

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

HOUSE BILL 357

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

LISA L. LUTZ

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,

Underscored material = new
[bracketed material] = delete

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

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

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

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

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

24 (c) the name of the resident agent of
25 the corporation authorized to accept service of process for

Underscored material = new
[bracketed material] = delete

1 all purposes, including orders and notices of the director,
2 which agent shall be approved by the director with respect to
3 his character;

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

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

15 (4) if the applicant is a limited
16 partnership, 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
22 the limited partnership or entitled to ten percent or more of
23 the profits earned or other income paid by the limited
24 partnership. No limited partnership shall receive a license
25 if any partner designated in this subsection would not be

Underscored material = new
[bracketed material] = delete

1 eligible to hold a license issued pursuant to the Liquor
2 Control Act; and

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

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

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

Underscored material = new
[bracketed material] = delete

1 total value of contributions made to the limited partnership
2 or entitled to ten percent or more of the profits earned or
3 other compensation by way of income paid by the limited
4 partnership. The fingerprints shall be taken and certified to
5 as provided for an individual or partnership.

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

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

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

Underscored material = new
[bracketed material] = delete

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

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

18 H. Whenever it appears to the director that there
19 will be more applications for new licenses than the available
20 number of new licenses during any time period, a random
21 selection method for the qualification, approval and issuance
22 of new licenses shall be provided by the director. The random
23 selection method shall allow each applicant an equal
24 opportunity to obtain an available license, provided that all
25 dispenser's and retailer's licenses issued in any calendar

Underscored material = new
[bracketed material] = delete

1 year shall be issued to residents of the state. For the
2 purposes of random selection, the director shall also set a
3 reasonable deadline by which applications for the available
4 licenses shall be filed. No person shall file more than one
5 application for each available license and no more than three
6 applications per calendar year.

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

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

23 K. The director shall notify the applicant by
24 certified mail of the date, time and place of the hearing.
25 The hearing shall be held in Santa Fe. The director may

Underscored material = new
[bracketed material] = delete

1 designate a hearing officer to take evidence at the hearing.
2 The director or the hearing officer shall have the power to
3 administer oaths.

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

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

Underscored material = new
[bracketed material] = delete

1 prescribed by the department, and such posting shall be over a
2 continuous period of twenty days prior to preliminary approval
3 of the license.

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

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

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

14 Q. Any person aggrieved by any decision made by
15 the director as to the approval or disapproval of the issuance
16 of a license may appeal to the district court of jurisdiction
17 by filing a petition in the court within thirty days from the
18 date of the decision of the director, and a hearing on the
19 matter may be held in the district court. If the disapproval
20 is based upon local option district disapproval pursuant to
21 Subsection H of Section 60-6B-4 NMSA 1978, the local option
22 district shall be a necessary party to any appeal. The
23 decision of the director shall continue in force, pending a
24 reversal or modification by the district court, unless
25 otherwise ordered by the court. Any appeal from the decision

Underscored material = new
[bracketed material] = delete

1 of the district court to the supreme court shall be permitted
2 as in other cases of appeals from the district court to the
3 supreme court. "

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

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

8 A. Any license issued under the provisions of the
9 Liquor Control Act shall be canceled if the licensee fails to
10 commence operation of the licensed business within one hundred
11 twenty days after the license is issued and to continuously
12 operate during customary hours and days of operation for that
13 type of business; provided, however, the director may extend
14 [such] that period [~~when construction or major renovation of a~~
15 ~~proposed licensed premises is planned by the licensee~~] for a
16 length of time determined by the director.

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

23 C. The director may grant temporary suspensions in
24 the operation of the licensed business upon receipt of the
25 notice provided in Subsection B of this section. [~~However, no~~

Underscored material = new
[bracketed material] = delete

1 ~~licensee shall be granted a single temporary suspension in the~~
2 ~~operation of the licensed business for any period in excess of~~
3 ~~ninety days and no more than two such ninety-day temporary~~
4 ~~suspensions in any one license year, unless the director~~
5 ~~determines that circumstances warrant the granting of a longer~~
6 ~~period of temporary suspension]~~ A temporary suspension shall
7 be for a period determined appropriate by the director.

8 D. The license of any person failing to comply
9 with any provision of this section shall be canceled after
10 notice and hearing complying with the provisions of Section
11 60-6C-4 NMSA 1978. "

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 5, 1998
7

8 Mr. Speaker:
9

10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 357
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
19
20
21

22 _____
23 Fred Luna, Chairman
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HBIC/HB 357

Page 13

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 7 For 0 Against

11 Yes: 7

12 Excused: Gubbels, Olguin, J. G. Taylor, Varela, Rodella

13 Absent: Getty

14
15 G:\BILLTEXT\BILLW_98\H0357

16
17
18
19
20
21
22
23
24
25
Underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4

5 February 14, 1998
6

7 Mr. Speaker:
8

9 Your JUDICIARY COMMITTEE, to whom has been referred
10

11 HOUSE BILL 357
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 6, strike line 17 and insert in lieu thereof
16 "for a length of time determined by the director."

17 Respectfully submitted,
18
19

20
21 _____
22
23 Thomas P. Foy, Chairman
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 15

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 6 For 1 Against

11 Yes: 6

12 No: Garcia, M P.

13 Excused: Alwin, King, Larranaga, Rios, Sanchez, Stewart

14 Absent: None

15
16 123300.1

17 G:\BILLTEXT\BILLW_98\H0357

18
19
20
21
22
23
24
25
Underscored material = new
[bracketed material] = delete

. 121922. 1

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

FORTY-THIRD LEGISLATURE
SECOND SESSION

February 14, 1998

HOUSE FLOOR AMENDMENT number _____ to HOUSE BILL 357

Amendment sponsored by Representative Lisa L. Lutz

1. On page 6, strike line 17 and insert in lieu thereof "for a length of time determined by the director."

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION

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

HF1/HB 357

Page 17

Lisa L. Lutz

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

Date _____

Underscored material = new
[bracketed material] = delete

123450.1

FORTY-THIRD LEGISLATURE
SECOND SESSION

HF1/HB 357

Page 18

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 16, 1998

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 357, as amended

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

Respectfully submitted,

Shannon Robinson, Chairman

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

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION

1 HF1/ HB 357

2

3

Date _____

4

5

6 The roll call vote was 5 For 0 Against

7 Yes: 5

8 No: 0

9 Excused: Boitano, Ingle, Smith, Vernon

10 Absent: None

11

12 H0357PA1

13

14

15

16

17

18

19

20

21

22

23

24

25

Underscored material = new
[bracketed material] = delete