

AN ACT

RELATING TO LIQUOR LICENSES; CHANGING REQUIRED INFORMATION IN APPLICATION; BROADENING THE SUPERINTENDENT OF REGULATION AND LICENSING'S DISCRETION REGARDING CANCELLATION OF LICENSES FOR FAILURE TO ENGAGE IN BUSINESS.

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

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

(3) if the applicant is a corporation, be

required to submit as part of its application the following:

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

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

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

(d) a duly executed power of attorney authorizing the agent described in Subparagraph (c) of this paragraph to exercise full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the sale of alcoholic beverages under authority of the

license requested; and

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

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

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

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. No limited partnership shall receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

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

(5) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance

with the provisions of the Liquor Control Act.

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual, taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a

temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

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

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

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

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of

the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. No license shall be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. No person shall file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days

after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

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

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

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in

which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

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

N. No license shall be issued until the posting requirements of Subsection M of this section have been met.

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

P. It is unlawful for any person to remove or deface any notice posted in accordance with this section.

Any person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. Any person aggrieved by any decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court of jurisdiction by filing a petition in the court within thirty days from the date of the decision of the director, and a hearing on the matter may be held in the district court. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to any appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court. Any appeal from the decision of the district court to the supreme court shall be permitted as in other cases of appeals from the district court to the supreme court."

Section 2. Section 60-6B-7 NMSA 1978 (being Laws 1981, Chapter 39, Section 43, as amended) is amended to read:

"60-6B-7. CANCELLATION OF LICENSE FOR FAILURE TO ENGAGE IN BUSINESS. --

A. Any license issued under the provisions of the Liquor Control Act shall be canceled if the licensee fails to

commence operation of the licensed business within one hundred twenty days after the license is issued and to continuously operate during customary hours and days of operation for that type of business; provided, however, the director may extend that period for a length of time determined by the director.

B. If after the one-hundred-twenty-day period or additional extension period specified in Subsection A of this section the licensee ceases to operate the licensed business during customary hours and days for that type of business for more than ten days, he shall notify the director in writing within five days of the cessation.

C. The director may grant temporary suspensions in the operation of the licensed business upon receipt of the notice provided in Subsection B of this section. A temporary suspension shall be for a period determined appropriate by the director.

D. The license of any person failing to comply with any provision of this section shall be canceled after notice and hearing complying with the provisions of Section 60-6C-4 NMSA 1978. "
