014, and the Regulation and Licensing Department will report its findings to the legislature on or by November of 2014. Task Force meetings will be held around the state and all are welcome to attend and participate. If/when a meeting is being held in your area, you are encouraged to attend and participate so that we may ensure the Task Force is able to gather input from licensees currently regulated by AGD and the Liquor Control Act.

SERVER TRAINING AND PERMITTING:

Many servers have participated or are participating in an on-line server training course called Seller Server that is **NOT** an approved server training provider under New Mexico law. We have contacted Seller Server, and their website now contains a disclaimer which states that the training is not approved for New Mexico. Still, we are asking that you please warn any current or future employees not to take the server training available at www.sellerserver.com for the purpose of getting a New Mexico server permit. If this company becomes an approved provider in the future, we will post it on our website, along with other approved providers.

Remember that it is the licensee's responsibility to ensure that you are employing servers with valid server permits. You can check whether or not your employees hold valid server permits under by going to:

<http://rldverification.rld.state.nm.us/Verification/Search.aspx>

As part of the search criteria, choose "Liquor Control" as the profession, and you can search either by server name or server permit number. The search results will tell you whether or not the server permit is valid or expired. Remember that any server permit issued after June 14, 2013 will only be valid for three years due to the passage of SB 259.

As of May 1, 2013 AGD no longer accepts the alcohol server permit duplicate request form via mail without a \$10 money order or cashier's check **AND** a copy of the server's government issued, valid picture ID.

The New Mexico Alcohol Server Training Advisory Committee had its first meeting of 2013 on April 19th at the Regulation and Licensing Department. Among the topics discussed were changes and updates to the current server training curriculum, 2013 legislative updates and proposed changes to the rule governing alcohol server training. These meetings are open to the public and are noticed ahead of time on AGD's website and in our offices, along with the agenda for the meeting. The next meeting will be held on May 15, 2013 at 1:00 p.m. in the AGD offices. The meetings are recorded, and electronic copies of transcripts from the meetings are available from AGD upon request at a cost of \$5.00 per transcript.

UPCOMING AGD RULEMAKING:

As you probably already know, AGD rules have not been revised in quite some time. As such, AGD will be conducting a rulemaking in 2013. The proposed new rules will be published sometime in the coming months. You are encouraged to participate and give public comment either in writing or by attending the public hearing in your area.

Below is a brief summary of the rulemaking process to give you an idea of what to expect:

1. Publish notice of the proposed rule-making and make copies of proposed rules available on AGD's website or upon request.

2. Public hearings to allow public comment will be held around the state (must be 30 days or more from the last date of publication of the proposed rules).
3. Adoption of final rules, taking into account public comment received in writing and taken at public hearing.
4. File adopted rules with State Rules division.
5. Publish adopted rules in the New Mexico Register. Rules will become effective 30 days from the date of publication in the New Mexico Register.

Notices are published in the legal notices sections of newspapers of general circulation and posted on our website at www.rld.state.nm.us/alcoholandgaming. Copies of the proposed rules may be requested to be sent to you by mail or may be downloaded from our website.

FIREARM SIGNS ON LICENSED PREMISES:

In an effort to better inform the public regarding firearm laws on various licensed premises, as of July 1, 2013 we will require that one of two posters be posted on your licensed premises. The first sign ***prohibits firearms of any kind, whether open carry or concealed***, on the licensed premises and must be posted on all licensed premises that are licensed to sell beer, wine or spirits for on-premises consumption **AND** any establishment that has elected to prohibit firearms of any kind whether open or concealed, on its licensed premises. The second sign ***prohibits open carry of firearms, but informs the public of the concealed carry exception***. The second sign is required to be posted on all licensed premises that do not fall into the category described previously in this paragraph.

If you have questions or do not understand the difference between the two signs please do not hesitate to contact us. Both signs are enclosed herein for your convenience and are also available on our website or upon request.

NOTE: You should only post **ONE** sign, depending on which category you fall into, as described above.

FOOD COUNTERS IN RESTAURANTS SERVING BEER AND WINE:

There is nothing in rule or statute preventing a restaurant with a beer and wine license from having a food counter for the purpose of serving both food and/or beer/wine. Similarly, there is nothing in rule or statute requiring that a restaurant only serve beer/wine in conjunction with food.

The limitations on restaurant ("beer and wine") licenses are as follows:

1. Must hold a valid food service establishment permit;
2. The primary source of revenue must be derived from the sale of food, not the sale of beer/wine, meaning that 60% or more of the gross receipts must be derived from the sale of food which is demonstrated upon renewal of the license;
3. Cannot sell beer/wine for consumption off the licensed premises;
4. Cannot serve beer/wine after the restaurant ceases the sale of food or 11pm, whichever is earlier;
5. Cannot be transferred from person to person or from location to location.

VERIFYING AGE BY REQUESTING IDENTIFICATION:

NMSA 1978, § 60-7B-2 requires that a server “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.” As such, the statute does not require that a server request an I.D. from all customers prior to serving or selling them an alcoholic beverage. Rather, the statute clearly requires that customers be able to produce identification to verify that they are over 21 upon request. Therefore, although a server is not required to request identification from all patrons, if the server **DOES** request identification and the patron is unable to produce an I.D., that patron may not be served, because he/she was unable to produce identification to verify that he/she is over 21 years of age. Please note that if a server fails to ask for I.D. and the person served turns out to be a minor, both the licensee and the server may be cited and potentially subject to criminal penalties for serving alcohol to a minor.

Of course, this is only the minimum standard required by statute. Establishments and servers may implement best practices in addition to what is statutorily required which we highly recommended. One example of a best practice would be an in-house requirement that servers request I.D. from all patrons who look under the age of 35. We also encourage servers to request an I.D. if they think the patron could be intoxicated in order to test dexterity and see whether or not he/she shows visible signs of intoxication.

With regard to checking the I.D. of everyone in a group, we encourage servers to use common sense. NMSA 1978, § 60-7B-1(A) makes it a violation of the Liquor Control Act for a server to “aid or assist a minor to buy, procure or be served with alcoholic beverages” if the sever knows or has reason to know that he/she is violating the law. Therefore, a server should I.D. everyone in a group if the server knows or has reason to know that a sale could result in the procurement of alcoholic beverages by a minor. Therefore, it is **NOT** a violation of the law to sell alcoholic beverages to a person who is 21 or over and is accompanied by another person who clearly looks over 21. It would also **NOT** include a mother who is 21 or over and is accompanied by her minor children, unless the server knows or has reason to know that the mother intends to give the alcoholic beverages to her children.

Furthermore, NMSA 1978, § 60-7B-1(D) offers some additional protection for the server in situations where a server sells alcoholic beverages to someone who is over 21, and the alcoholic beverages end up in the possession of a minor(s):

“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.”

DRINK SIZE:

NMAC Rule 15.10.51.11(C)(4) prohibits a licensee from “allowing any person to have more than two unconsumed alcoholic beverage drinks at any one time[.]” It is clear that some establishments serve alcoholic beverages in containers larger than what is considered a standard-sized drink. It is in the establishment’s best interest to monitor the quantities of alcohol they choose to serve to a patron at one time. AGD encourages establishments to implement house policies to ensure that alcohol is being served at a frequency that enables a server to gauge whether or not the patron is becoming intoxicated. AGD’s guidelines for establishments are to not to allow a patron to have more than **ONE** drink at a time if the drink is larger than a standard-sized drink. For example, if an establishment elects to sell 24 ounce beers, then it would be a best practice to only allow one per patron at a time, as it makes it more difficult to gauge their level of intoxication, which increases the liability on the establishment.

PERSONAL INFORMATION:

We had an inquiry regarding whether or not licensees may black out personal information on the copy of the renewal application that they are to keep on premises for inspection by the Special Investigations Division. In fact, we encourage licensees to keep social security numbers and dates of birth blacked out on the copy of the renewal application in order to protect against identity theft.