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HOUSE BILL 1046

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO BUSINESS LICENSES; CHANGING LICENSING REQUIREMENTS FOR CERTAIN BUSINESSES; CHANGING THE APPLICATION FEE FOR LIQUOR LICENSES; CHANGING FINGERPRINT REQUIREMENTS FOR LIQUOR LICENSES; CHANGING THE EXPIRATION DATE FOR CERTAIN LIQUOR LICENSES; AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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 a 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

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1 by and stating the information required by the director,  
2 together with a nonrefundable application fee of [~~two hundred~~  
3 ~~dollars (\$200)~~] three hundred dollars (\$300);

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

10 (3) submit the name and street address of a  
11 New Mexico resident upon whom the director may serve any notice  
12 related to ownership or operation of the license, including any  
13 notice of change pursuant to Chapter 60, Article 6C NMSA 1978;

14 [~~3~~] (4) if the applicant is a corporation,  
15 be required to submit as part of its application the following:

16 (a) a certified copy of its articles of  
17 incorporation or, if a foreign corporation, a certified copy of  
18 its certificate of authority;

19 (b) the names and addresses of all  
20 officers and directors and those stockholders owning ten  
21 percent or more of the voting stock of the corporation and the  
22 amounts of stock held by each stockholder; provided, however, a  
23 corporation may not be licensed if an officer, manager,  
24 director or holder of more than a ten percent [~~of the stock~~]  
25 interest in the applicant entity would not be eligible to hold

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1 a license pursuant to the Liquor Control Act; ~~[except that the~~  
2 ~~provision of Subsection D of Section 60-6B-1 NMSA 1978 shall~~  
3 ~~not apply if the stock is listed with a national securities~~  
4 ~~exchange;~~

5 ~~(c) the name of the resident agent of~~  
6 ~~the corporation authorized to accept service of process for all~~  
7 ~~purposes, including orders and notices of the director, which~~  
8 ~~agent shall be approved by the director with respect to his~~  
9 ~~character;~~

10 ~~(d) a duly executed power of attorney~~  
11 ~~authorizing the agent described in Subparagraph (c) of this~~  
12 ~~paragraph to exercise full authority, control and~~  
13 ~~responsibility for the conduct of all business and transactions~~  
14 ~~of the corporation within the state relative to the sale of~~  
15 ~~alcoholic beverages under authority of the license requested]~~  
16 and

17 ~~[(e)]~~ (c) such additional information  
18 regarding the corporation as the director may require to assure  
19 full disclosure of the corporation's structure and financial  
20 responsibility;

21 ~~[(4)]~~ (5) if the applicant is a limited  
22 partnership, submit as part of its application the following:

23 (a) a certified copy of its certificate  
24 of limited partnership;

25 (b) the names and addresses of all

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1 general partners and of all limited partners contributing ten  
2 percent or more of the total value of contributions made to the  
3 limited partnership or entitled to ten percent or more of the  
4 profits earned or other income paid by the limited partnership.

5 A limited partnership shall not receive a license if ~~[any]~~ a  
6 partner or holder of a ten percent or greater interest in the  
7 applicant entity designated in this subsection would not be  
8 eligible to hold a license issued pursuant to the Liquor  
9 Control Act; and

10 (c) such additional information  
11 regarding the limited partnership as the director may require  
12 to assure full disclosure of the limited partnership's  
13 structure and financial responsibility; ~~[and]~~

14 (6) if the applicant is a limited liability  
15 company, submit as part of its application the following:

16 (a) a copy of the articles of  
17 organization, with a copy of the certificate of filing with the  
18 public regulation commission;

19 (b) the name and addresses of all the  
20 managing members and all of the nonmanaging members that own a  
21 greater than ten percent interest in the limited liability  
22 company. Any direct or indirect parent entity of the limited  
23 liability company with an interest of ten percent or more in  
24 the applicant entity shall submit application forms and qualify  
25 to hold a license; and

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

5                   (7) if the applicant is a trust, submit as  
6 part of its application:

7                   (a) the names and addresses of the  
8 trustees;

9                   (b) the names and addresses of any  
10 beneficiaries having control over the property of the trust or  
11 receiving regular and substantial distributions of principal  
12 and income from the trust. Any beneficiary receiving regular  
13 and substantial distributions from the trust shall qualify to  
14 hold a license. The director may request a copy of the trust  
15 agreement for review, which trust agreement need not become  
16 part of the application. Affidavits as to the operation and  
17 distribution of the principal and income may be requested in  
18 lieu of, or in addition to, the copy of the trust agreement  
19 that is supplied for review by the department; and

20                   (c) such additional information  
21 regarding the trust as the director may require to assure full  
22 disclosure of the trust's structure and financial  
23 responsibility; and

24                   [+5+] (8) obtain approval for the issuance  
25 from the governing body of the local option district in which

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1 the proposed licensed premises are to be located in accordance  
2 with the provisions of the Liquor Control Act.

3 B. Except for individual officers, directors,  
4 shareholders, members or partners of entities that are publicly  
5 traded on a national stock exchange and for individuals who  
6 have been fingerprinted for another New Mexico license and had  
7 no prior criminal or arrest record, every applicant for a new  
8 license or for a transfer of ownership of a license [~~if an~~  
9 ~~individual or general partnership~~] shall file with the  
10 application two complete sets of fingerprints [~~of each~~  
11 ~~individual~~] taken under the supervision of and certified to by  
12 an officer of the New Mexico state police, a county sheriff,  
13 [~~or~~] a municipal chief of police, a police officer in a foreign  
14 country or an individual qualified to take fingerprints by  
15 virtue of training or experience, for each of the following  
16 individuals:

17 (1) if the applicant is a person, for the  
18 applicant;

19 (2) if the applicant or the holder of a ten  
20 percent or greater interest in the applicant entity is a  
21 corporation, for each principal officer, for each member of the  
22 board of directors and for each stockholder with a ten percent  
23 or greater interest in the applicant entity;

24 (3) if the applicant or the holder of a ten  
25 percent or greater interest in the applicant entity is a

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1 general partnership, for each partner;

2 (4) if the applicant or the holder of a ten  
3 percent or greater interest in the applicant entity is a  
4 limited partnership, for each general partner, for each limited  
5 partner holding a ten percent or greater interest in the  
6 applicant entity and for any principal officers of the limited  
7 partnership;

8 (5) if the applicant or the holder of a ten  
9 percent or greater interest in the applicant entity is a  
10 limited liability company, for each managing member, for each  
11 member who owns a ten percent or greater interest in the  
12 applicant entity and for any principal officer of the limited  
13 liability company; and

14 (6) if the applicant is a trust, for each  
15 trustee and for each beneficiary who has control over trust  
16 property and income or who receives substantial and regular  
17 distributions from the trust. [If the applicant is a  
18 corporation, it shall file two complete sets of fingerprints  
19 for each stockholder holding ten percent or more of the  
20 outstanding stock, principal officer, director and the agent  
21 responsible for the operation of the licensed business. The  
22 fingerprints shall be taken and certified to as provided for an  
23 individual or partnership. If the applicant is a limited  
24 partnership, it shall file two complete sets of fingerprints  
25 for each general partner and for each limited partner

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1 ~~contributing ten percent or more of the total value of~~  
2 ~~contributions made to the limited partnership or entitled to~~  
3 ~~ten percent or more of the profits earned or other compensation~~  
4 ~~by way of income paid by the limited partnership. The~~  
5 ~~fingerprints shall be taken and certified to as provided for an~~  
6 ~~individual or partnership.]~~

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

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

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

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1 F. Before issuing a license, the department shall  
2 hold a public hearing within thirty days after receipt of the  
3 application pursuant to Subsection K of this section.

4 G. An application for transfer of ownership shall  
5 be filed with the department no later than thirty days after  
6 the date a person acquired an ownership interest in a license.  
7 It shall contain the actual date of sale of the license and  
8 shall be accompanied by a sworn affidavit from the owner of  
9 record of the license agreeing to the sale of the license to  
10 the applicant as well as attesting to the accuracy of the  
11 information required by this section to be filed with the  
12 department. A license shall not be transferred unless it will  
13 be placed into operation in an actual location within one  
14 hundred twenty days of issuance of the license, unless for good  
15 cause shown the director grants an additional extension for a  
16 length of time determined by the director.

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

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1 purposes of random selection, the director shall also set a  
2 reasonable deadline by which applications for the available  
3 licenses shall be filed. A person shall not file more than one  
4 application for each available license and no more than three  
5 applications per calendar year.

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

19 J. All applications submitted for a license shall  
20 expire upon the director's final approval of a qualified  
21 applicant for that available license.

22 K. The director shall notify the applicant by  
23 certified mail of the date, time and place of the hearing. The  
24 hearing shall be held in Santa Fe. The director may designate  
25 a hearing officer to take evidence at the hearing. The

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1 director or the hearing officer shall have the power to  
2 administer oaths.

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

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

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1 period of twenty days prior to preliminary approval of the  
2 license. The director shall prescribe the manner in which the  
3 posting may be accomplished by the licensee, the licensee's  
4 representative or an individual that the director deems  
5 trustworthy and reliable.

6 N. A license shall not be issued until the posting  
7 requirements of Subsection M of this section have been met.

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

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

16 Q. A person aggrieved by a decision made by the  
17 director as to the approval or disapproval of the issuance of a  
18 license may appeal to the district court pursuant to the  
19 provisions of Section 39-3-1.1 NMSA 1978. If the disapproval  
20 is based upon local option district disapproval pursuant to  
21 Subsection H of Section 60-6B-4 NMSA 1978, the local option  
22 district shall be a necessary party to ~~[any]~~ an appeal. The  
23 decision of the director shall continue in force, pending a  
24 reversal or modification by the district court, unless  
25 otherwise ordered by the court."

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1 Section 2. Section 60-6B-5 NMSA 1978 (being Laws 1981,  
2 Chapter 39, Section 41, as amended) is amended to read:

3 "60-6B-5. EXPIRATION AND RENEWAL OF LICENSES.--Effective  
4 January 1, 2008, dispenser, retailer and canopy licenses shall  
5 expire on October 31 of each year and may be renewed yearly  
6 thereafter. Dispenser, retailer and canopy licensees shall pay  
7 renewal fees in a prorated amount not to exceed one thousand  
8 seven hundred thirty-four dollars (\$1,734) in 2008, and  
9 thereafter shall pay license fees pursuant to Chapter 60,  
10 Article 6A NMSA 1978. All other licenses provided for in the  
11 Liquor Control Act, except nonresident licenses and common  
12 carrier registrations, shall expire on June 30 of each year and  
13 may be renewed from year to year under the rules of the  
14 department. Current nonresident licenses and common carrier  
15 registrations shall expire on June 30, 1998 and may be renewed  
16 for three-year periods thereafter. The director shall  
17 determine whether any of the licensees under [~~his~~] the  
18 director's jurisdiction are delinquent in any taxes  
19 administered by the taxation and revenue department as of [~~June~~  
20 ~~1 of each renewal period~~] the first day of the month in which  
21 the license expires. The director shall also determine whether  
22 [~~or not~~] there exists any other reason why a license should not  
23 be renewed. If the director determines that the license should  
24 not be renewed, [~~he~~] the director shall enter an order  
25 requiring the licensee, after notice, to show cause why [~~his~~]

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1 the licensee's license should be renewed, and [~~he~~] the director  
2 shall conduct a hearing on the matter. If, after the hearing,  
3 the director finds that the licensee is qualified, [~~he~~] the  
4 director shall renew the license."

5 Section 3. Section 60-6B-6 NMSA 1978 (being Laws 1981,  
6 Chapter 39, Section 42, as amended) is amended to read:

7 "60-6B-6. CORPORATE LICENSEES--LIMITED PARTNERSHIP  
8 LICENSEES--REPORTING.--

9 A. A corporation [~~which~~] that holds a license  
10 issued under the Liquor Control Act shall notify the director  
11 within thirty days after the occurrence of any change in the  
12 officers, directors or holders of more than ten percent of the  
13 voting stock of the corporation, giving the names and addresses  
14 of the new officers, directors or stockholders. A corporate  
15 licensee shall also notify the director immediately of a change  
16 of agent by filing a new power of attorney. The director shall  
17 by regulation define what corporate changes, including but not  
18 limited to transfer of stock, merger and consolidation,  
19 constitute transfers of ownership of corporate licenses and  
20 shall, upon making such a determination, order appropriate  
21 compliance with the Liquor Control Act, provided that a  
22 transfer of ownership of a corporate license shall not be  
23 deemed to occur where ultimate ownership of the corporation  
24 does not change.

25 B. A limited partnership [~~which~~] that holds a

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1 license issued under the Liquor Control Act shall notify the  
2 director within thirty days after the occurrence of any change  
3 of general partners or of limited partners contributing ten  
4 percent or more of the total value of contributions made to the  
5 limited partnership or entitled to ten percent or more of the  
6 profits earned or other compensation by way of income paid by  
7 the limited partnership. The director shall by regulation  
8 define what limited partnership changes constitute transfers of  
9 ownership of limited partnership licenses and shall, upon  
10 making such determination, order appropriate compliance with  
11 the Liquor Control Act, provided that a transfer of ownership  
12 of a licensee that is a limited partnership shall not be deemed  
13 to occur where ultimate ownership of the limited partnership  
14 does not change.

15 C. A legal entity [~~which~~] that is not a corporation  
16 or limited partnership and [~~which~~] that holds a license issued  
17 under the Liquor Control Act shall notify the director within  
18 thirty days after the occurrence of any change in the trustees,  
19 [~~or~~] partners, [~~or~~] owners or members of more than a ten  
20 percent interest in the entity, giving the names and addresses  
21 of the new trustees, partners or owners. The director shall by  
22 regulation define what entity changes constitute a transfer of  
23 ownership of such entity's license and shall, upon making such  
24 determination, order appropriate compliance with the Liquor  
25 Control Act, provided that a transfer of ownership of a

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1 licensee shall not be deemed to occur where there is no change  
2 in the ultimate ownership of the legal entity."

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