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SENATE BILL 666

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO BUSINESS LICENSES; CHANGING THE FINGERPRINTING  
REQUIREMENTS FOR CERTAIN BUSINESSES.

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  
by and stating the information required by the director,  
together with a nonrefundable application fee of two hundred  
dollars (\$200);

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

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

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

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

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

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1 ~~character;~~

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

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

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

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

17 (b) the names and addresses of all  
18 general partners and of all limited partners contributing ten  
19 percent or more of the total value of contributions made to the  
20 limited partnership or entitled to ten percent or more of the  
21 profits earned or other income paid by the limited partnership.

22 A limited partnership shall not receive a license if any  
23 partner, general partner or any holder of a ten percent or  
24 greater interest in the applicant entity designated in this  
25 subsection would not be eligible to hold a license issued

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1 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) if the applicant is a limited liability  
7 company, submit as part of its application the following:

8 (a) a copy of the articles of  
9 organization, with a copy of the certificate of filing with the  
10 public regulation commission;

11 (b) the name and addresses of all the  
12 managing members and all of the nonmanaging members that own a  
13 greater than ten percent interest in the limited liability  
14 company. Any direct or indirect parent entity of the limited  
15 liability company with an interest of ten percent or more in  
16 the applicant entity shall submit application forms and qualify  
17 to hold a license; and

18 (c) such additional information  
19 regarding the limited liability company as the director may  
20 require to assure full disclosure of the limited liability  
21 company's structure and financial responsibility;

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

24 (a) the names and addresses of the  
25 trustees;

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

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

16                                    ~~(5)~~ (7) obtain approval for the issuance  
17 from the governing body of the local option district in which  
18 the proposed licensed premises are to be located in accordance  
19 with the provisions of the Liquor Control Act.

20                                    B. Except for individual officers, directors,  
21 shareholders, members or partners of entities that file regular  
22 reports with the United States securities and exchange  
23 commission and for individuals who have been fingerprinted for  
24 another New Mexico license: every applicant for a new license  
25 or for a transfer of ownership of a license ~~if an individual~~

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1 ~~or general partnership]~~ shall file with the application two  
2 complete sets of fingerprints ~~[of each individual]~~ taken under  
3 the supervision of and certified to by an officer of the New  
4 Mexico state police, a county sheriff, ~~[or]~~ a municipal chief  
5 of police, ~~[If the applicant is a corporation, it shall file~~  
6 ~~two complete sets of fingerprints for each stockholder holding~~  
7 ~~ten percent or more of the outstanding stock, principal~~  
8 ~~officer, director and the agent responsible for the operation~~  
9 ~~of the licensed business. The fingerprints shall be taken and~~  
10 ~~certified to as provided for an individual or partnership. If~~  
11 ~~the applicant is a limited partnership, it shall file two~~  
12 ~~complete sets of fingerprints for each general partner and for~~  
13 ~~each limited partner contributing ten percent or more of the~~  
14 ~~total value of contributions made to the limited partnership or~~  
15 ~~entitled to ten percent or more of the profits earned or other~~  
16 ~~compensation by way of income paid by the limited partnership.~~  
17 ~~The fingerprints shall be taken and certified to as provided~~  
18 ~~for an individual or partnership.]~~ a police officer in a  
19 foreign country or an individual qualified to take fingerprints  
20 by virtue of training or experience, for each of the following  
21 individuals:

- 22 (1) if the applicant is a person, the  
23 applicant;  
24 (2) if the applicant or the holder of a ten  
25 percent or greater direct or indirect interest in the applicant

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1 is a corporation, for each principal officer, for each member  
2 of the board of directors who is employed by the corporation  
3 and who participates in operation of the license in some way  
4 other than infrequent meetings of the board of directors and  
5 for each stockholder with a ten percent or greater interest in  
6 the corporation;

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

10 (4) if the applicant or the holder of a ten  
11 percent or greater direct or indirect interest in the applicant  
12 is a limited partnership, for each general partner, for each  
13 limited partner holding a ten percent or greater interest in  
14 the partnership and for any principal officers of the limited  
15 partnership;

16 (5) if the applicant or the holder of a ten  
17 percent or greater direct or indirect interest in the applicant  
18 is limited liability company, for each managing member, for  
19 each member who owns a ten percent or greater interest in the  
20 limited liability company and for any principal officer of the  
21 limited liability company; and

22 (6) if the applicant is trust, for each  
23 trustee and for each beneficiary who has control over trust  
24 property and income or who receives substantial and regular  
25 distributions from the trust.

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

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

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

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

23 G. An application for transfer of ownership shall  
24 be filed with the department no later than thirty days after  
25 the date a person acquired an ownership interest in a license.

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1 It shall contain the actual date of sale of the license and  
2 shall be accompanied by a sworn affidavit from the owner of  
3 record of the license agreeing to the sale of the license to  
4 the applicant as well as attesting to the accuracy of the  
5 information required by this section to be filed with the  
6 department. A license shall not be transferred unless it will  
7 be placed into operation in an actual location within one  
8 hundred twenty days of issuance of the license, unless for good  
9 cause shown the director grants an additional extension for a  
10 length of time determined by the director.

11 H. Whenever it appears to the director that there  
12 will be more applications for new licenses than the available  
13 number of new licenses during any time period, a random  
14 selection method for the qualification, approval and issuance  
15 of new licenses shall be provided by the director. The random  
16 selection method shall allow each applicant an equal  
17 opportunity to obtain an available license, provided that all  
18 dispenser's and retailer's licenses issued in any calendar year  
19 shall be issued to residents of the state. For the purposes of  
20 random selection, the director shall also set a reasonable  
21 deadline by which applications for the available licenses shall  
22 be filed. A person shall not file more than one application  
23 for each available license and no more than three applications  
24 per calendar year.

25 I. After the deadline set in accordance with

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1 Subsection H of this section, no more than ten applications per  
2 available license shall be selected at random for priority of  
3 qualification and approval. Within thirty days after the  
4 random selection for the ten priority positions for each  
5 license, a hearing pursuant to Subsection K of this section  
6 shall be held to determine the qualifications of the applicant  
7 having the highest priority for each available license. If  
8 necessary, such a hearing shall be held on each selected  
9 application by priority until a qualified applicant for each  
10 available license is approved. Further random selections for  
11 priority positions shall also be held pursuant to this section  
12 as necessary.

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

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

22 L. In determining whether a license shall be  
23 issued, the director shall take into consideration all  
24 requirements of the Liquor Control Act. In the issuance of a  
25 license, the director shall specifically consider the nature

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1 and number of prior violations of the Liquor Control Act by the  
2 applicant or of any citations issued within the prior five  
3 years against a license held by the applicant or in which the  
4 applicant had an ownership interest required to be disclosed  
5 under the Liquor Control Act. The director shall disapprove  
6 the issuance or give preliminary approval of the issuance of  
7 the license based upon a review of all documentation submitted  
8 and any investigation deemed necessary by the director.

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

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

25 O. All costs of publication and posting shall be

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1 paid by the applicant.

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

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