

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 167

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DEDE FELDMAN

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING THE GOVERNING BODY OF
A LOCAL OPTION DISTRICT WITH STANDING TO APPEAL A DECISION OF
THE SUPERINTENDENT OF REGULATION AND LICENSING REGARDING
ISSUANCE OR TRANSFER OF A LICENSE; REQUIRING THE SUPERINTENDENT
TO PROVIDE NOTICE OF HIS DECISION; 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 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

Underscored material = new
[bracketed material] = delete

1 application for the license under oath, in the form prescribed
2 by and stating the information required by the director,
3 together with a nonrefundable application fee of one hundred
4 fifty dollars (\$150);

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

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

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

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

25 (c) the name of the resident agent of the

Underscored material = new
[bracketed material] = delete

1 corporation authorized to accept service of process for all
2 purposes, including orders and notices of the director, which
3 agent shall be approved by the director with respect to his
4 character;

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

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

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

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

19 (b) the names and addresses of all
20 general partners and of all limited partners contributing ten
21 percent or more of the total value of contributions made to the
22 limited partnership or entitled to ten percent or more of the
23 profits earned or other income paid by the limited partnership.
24 No limited partnership shall receive a license if any partner
25 designated in this subsection would not be eligible to hold a

Underscored material = new
[bracketed material] = delete

1 license issued pursuant to the Liquor Control Act; and

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

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

10 B. Every applicant for a new license or for a
11 transfer of ownership of a license, if an individual or general
12 partnership, shall file with the application two complete sets
13 of fingerprints of each individual, taken under the supervision
14 of and certified to by an officer of the New Mexico state
15 police, a county sheriff or a municipal chief of police. If the
16 applicant is a corporation, it shall file two complete sets of
17 fingerprints for each stockholder holding ten percent or more of
18 the outstanding stock, principal officer, director and the agent
19 responsible for the operation of the licensed business. The
20 fingerprints shall be taken and certified to as provided for an
21 individual or partnership. If the applicant is a limited
22 partnership, it shall file two complete sets of fingerprints for
23 each general partner and for each limited partner contributing
24 ten percent or more of the total value of contributions made to
25 the limited partnership or entitled to ten percent or more of

. 113612. 2

Underscored material = new
[bracketed material] = delete

1 the profits earned or other compensation by way of income paid
2 by the limited partnership. The fingerprints shall be taken and
3 certified to as provided for an individual or partnership.

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

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

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

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

25 G. An application for transfer of ownership shall be

Underscored material = new
[bracketed material] = delete

1 filed with the department no later than thirty days after the
2 date a person acquired an ownership interest in a license; shall
3 contain documentation of the actual purchase price paid for the
4 license, and the actual date of sale of the license; and shall
5 be accompanied by a sworn affidavit from the owner of record of
6 the license agreeing to the sale of the license to the applicant
7 as well as attesting to the accuracy of the information required
8 by this section to be filed with the department. No license
9 shall be transferred unless it will be placed into operation in
10 an actual location within one hundred twenty days of issuance of
11 the license, unless for good cause shown the director grants an
12 additional extension not to exceed one hundred twenty days.

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

. 113612. 2

Underscored material = new
[bracketed material] = delete

1 calendar year.

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

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

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

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

. 113612. 2

Underscored material = new
[bracketed material] = delete

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

9 M Before any new license is issued for a location,
10 the director shall cause a notice of the application therefor to
11 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 contents
18 of the notice shall be in the form prescribed by the department,
19 and such posting shall be over a continuous period of twenty
20 days prior to preliminary approval of the license.

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

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

25 P. It is unlawful for any person to remove or deface

Underscored material = new
[bracketed material] = delete

1 any notice posted in accordance with this section. Any person
2 convicted of a violation of this subsection shall be punished by
3 a fine of not more than three hundred dollars (\$300) or by
4 imprisonment in the county jail for not more than one hundred
5 twenty days or by both.

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

21 Section 2. Section 60-6B-4 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 40) is amended to read:

23 "60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF
24 APPROPRIATE GOVERNING BODY. --

25 A. Prior to the approval of the issuance of a new

Underscored material = new
[bracketed material] = delete

1 license, and prior to the approval of any transfer permitted by
2 Section [~~39 or 113 of the Liquor Control Act~~] 60-6B-3 or
3 60-6B-12 NMSA 1978, the director shall notify the governing body
4 of his preliminary approval of the issuance or transfer of the
5 license. Notice to the governing body shall be by certified
6 mail.

7 B. A governing body [~~which~~] that has received a
8 notice of preliminary approval of the issuance or transfer of a
9 license from the department may approve or disapprove the
10 issuance or transfer of the license in accordance with the
11 provisions of this section.

12 C. Within forty-five days after receipt of a notice
13 of preliminary approval from the department, the governing body
14 shall hold a public hearing on the question of whether the
15 department should approve the proposed issuance or transfer.

16 D. Notice of the public hearing required by
17 Subsection C of this section shall be given by the governing
18 body by:

19 (1) publishing a notice of the date, time and
20 place of the hearing at least once a week for two consecutive
21 weeks in a newspaper of general circulation within the
22 territorial limits of the governing body. The notice shall set
23 forth:

- 24 (a) the name and address of the licensee;
25 (b) the action proposed to be taken by

1 the department;

2 (c) the location of the licensee's
3 premises; and

4 (d) such other information as may be
5 required by the department; and

6 (2) sending a notice by certified mail to the
7 applicant of the date, time and place of the public hearing.

8 E. The governing body may designate a hearing
9 officer to conduct the hearing. A record shall be made of the
10 hearing.

11 F. The governing body may disapprove the issuance or
12 transfer of the license if:

13 (1) the proposed location is within an area
14 where the sale of alcoholic beverages is prohibited by the laws
15 of New Mexico;

16 (2) the issuance or transfer would be in
17 violation of a zoning or other ordinance of the governing body;
18 or

19 (3) the issuance or transfer would be
20 detrimental to the public health, safety or morals of the
21 residents of the local option district.

22 G. Within thirty days after the public hearing, the
23 governing body shall notify the department as to whether the
24 governing body has approved or disapproved the proposed issuance
25 or transfer of the license. If the governing body fails to

Underscored material = new
[bracketed material] = delete

1 either approve or disapprove the issuance or transfer of the
2 license within thirty days after the public hearing, the
3 director may give final approval to the issuance or transfer of
4 the license.

5 H. If the governing body disapproves the issuance or
6 transfer of the license, it shall notify the department within
7 the time required by Subsection G of this section setting forth
8 the reasons for the disapproval. A copy of the minutes of the
9 public hearing shall be submitted to the department by the
10 governing body with the notice of disapproval. If the governing
11 body disapproves of the issuance or transfer of the license, the
12 director shall disapprove the issuance or transfer of the
13 license.

14 I. If the governing body approves the issuance or
15 transfer of the license, it shall notify the department within
16 the time required by Subsection G of this section of its
17 approval. If the governing body approves of the issuance or
18 transfer of the license, the director shall approve the issuance
19 or transfer of the license.

20 J. Within five days of the director's decision to
21 approve or disapprove the issuance or transfer of a license, the
22 director shall notify the governing body of his decision. The
23 director shall provide notice to the governing body by certified
24 mail. "

25 Section 3. EFFECTIVE DATE. --The effective date of the

Underscored material = new
~~[bracketed material] = delete~~

1 provisions of this act is July 1, 1997.

2 - 13 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3
4
5
6 February 3, 1997

7
8 Mr. President:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 SENATE BILL 167

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 PUBLIC AFFAIRS COMMITTEE.

17
18
19 Respectfully submitted,

20
21
22
23
24 _____
25 Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Sanchez, Tsosie, Vernon

Absent: None

S0167JU1

Underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3
4
5
6 March 14, 1997

7
8 Mr. President:

9
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 167

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17
18
19 Respectfully submitted,

20
21
22
23 _____
24 Shannon Robinson, Chairman
25

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Garcia, Vernon, Rodarte, Smith

Absent: None

S0167PA1

Underscored material = new
[bracketed material] = delete