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SENATE BILL 574

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO LIQUOR LICENSING; INCREASING THE FEES FOR CERTAIN  
LICENSES; INCREASING THE APPLICATION FEE FOR A LIQUOR LICENSE.

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

Section 1. Section 60-6A-15 NMSA 1978 (being Laws 1981,  
Chapter 39, Section 32, as amended) is amended to read:

"60-6A-15. LICENSE FEES. -- Every application for the  
issuance or renewal of the following licenses shall be  
accompanied by a license fee in the following specified  
amounts:

A. manufacturer's license as a distiller, except a  
brandy manufacturer, three thousand dollars (\$3,000);

B. manufacturer's license as a brewer, three  
thousand dollars (\$3,000);

C. manufacturer's license as a rectifier, one

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1 thousand fifty dollars (\$1,050);

2 D. wholesaler's license to sell all alcoholic  
3 beverages for resale only, two thousand five hundred dollars  
4 (\$2,500);

5 E. wholesaler's license to sell spirituous liquors  
6 and wine for resale only, one thousand seven hundred fifty  
7 dollars (\$1,750);

8 F. wholesaler's license to sell spirituous liquors  
9 for resale only, one thousand five hundred dollars (\$1,500);

10 G. wholesaler's license to sell beer and wine for  
11 resale only, one thousand five hundred dollars (\$1,500);

12 H. wholesaler's license to sell beer for resale  
13 only, one thousand dollars (\$1,000);

14 I. wholesaler's license to sell wine for resale  
15 only, seven hundred fifty dollars (\$750);

16 J. retailer's license, [~~one thousand two hundred~~  
17 ~~fifty dollars (\$1,250)~~] one thousand three hundred dollars  
18 (\$1,300);

19 K. dispenser's license, [~~one thousand two hundred~~  
20 ~~fifty dollars (\$1,250)~~] one thousand three hundred dollars  
21 (\$1,300);

22 L. canopy license, [~~one thousand two hundred fifty~~  
23 ~~dollars (\$1,250)~~] one thousand three hundred dollars (\$1,300);

24 M. restaurant license, [~~one thousand dollars~~  
25 ~~(\$1,000)~~] one thousand fifty dollars (\$1,050);

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1 N. club license, for clubs with more than two  
2 hundred fifty members, one thousand two hundred fifty dollars  
3 (\$1,250), and for clubs with two hundred fifty members or  
4 fewer, two hundred fifty dollars (\$250);

5 O. wine bottler's license to sell to wholesalers  
6 only, five hundred dollars (\$500);

7 P. public service license, one thousand two hundred  
8 fifty dollars (\$1,250);

9 Q. nonresident licenses, for a total billing to New  
10 Mexico wholesalers:

- 11 (1) in excess of:
- 12 \$3,000,000 annually . . . . . \$10,500;
- 13 1,000,000 annually . . . . . 5,250;
- 14 500,000 annually . . . . . 3,750;
- 15 200,000 annually . . . . . 2,700;
- 16 100,000 annually . . . . . 1,800;

17 and

- 18 50,000 annually . . . . . 900;

19 and

- 20 (2) of \$50,000 or less . . . . . \$300;

21 R. wine wholesaler's license, for persons with  
22 sales of five thousand gallons of wine per year or less,  
23 twenty-five dollars (\$25.00), and for persons with sales in  
24 excess of five thousand gallons of wine per year, one hundred  
25 dollars (\$100); and

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1                   S. beer bottler's license, two hundred dollars  
2 (\$200). "

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

5                   "60-6B-2. APPLICATIONS. --

6                   A. Before [~~any~~] a new license authorized by the  
7 Liquor Control Act may be issued by the director, the applicant  
8 for the license shall:

9                   (1) submit to the director a written  
10 application for the license under oath, in the form prescribed  
11 by and stating the information required by the director,  
12 together with a nonrefundable application fee of [~~one hundred~~  
13 ~~fifty dollars (\$150)~~] two hundred dollars (\$200) ;

14                   (2) submit to the director for his approval a  
15 description, including floor plans, in a form prescribed by the  
16 director, [~~which~~] that shows the proposed licensed premises for  
17 which the license application is submitted. The area  
18 represented by the approved description shall become the  
19 licensed premises;

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

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

25                   (b) the names and addresses of all

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

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

15 (d) a duly executed power of attorney  
16 authorizing the agent described in Subparagraph (c) of this  
17 paragraph to exercise full authority, control and  
18 responsibility for the conduct of all business and transactions  
19 of the corporation within the state relative to the sale of  
20 alcoholic beverages under authority of the license requested;  
21 and

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

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

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

5 (b) the names and addresses of all  
6 general partners and of all limited partners contributing ten  
7 percent or more of the total value of contributions made to the  
8 limited partnership or entitled to ten percent or more of the  
9 profits earned or other income paid by the limited partnership.

10 [No] A limited partnership shall not receive a license if any  
11 partner designated in this subsection would not be eligible to  
12 hold a license issued pursuant to the Liquor Control Act; and

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

17 (5) obtain approval for the issuance from the  
18 governing body of the local option district in which the  
19 proposed licensed premises are to be located in accordance with  
20 the provisions of the Liquor Control Act.

21 B. Every applicant for a new license or for a  
22 transfer of ownership of a license, if an individual or general  
23 partnership, shall file with the application two complete sets  
24 of fingerprints of each individual, taken under the supervision  
25 of and certified to by an officer of the New Mexico state

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1 police, a county sheriff or a municipal chief of police. If  
2 the applicant is a corporation, it shall file two complete sets  
3 of fingerprints for each stockholder holding ten percent or  
4 more of the outstanding stock, principal officer, director and  
5 the agent responsible for the operation of the licensed  
6 business. The fingerprints shall be taken and certified to as  
7 provided for an individual or partnership. If the applicant is  
8 a limited partnership, it shall file two complete sets of  
9 fingerprints for each general partner and for each limited  
10 partner contributing ten percent or more of the total value of  
11 contributions made to the limited partnership or entitled to  
12 ten percent or more of the profits earned or other compensation  
13 by way of income paid by the limited partnership. The  
14 fingerprints shall be taken and certified to as provided for an  
15 individual or partnership.

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

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

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

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

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

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1           H. Whenever it appears to the director that there  
2 will be more applications for new licenses than the available  
3 number of new licenses during any time period, a random  
4 selection method for the qualification, approval and issuance  
5 of new licenses shall be provided by the director. The random  
6 selection method shall allow each applicant an equal  
7 opportunity to obtain an available license, provided that all  
8 dispenser's and retailer's licenses issued in any calendar year  
9 shall be issued to residents of the state. For the purposes of  
10 random selection, the director shall also set a reasonable  
11 deadline by which applications for the available licenses shall  
12 be filed. [No] A person shall not file more than one  
13 application for each available license and no more than three  
14 applications per calendar year.

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

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1 priority positions shall also be held pursuant to this section  
2 as necessary.

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

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

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

24 M Before ~~[any]~~ a new license is issued for a  
25 location, the director shall cause a notice of the application

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1 therefor to be posted conspicuously, on a sign not smaller than  
2 thirty inches by forty inches, on the outside of the front wall  
3 or front entrance of the immediate premises for which the  
4 license is sought or, if no building or improvements exist on  
5 the premises, the notice shall be posted at the front entrance  
6 of the immediate premises for which the license is sought, on a  
7 billboard not smaller than five feet by five feet. The  
8 contents of the notice shall be in the form prescribed by the  
9 department, and such posting shall be over a continuous period  
10 of twenty days prior to preliminary approval of the license.

11 N. ~~No~~ A license shall not be issued until the  
12 posting requirements of Subsection M of this section have been  
13 met.

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

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

22 Q. ~~Any~~ A person aggrieved by ~~any~~ a decision  
23 made by the director as to the approval or disapproval of the  
24 issuance of a license may appeal to the district court pursuant  
25 to the provisions of Section 39-3-1.1 NMSA 1978. If the

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1 disapproval is based upon local option district disapproval  
2 pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the  
3 local option district shall be a necessary party to any appeal.  
4 The decision of the director shall continue in force, pending a  
5 reversal or modification by the district court, unless  
6 otherwise ordered by the court. "

7 Section 3. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2003.

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