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SENATE BILL 811

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

INTRODUCED BY

Phil A. Griego

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 file regular
5 reports with the United States securities and exchange
6 commission and for individuals who have been fingerprinted for
7 another New Mexico license and had no prior criminal or arrest
8 record, every applicant for a new license or for a transfer of
9 ownership of a license [~~if an individual or general~~
10 ~~partnership~~] shall file with the application two complete sets
11 of fingerprints [~~of each individual~~] taken under the
12 supervision of and certified to by an officer of the New Mexico
13 state police, a county sheriff, [~~or~~] a municipal chief of
14 police, a police officer in a foreign country or an individual
15 qualified to take fingerprints by virtue of training or
16 experience, for each of the following 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 direct or indirect interest in the applicant
21 is a corporation, for each principal officer, for each member
22 of the board of directors who is employed by the corporation
23 and who participates in operation of the license in some way
24 other than infrequent meetings of the board of directors and
25 for each stockholder with a ten percent or greater interest in

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1 the corporation;

2 (3) if the applicant or the holder of a ten
3 percent or greater direct or indirect interest in the applicant
4 is a general partnership, for each partner;

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

11 (5) if the applicant or the holder of a ten
12 percent or greater direct or indirect interest in the applicant
13 is a limited liability company, for each managing member, for
14 each member who owns a ten percent or greater interest in the
15 limited liability company and for any principal officer of the
16 limited liability company; and

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

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1 ~~individual or partnership. If the applicant is a limited~~
2 ~~partnership, it shall file two complete sets of fingerprints~~
3 ~~for each general partner and for each limited partner~~
4 ~~contributing ten percent or more of the total value of~~
5 ~~contributions made to the limited partnership or entitled to~~
6 ~~ten percent or more of the profits earned or other compensation~~
7 ~~by way of income paid by the limited partnership. The~~
8 ~~fingerprints shall be taken and certified to as provided for an~~
9 ~~individual or partnership.]~~

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

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

25 E. If an applicant is not a resident of New Mexico,

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1 fingerprints may be taken under supervision and certification
2 of comparable officers in the state of residence of the
3 applicant.

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

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

20 H. Whenever it appears to the director that there
21 will be more applications for new licenses than the available
22 number of new licenses during any time period, a random
23 selection method for the qualification, approval and issuance
24 of new licenses shall be provided by the director. The random
25 selection method shall allow each applicant an equal

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1 opportunity to obtain an available license, provided that all
2 dispenser's and retailer's licenses issued in ~~any~~ a calendar
3 year shall be issued to residents of the state. For the
4 purposes of random selection, the director shall also set a
5 reasonable deadline by which applications for the available
6 licenses shall be filed. A person shall not file more than one
7 application for each available license and no more than three
8 applications per calendar year.

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

22 J. All applications submitted for a license shall
23 expire upon the director's final approval of a qualified
24 applicant for that available license.

25 K. The director shall notify the applicant by

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1 certified mail of the date, time and place of the hearing. The
2 hearing shall be held in Santa Fe. The director may designate
3 a hearing officer to take evidence at the hearing. The
4 director or the hearing officer shall have the power to
5 administer oaths.

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

18 M. Before a new license is issued for a location,
19 the director shall cause a notice of the application [~~therefor~~]
20 for the license to be posted conspicuously, on a sign not
21 smaller than thirty inches by forty inches, on the outside of
22 the front wall or front entrance of the immediate premises for
23 which the license is sought or, if no building or improvements
24 exist on the premises, the notice shall be posted at the front
25 entrance of the immediate premises for which the license is

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1 sought, on a billboard not smaller than five feet by five feet.
2 The contents of the notice shall be in the form prescribed by
3 the department, and such posting shall be over a continuous
4 period of twenty days prior to preliminary approval of the
5 license. The director shall prescribe the manner in which the
6 posting may be accomplished by the licensee, the licensee's
7 representative or the director's designee.

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

10 O. All costs of publication and posting shall be
11 paid by the applicant.

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

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

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1 reversal or modification by the district court, unless
2 otherwise ordered by the court."

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

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

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1 not be renewed, [~~he~~] the director shall enter an order
2 requiring the licensee, after notice, to show cause why [~~his~~]
3 the licensee's license should be renewed, and [~~he~~] the director
4 shall conduct a hearing on the matter. If, after the hearing,
5 the director finds that the licensee is qualified, [~~he~~] the
6 director shall renew the license."

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

9 "60-6B-6. CORPORATE LICENSEES--LIMITED PARTNERSHIP
10 LICENSEES--REPORTING.--

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

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1 does not change.

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

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

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1 order appropriate compliance with the Liquor Control Act,
2 provided that a transfer of ownership of a licensee shall not
3 be deemed to occur where there is no change in the ultimate
4 ownership of the legal entity."

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