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HOUSE BILL 411

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

**RELATING TO ALCOHOLIC BEVERAGES; CHANGING THE PROCEDURES AND
AUTHORITY FOR APPROVAL OF NEW LIQUOR LICENSES AND TRANSFER OF
EXISTING LICENSES; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.**

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

**Section 1. Section 60-6B-2 NMSA 1978 (being Laws 1981,
Chapter 39, Section 38, as amended) is amended to read:**

"60-6B-2. APPLICATIONS. --

**A. Before any new license authorized by the Liquor
Control Act may be issued by the director, the applicant for
the license shall:**

**(1) submit to the director a written
application for the license under oath, in the form prescribed
by and stating the information required by the director,**

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1 together with a nonrefundable application fee of one hundred
2 fifty dollars (\$150);

3 (2) submit to the director for his approval a
4 description, including floor plans, in a form prescribed by the
5 director, ~~which~~ that shows the proposed licensed premises for
6 which the license application is submitted. The area
7 represented by the approved description shall become the
8 licensed premises;

9 (3) if the applicant is a corporation, be
10 required to submit as part of its application the following:

11 (a) a certified copy of its articles of
12 incorporation or, if a foreign corporation, a certified copy of
13 its certificate of authority;

14 (b) the names and addresses of all
15 officers and directors and those stockholders owning ten
16 percent or more of the voting stock of the corporation and the
17 amounts of stock held by each stockholder; provided, however, a
18 corporation may not be licensed if an officer, manager,
19 director or holder of more than ten percent of the stock would
20 not be eligible to hold a license pursuant to the Liquor
21 Control Act, except that the provision of Subsection D of
22 Section 60-6B-1 NMSA 1978 shall not apply if the stock is
23 listed with a national securities exchange;

24 (c) the name of the resident agent of
25 the corporation authorized to accept service of process for all

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1 purposes, including orders and notices of the director, which
2 agent shall be approved by the director with respect to his
3 character;

4 (d) a duly executed power of attorney
5 authorizing the agent described in Subparagraph (c) of this
6 paragraph to exercise full authority, control and
7 responsibility for the conduct of all business and transactions
8 of the corporation within the state relative to the sale of
9 alcoholic beverages under authority of the license requested;
10 and

11 (e) such additional information
12 regarding the corporation as the director may require to assure
13 full disclosure of the corporation's structure and financial
14 responsibility;

15 (4) if the applicant is a limited partnership,
16 submit as part of its application the following:

17 (a) a certified copy of its certificate
18 of limited partnership;

19 (b) the names and addresses of all
20 general partners and of all limited partners contributing ten
21 percent or more of the total value of contributions made to the
22 limited partnership or entitled to ten percent or more of the
23 profits earned or other income paid by the limited partnership.
24 No limited partnership shall receive a license if any partner
25 designated in this subsection would not be eligible to hold a

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1 license issued pursuant to the Liquor Control Act; and

2 (c) such additional information
3 regarding the limited partnership as the director may require
4 to assure full disclosure of the limited partnership's
5 structure and financial responsibility; and

6 (5) obtain approval for the issuance from the
7 governing body of the local option district in which the
8 proposed licensed premises are to be located in accordance with
9 the provisions of the Liquor Control Act.

10 B. Every applicant for a new license, [~~or for a~~
11 ~~transfer of ownership of a license~~] if an individual or general
12 partnership, shall file with the application two complete sets
13 of fingerprints of each individual, taken under the supervision
14 of and certified to by an officer of the New Mexico state
15 police, a county sheriff or a municipal chief of police. If
16 the applicant is a corporation, it shall file two complete sets
17 of fingerprints for each stockholder holding ten percent or
18 more of the outstanding stock, principal officer, director and
19 the agent responsible for the operation of the licensed
20 business. The fingerprints shall be taken and certified to as
21 provided for an individual or partnership. If the applicant is
22 a limited partnership, it shall file two complete sets of
23 fingerprints for each general partner and for each limited
24 partner contributing ten percent or more of the total value of
25 contributions made to the limited partnership or entitled to

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1 ten percent or more of the profits earned or other compensation
2 by way of income paid by the limited partnership. The
3 fingerprints shall be taken and certified to as provided for an
4 individual or partnership.

5 C. Upon submission of a sworn affidavit from each
6 person who is required to file fingerprints stating that the
7 person has not been convicted of a felony in any jurisdiction
8 and pending the results of background investigations, a
9 temporary license for ninety days may be issued. The temporary
10 license may be extended by the director for an additional
11 ninety days if the director determines there is not sufficient
12 time to complete the background investigation or obtain reviews
13 of fingerprints from appropriate agencies. A temporary license
14 shall be surrendered immediately upon order of the director.

15 D. An applicant who files a false affidavit shall
16 be denied a license. When the director determines a false
17 affidavit has been filed, he shall refer the matter to the
18 attorney general or district attorney for prosecution of
19 perjury.

20 E. If an applicant is not a resident of New Mexico,
21 fingerprints may be taken under supervision and certification
22 of comparable officers in the state of residence of the
23 applicant.

24 ~~[F. Before issuing a license, the department shall~~
25 ~~hold a public hearing within thirty days after receipt of the~~

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1 ~~application pursuant to Subsection K of this section.~~

2 ~~G. An application for transfer of ownership shall~~
3 ~~be filed with the department no later than thirty days after~~
4 ~~the date a person acquired an ownership interest in a license.~~
5 ~~It shall contain the actual date of sale of the license and~~
6 ~~shall be accompanied by a sworn affidavit from the owner of~~
7 ~~record of the license agreeing to the sale of the license to~~
8 ~~the applicant as well as attesting to the accuracy of the~~
9 ~~information required by this section to be filed with the~~
10 ~~department. No license shall be transferred unless it will be~~
11 ~~placed into operation in an actual location within one hundred~~
12 ~~twenty days of issuance of the license, unless for good cause~~
13 ~~shown the director grants an additional extension for a length~~
14 ~~of time determined by the director.~~

15 ~~H.]~~ F. Whenever it appears to the director that
16 there will be more applications for new licenses than the
17 available number of new licenses during any time period, a
18 random selection method for the qualification, approval and
19 issuance of new licenses shall be provided by the director.
20 The random selection method shall allow each applicant an equal
21 opportunity to obtain an available license, provided that all
22 dispenser's and retailer's licenses issued in any calendar year
23 shall be issued to residents of the state. For the purposes of
24 random selection, the director shall also set a reasonable
25 deadline by which applications for the available licenses shall

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1 be filed. No person shall file more than one application for
2 each available license and no more than three applications per
3 calendar year.

4 ~~[I.]~~ G. After the deadline set in accordance with
5 Subsection ~~[H]~~ F of this section, no more than ten applications
6 per available license shall be selected at random for priority
7 of qualification and approval. Within thirty days after the
8 random selection for the ten priority positions for each
9 license, a hearing pursuant to Subsection K of this section
10 shall be held to determine the qualifications of the applicant
11 having the highest priority for each available license. If
12 necessary, such a hearing shall be held on each selected
13 application by priority until a qualified applicant for each
14 available license is approved. Further random selections for
15 priority positions shall also be held pursuant to this section
16 as necessary.

17 ~~[J.]~~ H. All applications submitted for a license
18 shall expire upon the director's final approval of a qualified
19 applicant for that available license.

20 ~~[K.]~~ ~~The director shall notify the applicant by~~
21 ~~certified mail of the date, time and place of the hearing. The~~
22 ~~hearing shall be held in Santa Fe. The director may designate~~
23 ~~a hearing officer to take evidence at the hearing. The~~
24 ~~director or the hearing officer shall have the power to~~
25 ~~administer oaths.~~

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1 ~~L. In determining whether a license shall be~~
2 ~~issued, the director shall take into consideration all~~
3 ~~requirements of the Liquor Control Act. In the issuance of a~~
4 ~~license, the director shall specifically consider the nature~~
5 ~~and number of prior violations of the Liquor Control Act by the~~
6 ~~applicant or of any citations issued within the prior five~~
7 ~~years against a license held by the applicant or in which the~~
8 ~~applicant had an ownership interest required to be disclosed~~
9 ~~under the Liquor Control Act. The director shall disapprove~~
10 ~~the issuance or give preliminary approval of the issuance of~~
11 ~~the license based upon a review of all documentation submitted~~
12 ~~and any investigation deemed necessary by the director.~~

13 ~~M. Before any new license is issued for a location,~~
14 ~~the director shall cause a notice of the application therefor~~
15 ~~to be posted conspicuously, on a sign not smaller than thirty~~
16 ~~inches by forty inches, on the outside of the front wall or~~
17 ~~front entrance of the immediate premises for which the license~~
18 ~~is sought or, if no building or improvements exist on the~~
19 ~~premises, the notice shall be posted at the front entrance of~~
20 ~~the immediate premises for which the license is sought, on a~~
21 ~~billboard not smaller than five feet by five feet. The~~
22 ~~contents of the notice shall be in the form prescribed by the~~
23 ~~department, and such posting shall be over a continuous period~~
24 ~~of twenty days prior to preliminary approval of the license.~~

25 ~~N. No license shall be issued until the posting~~

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1 ~~requirements of Subsection M of this section have been met.~~

2 ~~0. All costs of publication and posting shall be~~
3 ~~paid by the applicant.~~

4 ~~P. It is unlawful for any person to remove or~~
5 ~~deface any notice posted in accordance with this section. Any~~
6 ~~person convicted of a violation of this subsection shall be~~
7 ~~punished by a fine of not more than three hundred dollars~~
8 ~~(\$300) or by imprisonment in the county jail for not more than~~
9 ~~one hundred twenty days or by both.]~~

10 I. The director shall investigate the applicant's
11 records to determine the nature and number of prior violations
12 of the Liquor Control Act by the applicant and the nature and
13 number of citations issued within the prior five years against
14 a license held by the applicant or in which the applicant had
15 an ownership interest required to be disclosed pursuant to the
16 Liquor Control Act.

17 J. A license shall not be issued until the
18 applicant meets all the requirements of the Liquor Control Act.
19 The director shall establish a process for verification and
20 clarification of the information submitted by the applicant.

21 K. The director shall forward to the local
22 governing body where the license is located:

23 (1) a certification that the application is
24 complete along with the information necessary to identify the
25 applicant and the location of the license; and

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1 (2) a request that the local governing body
2 consider the application for approval.

3 [~~Q-~~] L. Any person aggrieved by any decision made
4 by the director as to the approval or disapproval of the
5 issuance of a license may appeal to the district court pursuant
6 to the provisions of Section 39-3-1.1 NMSA 1978. If the
7 disapproval is based upon local option district disapproval
8 pursuant to Subsection [~~H~~] K of Section 60-6B-4 NMSA 1978, the
9 local option district shall be a necessary party to any appeal.
10 The decision of the director shall continue in force, pending a
11 reversal or modification by the district court, unless
12 otherwise ordered by the court. "

13 Section 2. A new section of the Liquor Control Act,
14 Section 60-6B-2.1 NMSA 1978, is enacted to read:

15 "60-6B-2.1. [NEW MATERIAL] APPLICATIONS FOR TRANSFER OF
16 OWNERSHIP. --

17 A. An application for transfer of ownership shall
18 be filed with the director no later than thirty days after the
19 date a person acquired an ownership interest in a license. It
20 shall contain the actual date of sale of the license and shall
21 be accompanied by a sworn affidavit from the owner of record of
22 the license agreeing to the sale of the license to the
23 applicant as well as attesting to the accuracy of the
24 information required by this section to be filed with the
25 director. Applications for transfer of ownership shall include

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1 all the information required by Section 60-6B-2 NMSA 1978.

2 B. No license shall be transferred unless it will
3 be placed into operation in an actual location within one
4 hundred twenty days of issuance of the license, unless for good
5 cause shown the director grants an additional extension for a
6 length of time determined by the director.

7 C. The application shall include a certification
8 that all wholesalers who are creditors of the licensee have
9 been paid or that satisfactory arrangements have been made
10 between the licensee and the wholesaler for the payment of such
11 debts. Such debts shall constitute a lien on the license, and
12 the lien shall be deemed to have arisen on the date when the
13 debt was originally incurred. No application for transfer of
14 ownership is complete until the director certifies that the
15 requirements of this section have been met.

16 D. Upon receipt of an application for transfer of
17 ownership of a liquor license, the director shall investigate
18 whether there are any outstanding unresolved citations against
19 the licensee for violations of the Liquor Control Act. No
20 application for transfer of ownership is complete until all
21 outstanding citations against the licensee have been resolved
22 and the director so certifies.

23 E. The application shall include a certification
24 that all gross receipts taxes due have been paid, and there are
25 no tax liens against the license.

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1 F. No license shall be transferred until the
2 applicant meets all the requirements of the Liquor Control Act.
3 The director shall establish a process for verification and
4 clarification of the information submitted by the applicant.

5 G. The director shall forward a certification that
6 the application is complete, along with the information
7 necessary to identify the applicant and the location of the
8 license, to the local governing body where the license is
9 located for consideration for approval. "

10 Section 3. A new section of the Liquor Control Act,
11 Section 60-6B-2.2 NMSA 1978, is enacted to read:

12 "60-6B-2.2. [NEW MATERIAL] APPLICATIONS FOR TRANSFER OF
13 LOCATION. --

14 A. All applications for transfer of an existing
15 liquor license to a different location within the same local
16 option district must be filed with the director.

17 B. The application shall include a certification
18 that all wholesalers who are creditors of the licensee have
19 been paid or that satisfactory arrangements have been made
20 between the licensee and the wholesaler for the payment of such
21 debts. Such debts shall constitute a lien on the license, and
22 the lien shall be deemed to have arisen on the date when the
23 debt was originally incurred. No application for transfer of
24 ownership is complete until the director certifies that the
25 requirements of this section have been met.

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1 C. Upon receipt of an application for transfer of
2 ownership of a liquor license, the director shall investigate
3 whether there are any outstanding unresolved citations against
4 the licensee for violations of the Liquor Control Act. No
5 application for transfer of ownership is complete until all
6 outstanding citations against the licensee have been resolved
7 and the director so certifies.

8 D. The application shall include a certification
9 that all gross receipts taxes due have been paid, and there are
10 no tax liens against the license.

11 E. No license shall be transferred unless the
12 applicant meets all the requirements of the Liquor Control Act.
13 The director shall establish a process for verification and
14 clarification of the information submitted by the applicant.

15 F. The director shall forward a certification that
16 the application is complete, along with the information
17 necessary to identify the applicant and the location of the
18 license, to the local governing body where the license is
19 located for consideration for approval."

20 Section 4. Section 60-6B-4 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 40) is amended to read:

22 "60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF
23 APPROPRIATE GOVERNING BODY. --

24 A. Prior to the approval of the issuance of a new
25 license, and prior to the approval of any transfer permitted by

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1 Section ~~[39 or 113 of the Liquor Control Act]~~ 60-6B-3 or
2 60-6B-12 NMSA 1978, the director shall ~~[notify the governing~~
3 ~~body of his preliminary approval of the issuance or transfer of~~
4 ~~the license. Notice]~~ forward the certification of the
5 application for issuance or transfer of the license to the
6 governing body of the political subdivision where the license
7 is located for its consideration for approval. Certifications
8 shall be forwarded to the governing body ~~[shall be]~~ by
9 certified mail.

10 B. A governing body ~~[which]~~ that has received a
11 ~~[notice of preliminary approval of]~~ certification of an
12 application for the issuance or transfer of a license from the
13 ~~[department]~~ director may approve or disapprove the issuance or
14 transfer of the license in accordance with the provisions of
15 this section.

16 ~~[C. Within forty-five days after receipt of a~~
17 ~~notice of preliminary approval from the department, the~~
18 ~~governing body shall hold a public hearing on the question of~~
19 ~~whether the department should approve the proposed issuance or~~
20 ~~transfer.]~~

21 C. Within twenty-one days of receipt of the
22 certification, the local governing body shall cause a notice of
23 the application to be posted conspicuously, on a sign not
24 smaller than thirty inches by forty inches, on the outside of
25 the front wall or front entrance of the immediate premises for

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1 which the license is sought or, if no building or improvements
2 exist on the premises, the notice shall be posted at the front
3 entrance of the immediate premises for which the license is
4 sought, on a billboard not smaller than five feet by five feet.
5 The contents of the notice shall be in the form prescribed by
6 the director, and such posting shall be over a continuous
7 period of twenty days prior to the public hearing on the
8 question of approval of the issuance or transfer of the
9 license.

10 D. Within forty-five days after the receipt of a
11 certification of an application for issuance or transfer of a
12 liquor license, the local governing body shall hold a public
13 hearing to consider whether to approve the proposed issuance or
14 transfer.

15 ~~[D.]~~ E. Notice of the public hearing required by
16 Subsection ~~[E]~~ D of this section shall be given by the
17 governing body by:

18 (1) publishing a notice of the date, time and
19 place of the hearing at least once a week for two consecutive
20 weeks in a newspaper of general circulation within the
21 territorial limits of the governing body. The notice shall set
22 forth:

23 (a) the name and address of the
24 licensee;

25 (b) the action proposed to be taken by

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1 the department;

2 (c) the location of the licensee's
3 premises; and

4 (d) such other information as may be
5 required by the department; and

6 (2) sending a notice by certified mail to the
7 applicant of the date, time and place of the public hearing.

8 F. All costs of publication and posting shall be
9 paid by the applicant.

10 G. It is unlawful for any person to remove or
11 deface any notice posted in accordance with this section. Any
12 person convicted of a violation of this subsection shall be
13 punished by a fine of not more than three hundred dollars
14 (\$300) or by imprisonment in the county jail for not more than
15 one hundred twenty days or both.

16 [~~E.~~] H. The governing body may designate a hearing
17 officer to conduct the hearing. A record shall be made of the
18 hearing.

19 [~~F.~~] I. The governing body may disapprove the
20 issuance or transfer of the license if:

21 (1) the proposed location is within an area
22 where the sale of alcoholic beverages is prohibited by the laws
23 of New Mexico;

24 (2) the issuance or transfer would be in
25 violation of a zoning or other ordinance of the governing body;

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1 or

2 (3) the issuance or transfer would be
3 detrimental to the public health, safety or morals of the
4 residents of the local option district.

5 J. Disapproval must be supported by substantial
6 evidence, but general health and safety concerns of the
7 community as a whole and not necessarily the specific location
8 where the license is proposed to be transferred are sufficient
9 to support a decision to disapprove issuance or transfer of the
10 liquor license.

11 [~~G.~~] K. Within thirty days after the public
12 hearing, the governing body shall notify the department [~~as to~~]
13 whether the governing body has approved or disapproved the
14 proposed issuance or transfer of the license. [~~If the~~
15 ~~governing body fails to either approve or disapprove the~~
16 ~~issuance or transfer of the license within thirty days after~~
17 ~~the public hearing, the director may give final approval to the~~
18 ~~issuance or transfer of the license.~~

19 ~~H. If the governing body disapproves the issuance~~
20 ~~or transfer of the license, it shall notify the department~~
21 ~~within the time required by Subsection G of this section~~
22 ~~setting forth the reasons for the disapproval. A copy of the~~
23 ~~minutes of the public hearing shall be submitted to the~~
24 ~~department by the governing body with the notice of~~
25 ~~disapproval. If the governing body disapproves of the issuance~~

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1 ~~or transfer of the license, the director shall disapprove the~~
2 ~~issuance or transfer of the license.~~

3 ~~I. If the governing body approves the issuance or~~
4 ~~transfer of the license, it shall notify the department within~~
5 ~~the time required by Subsection G of this section of its~~
6 ~~approval. If the governing body approves of the issuance or~~
7 ~~transfer of the license, the director shall approve the~~
8 ~~issuance or transfer of the license.]~~

9 L. Within fifteen days after receipt of the notice
10 of the governing body's decision, the director shall issue the
11 license if the governing body has:

12 (1) approved issuance or transfer; or

13 (2) neither approved nor disapproved issuance
14 or transfer.

15 M The director shall not issue the license if the
16 governing body has disapproved issuance or transfer."