

1 **13-1661. Liquor licensee liability to a patron.**

2 To establish the claim against \_\_\_\_\_ (*name of defendant licensee*) for  
3 violation of the New Mexico liquor control laws, \_\_\_\_\_ (*name of plaintiff*) has the  
4 burden of proving the following elements:

5 1. [ \_\_\_\_\_ (*name of defendant*) ] [or] [ \_\_\_\_\_  
6 (*name of defendant's agent(s) or employee(s)*) ] sold, served, or provided alcoholic beverages to  
7 \_\_\_\_\_ (*name of patron*) while [~~he~~] [~~she~~] \_\_\_\_\_ (*name of*  
8 *patron*) was intoxicated;

9 2. [ \_\_\_\_\_ (*name of defendant*) ] [or]  
10 [ \_\_\_\_\_ (*name of defendant's agent(s) or employee(s)*) ] knew or should have  
11 known from the circumstances that \_\_\_\_\_ (*name of patron*) was intoxicated; and

12 3. [ \_\_\_\_\_ (*name of defendant*) ] [or] [ \_\_\_\_\_  
13 (*name of defendant's agent(s) or employee(s)*) ] acted with gross negligence and reckless disregard  
14 for the safety of \_\_\_\_\_ (*name of plaintiff*).

15 In addition, \_\_\_\_\_ (*name of plaintiff*) has the burden of proving that  
16 [ \_\_\_\_\_ (*name of defendant*)'s ] [or] [ \_\_\_\_\_ (*name of defendant's*  
17 *agent(s) or employee(s)*)'s] sale, service, or provision of alcoholic beverages was a cause of  
18 \_\_\_\_\_ (*name of plaintiff*)'s [injuries and] damages.

19 USE NOTES

20 This is the basic instruction for a licensee's violation of NMSA 1978, Section 41-11-1  
21 (1986), when the claim is brought by the person who was sold, served, or provided alcoholic  
22 beverages by the licensee. The instruction should be given in conjunction with the appropriate  
23 definitions contained in UJI 13-1660 NMRA.

1 [Adopted by Supreme Court Order No. 15-8300-005, effective for all cases pending or filed on or  
2 after December 31, 2015; as amended by Supreme Court Order No. S-1-RCR-2025-00126,  
3 effective for all cases pending or filed on or after December 31, 2025.]

4 **Committee commentary.** — The statute creating tort liability for the sale of alcoholic beverages,  
5 NMSA 1978, Section 41-11-1 (1986), limits liability for violation of the Liquor Control Act to the  
6 licensee. Section 41-11-1(D)(1) defines “licensee” as “a person licensed under the provisions of  
7 the Liquor Control Act and the agents or servants of the licensee.” The [legislature’s] Legislature’s  
8 definition of “licensee” evidences an intent to impose vicarious liability on an absent licensee for  
9 the acts and omissions of the licensee’s agents and employees. The New Mexico Supreme Court  
10 has confirmed that a licensee’s liability extends to the acts of agents and employees. *See Buffet v.*  
11 *Vargas*, 1996-NMSC-012, 121 N.M. 507, 914 P.2d 1004.

12 The New Mexico Supreme Court held in *Estate of Gutierrez v. Meteor Monument, L.L.C.*, 2012-  
13 NMSC-004, 274 P.3d 97, that actual knowledge of the patron’s intoxication is not required. The  
14 issue is whether the licensee or its agents or employees knew or should have known from the  
15 circumstances that the person was intoxicated. *Id.* ¶¶ 9-10. Section 41-11-1(C) specifically  
16 provides that a licensee may not be charged with “knowledge of previous acts by which a person  
17 becomes intoxicated at other locations unknown to the licensee.”

18 Comparative fault principles apply to an action brought pursuant to Section 41-11-1. *Baxter v.*  
19 *Noce*, [~~1998-NMSC-024~~] 1988-NMSC-024, ¶ 12, 107 N.M. 48, 752 P.2d 240; *Reichart v. Atler*,  
20 1994-NMSC-056, ¶ 11, 117 N.M. 623, 875 P.2d 379.

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