**Comments on recent changes to New Mexico Liquor Law**

**Background:**

**While the 2021 Legislative Session passed a number of laws which impacted and changed alcohol service in New Mexico, the most sweeping and controversial changes came about with the passage of HB255 into law. My comments are therefore focused on language proposed to implement HB255. The controversial nature of HB255 involved not only WHAT changes were made but also HOW these changes were made. Specifically, many of the most controversial parts of HB255 were made *AFTER* the bill passed the House and passed through the Senate Committee assigned to review the bill when it reached the Senate floor. The significance of this fact is twofold: 1. NO public comment was allowed on the numerous amendments( ie banning miniatures, restricting sales in McKinley County etc) that arose on the Senate floor and 2. The bill as drafted is incredibly poorly drafted. As a result, the role of ABC in cleaning up the bill through its Regulations and rule making is crucial and not an unimportant, procedural exercise.**

**SUBSTANTIVE CHANGES AND POTENTIAL PROBLEMS:**

**HB255 epitomizes the cliché “ The road to hell is paved with good intentions”. What was apparently launched in other bills later rolled into HB255 was a bill to help out the restaurant industry by finally providing delivery. This is the way the publicity around the bill was originally spun. A simple reading of the bills including HB255 immediately illustrated the fact that this had far greater implications than it was promoted as. To further complicate matters, perennial advocates of liquor reform jumped on the bandwagon when the legislation got legs and the bill departed from even the objectives of its original sponsors. While a great deal of press has been devoted to the adverse impact that allowing restaurant licenses with full, albeit New Mexico, spirits will have on full service by the drink licenses which has already proven to be true, there are a number of other problems with HB255 as passed into law. As I suspect that many licensees will weigh in with their personal perspective, I will point out areas that I believe need further thought. I will present my ideas in concept form with an open offer to assist with language if my ideas are deemed to have merit.**

1. **AGE YOU CAN WORK WITH LIQUOR. Existing law and the rules circulated require you to be 19 years old to work around liquor( except as a bartender where you must be 21 ), HB 255 changes the law to 18. This needs to be clarified**

**2.**

**2. APPROVED OPERATOR. While a Resident Agent generally is appointed as the NM resident who accepts service of license related documents on behalf of the license, the *new definition of “Approved Operator” includes a Resident Agent. I am often asked to help out of state clients coming into New Mexico by becoming their initial Resident Agent. I will cease this practice and turn away new out of state businesses if******this is enacted into law.***

***3. CONTROLLED ACCESS AREAS: The language proposed excludes “fuel filling Stations”. While this may have made sense when written, a recent NM appellate decision, Morris v Giant Four Corners, Inc. has created arguments for convenience store operators to have liability. I believe that the language requires further thought*.**

**4. ALCOHOL DELIVERY: This portion of the law is a potential lawyers retirement fund. The points set out here are by no means meant to be all inclusive but rather some of the potential problem areas.**

**WHAT CAN BE DELIVERED: the language of HB255 states “a *valid restaurant delivery license shall only convey the authority to deliver alcoholic beverages concurrently with the delivery of ……(food); provided that under no circumstances shall the delivery of alcoholic beverages be more than 750 milliliters of wine, six twelve-ounce containers of prepackaged wine, beer, cider or spiritous liquors(Emphasis added) or one locally produced growler.”* There are 25.36 ounces of spiritous liquors in a fifth and 33.8 ounces in a liter or quart. So, you can order a bottle of wine; a six pack or a couple of quarts of spiritous liquor to be delivered with your food. While the rule changes try to clean up this clear language in the statute, it is a question for another day whether clear language can be changed by the agency interpreting the statute**

**WHEN DOES DELIVERY STOP: While the proposed rules restrict restaurants from “serving” after 11pm, there is no comparable clarification on when restaurant deliveries must be completed unless delivery and service are deemed identical.**

**ENFORCEMENT: The State does not have the resources to consistently enforce compliance with any delivery statute and/or rule implemented. Furthermore, even if they did, it is highly questionable that police could enter a private residence without a warrant after the delivery. If delivery creates more alcohol related problems within the State, there is no fund set up in the statute nor rules to help the possible victims of our state’s delivery statute and I feel there should be.**

**I could go on and on but my objective is to point out that this law has real potential problems and those problems extend far beyond the immediate reduction in full service by the drink liquor licenses.**

**Respectfully submitted,**

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