

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 541

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; CREATING THE LIMITED
DISPENSER'S LICENSE; REPEALING THE QUOTA FOR DISPENSER'S AND
RETAILER'S LICENSES; ADDRESSING THE PURPOSE OF LOCAL OPTION
ELECTIONS; PROHIBITING THE ISSUANCE OF NEW DISPENSER'S AND
RETAILER'S LICENSES UNTIL 2018; INCREASING THE FEE FOR NEW
DISPENSER'S AND RETAILER'S LICENSES; ALLOWING CURRENT
DISPENSER'S AND RETAILER'S LICENSES TO BE TRANSFERRED ANYWHERE
IN THE STATE UNTIL 2021 SUBJECT TO A LOCAL OPTION DISTRICT
LIMITATION; ELIMINATING THE TRANSFERABILITY OF ANY LICENSE
AFTER 2021.

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

SECTION 1. Section 60-5A-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 15, as amended) is amended to read:

"60-5A-1. ELECTIONS FOR LOCAL OPTION.--~~[Any municipality~~

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

underscored material = new
[bracketed material] = delete

1 ~~containing over five thousand population according to the~~
2 ~~latest United States census, whether the county in which that~~
3 ~~municipality is situated has adopted the local option~~
4 ~~provisions of the Liquor Control Act or any former act or not,~~
5 ~~or any county in the state may adopt local option in the county~~
6 ~~or municipality upon the following terms and conditions:~~

7 ~~A. at any time after the effective date of the~~
8 ~~Liquor Control Act, the registered qualified electors of any~~
9 ~~proposed local option district may petition the governing body~~
10 ~~by filing one or more petitions in the appropriate office to~~
11 ~~hold an election for the purpose of determining whether the~~
12 ~~county or municipality shall adopt the local option provisions~~
13 ~~of the Liquor Control Act.]~~

14 A. Alcoholic beverages shall not be sold, served or
15 consumed in public in a county or municipality that did not
16 become a local option district pursuant to the Liquor Control
17 Act or any former act. A county or municipality that did not
18 become a local option district prior to July 1, 2011 pursuant
19 to the Liquor Control Act or any former act may hold an
20 election to become a local option district pursuant to this
21 section.

22 B. A local option district created pursuant to the
23 Liquor Control Act or any former act may hold an election to
24 limit the number of dispenser's, limited dispenser's and
25 retailer's licenses that may be issued in the local option

underscored material = new
[bracketed material] = delete

1 district. The election question shall be whether to limit the
2 number of those licenses to those currently issued or to allow
3 additional licenses in a certain number over a period of time.
4 If no election is held or until an election is held imposing a
5 limit, there shall be no limitation imposed on the number of
6 licenses in a local option district.

7 C. In a county or municipality that did not become
8 a local option district prior to July 1, 2011, the registered
9 qualified electors of any proposed local option district may
10 petition the governing body by filing one or more petitions in
11 the appropriate office to hold an election for the purpose of
12 determining whether the county or municipality shall adopt the
13 local option provisions of the Liquor Control Act. An election
14 shall be held pursuant to this section.

15 D. In a local option district created pursuant to
16 the Liquor Control Act or any former act, the registered
17 qualified electors of the local option district may petition
18 the governing body by filing one or more petitions in the
19 appropriate office to hold an election for the purpose of
20 determining whether licenses should be limited in one of the
21 manners described in Subsection B of this section. If a
22 petition is to limit additional licenses to a certain number
23 over a period of time, the number and period of time shall be
24 stated in the petition. An election shall be held pursuant to
25 this section.

185176.2

underscored material = new
[bracketed material] = delete

1 E. If the aggregate of the signatures [~~of such~~
2 ~~electors~~] on all the petitions equals or exceeds five percent
3 of the number of registered voters of the local option district
4 or proposed local option district, the governing body shall
5 call an election within seventy-five days of the verification
6 of the petition. The date of the filing of the petition shall
7 be the date of the filing of the last petition [~~which~~] that
8 brings the number of signatures up to the required five
9 percent; provided, however, that the governing body shall
10 refuse to recognize the petition if more than three months have
11 elapsed between the date of the first signature and the filing
12 of the last petition necessary to bring the number of
13 signatures on the petition up to five percent.

14 [~~B-~~] F. The election shall be called, conducted,
15 counted and canvassed substantially in the manner provided by
16 law for general elections within the county or special
17 municipal elections within the municipality, except as
18 otherwise provided in this section.

19 [~~G-~~] G. The votes at the election shall be counted,
20 returned and canvassed as provided for in the case of general
21 elections within the county or special municipal elections
22 within the municipality.

23 [~~D-~~] H. Except as otherwise provided in this
24 section, contests, recounts and rechecks shall be permitted as
25 provided for in the case of candidates for county office in

underscored material = new
[bracketed material] = delete

1 general elections or as provided for in the case of special
2 municipal elections within the municipality. Applications for
3 contests, recounts or rechecks may be filed by any person who
4 voted in the election, and service shall be made upon the
5 county clerk or municipal clerk as the case may be.

6 ~~[E-]~~ I. If [~~a~~] the majority of all the votes cast
7 at the election are cast in favor of [~~the sale, service or~~
8 ~~public consumption of alcoholic beverages in the county or~~
9 ~~municipality~~] limiting the number of licenses or of becoming a
10 local option district, the [~~chairman~~] chair of the governing
11 body shall declare by order entered upon the records of the
12 county or municipality that the county or municipality has
13 limited the number of licenses as petitioned or has adopted the
14 local option provisions of the Liquor Control Act and shall
15 notify the department of [~~such~~] the results.

16 ~~[F-]~~ J. No election held pursuant to this section
17 shall be held within forty-two days of [~~any~~] a primary,
18 general, municipal or school district election. If within
19 sixty days from the verification of [~~any~~] a petition as
20 provided in Subsection [~~A~~] C of this section a primary,
21 general, municipal or school election is held, the governing
22 body may call an election for a day not less than sixty days
23 after the primary, general, municipal or school election.

24 ~~[G-]~~ K. If an election is held under the provisions
25 of the Liquor Control Act in [~~any~~] a county [~~which~~] that

underscored material = new
[bracketed material] = delete

1 contains within its limits [~~any~~] a municipality of more than
2 five thousand persons according to the [~~last~~] latest United
3 States census, it is not necessary for the registered qualified
4 electors in the municipality to file a separate petition asking
5 for a separate or different vote on the question of adopting
6 the local option provisions of the Liquor Control Act by the
7 municipality. The election in the county shall be conducted so
8 as to separate the votes in the municipality from those in the
9 remaining parts of the county. If [~~a~~] the majority of the
10 voters in the county, including the voters in the municipality,
11 vote against the sale, service or public consumption of
12 alcoholic beverages in the county, the county shall not adopt
13 the local option provisions of the Liquor Control Act; but if
14 [~~a~~] the majority of the votes in the municipality are in favor
15 of the sale, service or public consumption of alcoholic
16 beverages, the municipality shall have adopted the local option
17 provisions of the Liquor Control Act. Nothing contained in
18 this subsection shall prevent any municipality from having a
19 separate election under the terms of this section.

20 ~~[H. any county or municipality composing a local~~
21 ~~option district under the provisions of the Liquor Control Act~~
22 ~~or any former act may vote to discontinue the sale, service or~~
23 ~~public consumption of alcoholic beverages in the local option~~
24 ~~district; the discontinuance shall become effective on the~~
25 ~~ninetieth day after the local option election is held; and~~

185176.2

underscored material = new
[bracketed material] = delete

1 ~~±.]~~ L. Nothing in this section shall invalidate any
2 local option election held pursuant to any former act prior to
3 July 1, 1981."

4 SECTION 2. Section 60-5A-2 NMSA 1978 (being Laws 1981,
5 Chapter 39, Section 16) is amended to read:

6 "60-5A-2. RESUBMISSION OF LOCAL OPTION QUESTION OR
7 LICENSE LIMITATION QUESTION.--~~[In any local option district]~~

8 A. In a county or municipality in which the local
9 option provisions of the Liquor Control Act or former act have
10 been rejected by the voters, it shall be permissible after the
11 expiration of two years from the date of the election at which
12 the local option provisions of the Liquor Control Act or any
13 former act were rejected to have another local option election
14 in the district by following the procedure provided for in
15 Section ~~[15 of the Liquor Control Act. At the option of the~~
16 ~~petitioners referred to in Subsection A of Section 15 of that~~
17 ~~act, it shall be permissible to resubmit to the voters of one~~
18 ~~district not only the question of the sale, service or public~~
19 ~~consumption of alcoholic beverages, but it shall also be~~
20 ~~permissible to petition for a local option election for the~~
21 ~~purpose of submitting to the voters of the district the~~
22 ~~question of permitting the sale of alcoholic beverages by~~
23 ~~retailers only in the district]~~ 60-5A-1 NMSA 1978.

24 B. In a local option district that imposed a
25 limitation on the number of licenses, no less than five years

185176.2

underscored material = new
[bracketed material] = delete

1 following the election that imposed the limitation, the
2 question of raising the limitation on the number of licenses
3 that can be issued in the local option district may be
4 resubmitted to the registered qualified electors pursuant to
5 the procedure in Section 60-5A-1 NMSA 1978. In no case shall
6 an election reduce the number of licenses permitted in the
7 local option district prior to the election."

8 SECTION 3. Section 60-6A-2 NMSA 1978 (being Laws 1981,
9 Chapter 39, Section 19) is amended to read:

10 "60-6A-2. RETAILER'S LICENSE.--

11 A. From July 1, 2011 until June 30, 2018, the
12 director shall not issue a new retailer's license. On and
13 after July 1, 2018, in any local option district, a person
14 qualified under the provisions of the Liquor Control Act may
15 apply for and be issued a retailer's license for the retail
16 sale of alcoholic beverages.

17 B. A retailer's license, when issued, shall only be
18 used by the person to whom the license is issued and shall only
19 be used within the licensed premises, pursuant to provisions of
20 the Liquor Control Act."

21 SECTION 4. Section 60-6A-3 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 20) is amended to read:

23 "60-6A-3. DISPENSER'S LICENSE.--

24 A. From July 1, 2011 until June 30, 2018, the
25 director shall not issue a new dispenser's license. On and

185176.2

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

1 after July 1, 2018, in any local option district, a person
2 qualified under the provisions of the Liquor Control Act may
3 apply for and be issued a dispenser's license for the sale of
4 alcoholic beverages.

5 B. A dispenser's license, when issued, shall only
6 be used by the person to whom the license is issued and shall
7 only be used within the licensed premises, pursuant to
8 provisions of the Liquor Control Act."

9 SECTION 5. Section 60-6A-4 NMSA 1978 (being Laws 1981,
10 Chapter 39, Section 21, as amended) is amended to read:

11 "60-6A-4. RESTAURANT LICENSE.--

12 A. At any time after the effective date of the
13 Liquor Control Act, a local option district may approve the
14 issuance of restaurant licenses for the sale of beer and wine
15 by holding an election on that question pursuant to the
16 procedures set out in Section 60-5A-1 NMSA 1978. The election
17 also may be initiated by a resolution adopted by the governing
18 body of the local option district without a petition from
19 registered qualified electors having been submitted.

20 B. After the approval of restaurant licenses by the
21 registered qualified electors of the local option district and
22 upon completion of all requirements in the Liquor Control Act
23 for the issuance of licenses, a restaurant located or to be
24 located within the local option district may receive a
25 restaurant license to sell, serve or allow the consumption of

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

1 beer and wine subject to the following requirements and
2 restrictions:

3 (1) the applicant shall submit evidence to the
4 department that ~~[he]~~ the applicant has a current valid food
5 service establishment permit;

6 (2) the applicant shall satisfy the director
7 that the primary source of revenue from the operation of the
8 restaurant will be derived from meals and not from the sale of
9 beer and wine;

10 (3) the director shall condition renewal upon
11 a requirement that no less than sixty percent of gross receipts
12 from the preceding twelve months' operation of the licensed
13 restaurant was derived from the sale of meals;

14 (4) upon application for renewal, the licensee
15 shall submit an annual report to the director indicating the
16 annual gross receipts from the sale of meals and from beer and
17 wine sales;

18 (5) restaurant licensees shall not sell beer
19 and wine for consumption off the licensed premises;

20 (6) all sales, services and consumption of
21 beer and wine authorized by a restaurant license shall cease at
22 the time meals sales and services cease or at 11:00 p.m.,
23 whichever time is earlier;

24 (7) if Sunday sales have been approved in the
25 local option district, a restaurant licensee may serve beer and

185176.2

underscored material = new
[bracketed material] = delete

1 wine on Sundays until the time meals sales and services cease
2 or 11:00 p.m., whichever time is earlier; and

3 (8) a restaurant license shall not be
4 transferable from person to person or from one location to
5 another.

6 ~~[G. The provisions of Section 60-6A-18 NMSA 1978~~
7 ~~shall not apply to restaurant licenses.~~

8 ~~D.]~~ C. Nothing in this section shall prevent a
9 restaurant licensee from receiving other licenses pursuant to
10 the Liquor Control Act."

11 SECTION 6. Section 60-6A-5 NMSA 1978 (being Laws 1981,
12 Chapter 39, Section 22) is amended to read:

13 "60-6A-5. CLUB LICENSES.--

14 A. In any local option district, a club qualified
15 under the provisions of the Liquor Control Act may apply for
16 and be issued a club license.

17 B. Club licenses shall not be transferred from one
18 owner to another. A club license may be transferred from one
19 location to another upon compliance with the provisions of the
20 Liquor Control Act. A club license shall not be leased.

21 ~~[G. The provisions of Section 35 of the Liquor~~
22 ~~Control Act shall not apply to club licenses.]"~~

23 SECTION 7. Section 60-6A-10 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 27, as amended) is amended to read:

25 "60-6A-10. GOVERNMENTAL LICENSE.--

185176.2

underscored material = new
[bracketed material] = delete

1 A. Except as provided in Subsection G of this
2 section, a governmental entity may sell alcoholic beverages
3 directly or through its lessee at a governmental facility if
4 the governing body applies to the director for a governmental
5 license. The governmental entity and its lessee shall be
6 subject to all state laws and regulations governing dispensers.

7 B. A governmental license may be leased to a
8 qualified lessee and may only be used by the lessee for its
9 operation during events authorized by the governmental entity
10 at the governmental facility designated on the governmental
11 license. The governmental entity and its lessee shall not sell
12 alcoholic beverages for consumption off the licensed premises.
13 On the licensed premises of a municipal baseball park, the sale
14 or service of alcoholic beverages in unbroken packages is
15 allowed. Alcoholic beverages shall not be removed from the
16 licensed premises of a municipal baseball park. A server as
17 defined in Section 60-6E-3 NMSA 1978 is not required to be
18 present in a skybox to serve alcoholic beverages to the person
19 leasing the skybox or ~~[his]~~ the person's guests.

20 C. A governmental entity holding a governmental
21 license shall annually and not less than sixty days prior to
22 the date for renewal of its license submit to the director
23 documentary proof that its lessee is fully qualified to be a
24 lessee of a governmental license. If the director finds that
25 the lessee is qualified to lease a governmental license, the

underscored material = new
[bracketed material] = delete

1 director shall renew the license for an additional period of
2 one year. If the director determines that the proof is
3 inadequate, ~~[he]~~ the director shall notify the governing body
4 of ~~[his]~~ the decision and shall conduct a hearing as provided
5 by law. If the director finds that the lessee does not qualify
6 and the governmental entity does not change its lessee, the
7 director shall revoke the license.

8 ~~[D. The provisions of Section 60-6A-18 NMSA 1978~~
9 ~~shall not apply to governmental licenses.~~

10 ~~E.]~~ D. For the purposes of this section:

11 (1) "governmental entity" means a
12 municipality, a county, a state fair that is held for ~~[less]~~
13 fewer than ten days per year, the state fair commission, a
14 state museum or a state university;

15 (2) "governmental facility" means locations on
16 property owned or operated by a governmental entity, including
17 county fairs; state fairs held for ~~[less]~~ fewer than ten days
18 per year; convention centers; airports; civic centers; food
19 service facilities in state museums; auditoriums; all
20 facilities on the New Mexico state fairgrounds; facilities used
21 for athletic competitions; golf courses, including golf courses
22 required to be used for municipal purposes notwithstanding that
23 there may be an existing club license at the same location
24 operated by the same club licensee; and other facilities used
25 for cultural or artistic performances, but "governmental

underscoring material = new
[bracketed material] = delete

1 facility" does not include tennis facilities;

2 (3) "lessee" means an individual, corporation,
3 partnership, firm or association that fulfills the requirements
4 set forth in Subsections A through D of Section 60-6B-2 NMSA
5 1978;

6 (4) "municipal baseball park" means a
7 governmental facility owned by a ~~[government]~~ governmental
8 entity in a class A county having a population of three hundred
9 fifty thousand or more pursuant to the most recent federal
10 decennial census that is the home stadium of an affiliate of a
11 professional baseball team and that may be used throughout the
12 year for baseball games and other events; and

13 (5) "skybox" means a room or area of seating
14 of a municipal baseball park, separated from the general
15 seating and usually located in the upper decks of the park,
16 leased to a person for that person's exclusive use during
17 baseball games and at any other time throughout the year.

18 ~~[F-]~~ E. The provisions of Section 60-6B-10 NMSA
19 1978 as regards to golf courses owned by a governmental entity
20 and civic centers owned and operated by a governmental entity
21 shall not apply to governmental licenses.

22 ~~[G-]~~ F. A governmental entity that sells alcoholic
23 beverages directly or indirectly through a lessee at a
24 governmental facility that is a food service facility in a
25 state museum or a golf course required to be used for municipal

185176.2

1 purposes may only sell beer and wine."

2 SECTION 8. A new section of the Liquor Control Act is
3 enacted to read:

4 "[NEW MATERIAL] LIMITED DISPENSER'S LICENSE.--

5 A. A person may apply for and be issued, after
6 submitting an application prescribed by the director and
7 meeting all the requirements of the Liquor Control Act, a
8 limited dispenser's license to permit the sale, service and
9 consumption of alcoholic beverages in a restaurant subject to
10 the following application and license requirements, conditions
11 and restrictions:

12 (1) the person shall submit evidence to the
13 director that the person has a current valid food service
14 establishment permit;

15 (2) the person shall satisfy the director that
16 the primary source of revenue from the operation of the
17 restaurant will be derived from meals and not from the sale of
18 alcoholic beverages;

19 (3) the person may renew the license annually,
20 and the director shall condition renewal upon a requirement
21 that no less than fifty-five percent of gross receipts from the
22 preceding twelve months' operation of the restaurant was
23 derived from the sale of meals;

24 (4) upon application for renewal, the person
25 shall submit an annual report to the director indicating the

185176.2

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

1 annual gross receipts from the sale of meals and from the sale
2 of alcoholic beverages;

3 (5) except as provided in Section 60-3A-12
4 NMSA 1978, the license does not permit the sale of alcoholic
5 beverages, whether in unbroken packages or not, for consumption
6 off the licensed premises;

7 (6) the license shall not permit the sale,
8 service and consumption of alcoholic beverages after the time
9 that meal sales and service cease;

10 (7) if Sunday sales have been approved in the
11 local option district, the license shall permit, subject to
12 Section 60-7A-1 NMSA 1978, the sale, service and consumption of
13 alcoholic beverages on Sundays until the time meal sales and
14 service cease;

15 (8) the license shall not be transferable from
16 person to person or from one location to another, and whenever
17 a licensee ceases to operate a restaurant at the licensed
18 premises, the director shall cancel the license; and

19 (9) except as otherwise specifically provided
20 for limited dispenser's licenses, a limited dispenser's license
21 is subject to the Liquor Control Act in the same manner as a
22 dispenser's license.

23 B. Nothing in this section shall prevent a limited
24 dispenser's licensee from receiving other licenses pursuant to
25 the Liquor Control Act; provided that a limited dispenser's

185176.2

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

1 license shall not be used to apply for or receive a special
2 dispenser's permit pursuant to Section 60-6A-12 NMSA 1978."

3 SECTION 9. Section 60-6A-15 NMSA 1978 (being Laws 1981,
4 Chapter 39, Section 32, as amended) is amended to read:

5 "60-6A-15. LICENSE FEES.--Every application for the
6 issuance or renewal of the following licenses shall be
7 accompanied by a license fee in the following specified
8 amounts:

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

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

13 C. manufacturer's license as a rectifier, one
14 thousand fifty dollars (\$1,050);

15 D. wholesaler's license to sell all alcoholic
16 beverages for resale only, two thousand five hundred dollars
17 (\$2,500);

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

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

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

25 H. wholesaler's license to sell beer for resale

185176.2

underscored material = new
[bracketed material] = delete

1 only, one thousand dollars (\$1,000);

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

4 J. retailer's license, for issuance, two hundred
5 thousand (\$200,000), and for renewal, one thousand three
6 hundred dollars (\$1,300);

7 K. dispenser's license, for issuance, two hundred
8 fifty thousand (\$250,000), and for renewal, one thousand three
9 hundred dollars (\$1,300);

10 L. limited dispenser's license, for issuance, one
11 hundred thousand dollars (\$100,000), and for renewal, one
12 thousand three hundred dollars (\$1,300);

13 [~~H-~~] M. canopy license, one thousand three hundred
14 dollars (\$1,300);

15 [~~M-~~] N. restaurant license, one thousand fifty
16 dollars (\$1,050);

17 [~~N-~~] O. club license, for clubs with more than two
18 hundred fifty members, one thousand two hundred fifty dollars
19 (\$1,250), and for clubs with two hundred fifty members or
20 fewer, two hundred fifty dollars (\$250);

21 [~~Θ-~~] P. wine bottler's license to sell to
22 wholesalers only, five hundred dollars (\$500);

23 [~~P-~~] Q. public service license, one thousand two
24 hundred fifty dollars (\$1,250);

25 [~~Q-~~] R. nonresident licenses, for a total billing

185176.2

underscored material = new
[bracketed material] = delete

1 to New Mexico wholesalers:

2 (1) in excess of:

3 \$3,000,000 annually \$10,500;

4 1,000,000 annually 5,250;

5 500,000 annually 3,750;

6 200,000 annually 2,700;

7 100,000 annually 1,800;

8 and

9 50,000 annually 900;

10 and

11 (2) of \$50,000 or less \$300;

12 [~~R-~~] S. wine wholesaler's license, for persons with
13 sales of five thousand gallons of wine per year or less,
14 twenty-five dollars (\$25.00), and for persons with sales in
15 excess of five thousand gallons of wine per year, one hundred
16 dollars (\$100); and

17 [~~S-~~] T. beer bottler's license, two hundred dollars
18 (\$200)."

19 SECTION 10. Section 60-6B-2 NMSA 1978 (being Laws 1981,
20 Chapter 39, Section 38, as amended) is amended to read:

21 "60-6B-2. APPLICATIONS.--

22 A. Before a new license authorized by the Liquor
23 Control Act may be issued by the director, the applicant for
24 the license shall:

25 (1) submit to the director a written

underscoring 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 two hundred
4 dollars (\$200);

5 (2) submit to the director for approval a
6 description, including floor plans, in a form prescribed by the
7 director, that 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) submit the name and street address of a
11 New Mexico resident who is not a felon, who has power of
12 attorney and authority to bind the applicant to matters related
13 to liquor sales and operations and upon whom the director may
14 serve any notice related to ownership or operation of the
15 license, including any notice of charge pursuant to Chapter 60,
16 Article 6C NMSA 1978;

17 (4) if the applicant is a corporation, be
18 required to submit as part of its application the following:

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

22 (b) the names and addresses of all
23 officers and directors and those stockholders owning ten
24 percent or more of the voting stock of the corporation and the
25 amounts of stock held by each stockholder; provided, however,

185176.2

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

1 that a corporation may not be licensed if an officer, manager,
2 director or holder of more than a ten percent interest in the
3 applicant entity would not be eligible to hold a license
4 pursuant to the Liquor Control Act; and

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

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

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

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

18 A limited partnership shall not receive a license if a partner
19 or holder of a ten percent or greater interest in the applicant
20 entity designated in this subsection would not be eligible to
21 hold a license issued pursuant to the Liquor Control Act; and

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

185176.2

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

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

3 (a) a copy of the articles of
4 organization, with a copy of the certificate of filing with the
5 public regulation commission;

6 (b) the ~~[name]~~ names and addresses of
7 all the managing members and all of the nonmanaging members
8 that own a greater than ten percent interest in the limited
9 liability company. Any direct or indirect parent entity of the
10 limited liability company with an interest of ten percent or
11 more in the applicant entity shall submit application forms and
12 qualify to hold a license; and

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

17 (7) if the applicant is a trust, submit as
18 part of its application:

19 (a) the names and addresses of the
20 trustees;

21 (b) the names and addresses of any
22 beneficiaries having control over the property of the trust or
23 receiving regular and substantial distributions of principal
24 and income from the trust. Any beneficiary receiving regular
25 and substantial distributions from the trust shall qualify to

185176.2

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

1 hold a license. The director may request a copy of the trust
2 agreement for review, which trust agreement need not become
3 part of the application. Affidavits as to the operation and
4 distribution of the principal and income may be requested in
5 lieu of, or in addition to, the copy of the trust agreement
6 that is supplied for review by the department; and

7 (c) such additional information
8 regarding the trust as the director may require to assure full
9 disclosure of the trust's structure and financial
10 responsibility; and

11 (8) obtain approval for the issuance from the
12 governing body of the local option district in which the
13 proposed licensed premises are to be located in accordance with
14 the provisions of the Liquor Control Act.

15 B. Except for individual officers, directors,
16 shareholders, members or partners of entities that are publicly
17 traded on a national stock exchange and for individuals who
18 have been fingerprinted for another New Mexico license and had
19 no prior criminal or arrest record, every applicant for a new
20 license or for a transfer of ownership of a license shall file
21 with the application two complete sets of fingerprints taken
22 under the supervision of and certified to by an officer of the
23 New Mexico state police, a county sheriff, a municipal chief of
24 police, a police officer in a foreign country or an individual
25 qualified to take fingerprints by virtue of training or

185176.2

1 experience, for each of the following individuals:

2 (1) if the applicant is a person, for the
3 applicant;

4 (2) if the applicant or the holder of a ten
5 percent or greater interest in the applicant entity is a
6 corporation, for each principal officer, for each member of the
7 board of directors and for each stockholder with a ten percent
8 or greater interest in the applicant entity;

9 (3) if the applicant or the holder of a ten
10 percent or greater interest in the applicant entity is a
11 general partnership, for each partner;

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

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

24 (6) if the applicant is a trust, for each
25 trustee and for each beneficiary who has control over trust

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

1 property and income or who receives substantial and regular
2 distributions from the trust.

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

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

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

25 G. An application for transfer of ownership shall

185176.2

underscoring material = new
[bracketed material] = delete

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

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~~
17 ~~of new licenses shall be provided by the director. The random~~
18 ~~selection method shall allow each applicant an equal~~
19 ~~opportunity to obtain an available license, provided that all~~
20 ~~dispenser's and retailer's licenses issued in a calendar year~~
21 ~~shall be issued to residents of the state. For the purposes of~~
22 ~~random selection, the director shall also set a reasonable~~
23 ~~deadline by which applications for the available licenses shall~~
24 ~~be filed. A person shall not file more than one application~~
25 ~~for each available license and no more than three applications~~

185176.2

underscored material = new
[bracketed material] = delete

1 ~~per 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~~
6 ~~random selection for the ten priority positions for each~~
7 ~~license, a hearing pursuant to Subsection K of this section~~
8 ~~shall be held to determine the qualifications of the applicant~~
9 ~~having the highest priority for each available license. If~~
10 ~~necessary, such a hearing shall be held on each selected~~
11 ~~application by priority until a qualified applicant for each~~
12 ~~available license is approved. Further random selections for~~
13 ~~priority positions shall also be held pursuant to this section~~
14 ~~as necessary.~~

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

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

24 ~~[L.]~~ I. In determining whether a license shall be
25 issued, the director shall take into consideration all

185176.2

underscored material = new
[bracketed material] = delete

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

11 ~~[M.]~~ J. Before a new license is issued for a
12 location, the director shall cause a notice of the application
13 for the license to be posted conspicuously, on a sign not
14 smaller than thirty inches by forty inches, on the outside of
15 the front wall or front entrance of the immediate premises for
16 which the license is sought, or, if no building or improvements
17 exist on the premises, the notice shall be posted at the front
18 entrance of the immediate premises for which the license is
19 sought, on a billboard not smaller than five feet by five feet.
20 The contents of the notice shall be in the form prescribed by
21 the department, and ~~[such]~~ the posting shall be over a
22 continuous period of twenty days prior to preliminary approval
23 of the license. The director shall prescribe the manner in
24 which the posting may be accomplished by the licensee, the
25 licensee's representative or the director's designee.

185176.2

underscored material = new
[bracketed material] = delete

1 ~~[N-]~~ K. A license shall not be issued until the
2 posting requirements of Subsection ~~[M]~~ J of this section have
3 been met.

4 ~~[O-]~~ L. All costs of publication and posting shall
5 be paid by the applicant.

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

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

22 **SECTION 11.** Section 60-6B-12 NMSA 1978 (being Laws 1981,
23 Chapter 39, Section 113, as amended) is amended to read:

24 "60-6B-12. INTER-LOCAL OPTION DISTRICT TRANSFERS.--

25 A. ~~[A11]~~ Until July 1, 2021, dispenser's and

underscoring material = new
[bracketed material] = delete

1 retailer's licenses originally issued before July 1, 1981,
2 except rural dispenser's and rural retailer's licenses and
3 canopy licenses that were replaced by dispenser's licenses
4 pursuant to Section 60-6B-16 NMSA 1978, may be transferred to
5 any location within the state, except class B counties having a
6 population of between fifty-six thousand and fifty-seven
7 thousand according to the 1980 federal decennial census, the
8 municipalities located within those class B counties and any
9 municipality or county that ~~[prohibits]~~ is not a local option
10 district or that under any prior law prohibited by election the
11 transfer of a license from another local option district.

12 ~~[without regard to the limitations on the maximum number of~~
13 ~~licenses provided in Section 60-6A-18 NMSA 1978, not otherwise~~
14 ~~contrary to law, subject to the approval of transferring~~
15 ~~locations of such liquor licenses of the governing body for~~
16 ~~that location; and provided all]~~ The transfer shall be subject
17 to the following provisions:

18 (1) it is not contrary to law;

19 (2) the local governing body of the receiving
20 local option district has approved the transfer;

21 (3) the requirements of the Liquor Control Act
22 and department [regulations] rules for the transfer of licenses
23 are fulfilled; and [provided further:

24 ~~(1) the transfer of location does not lower~~
25 ~~the number of dispenser's and retailer's licenses below that~~

185176.2

underscored material = new
[bracketed material] = delete

1 ~~number allowed by law in the local option district from which a~~
2 ~~license will be transferred;~~

3 ~~(2) beginning in calendar year 1997, no more~~
4 ~~than ten dispenser's or retailer's licenses shall be~~
5 ~~transferred to any local option district in any calendar year;~~

6 ~~(3) the dispenser's or retailer's licenses~~
7 ~~transferred under this section shall count in the computation~~
8 ~~of the limitation of the maximum number of licenses that may be~~
9 ~~issued in the future in any local option district as provided~~
10 ~~in Section 60-6A-18 NMSA 1978 for the purpose of determining~~
11 ~~whether additional licenses may be issued in the local option~~
12 ~~district under the provisions of Subsection E of Section~~
13 ~~60-6B-2 NMSA 1978; and]~~

14 (4) the dispenser's or retailer's licenses
15 shall be operated or leased by the person who transfers the
16 license to the local option district for at least a period of
17 one year from the date of the approval of the transfer by the
18 department.

19 B. [Transfers] Transfer of location of [each] a
20 liquor license pursuant to Subsection A of this section shall
21 become effective upon approval of the local governing body.
22 [~~unless within one hundred twenty days after the effective date~~
23 ~~of the Liquor Control Act a petition requesting an election on~~
24 ~~the question of approval of statewide transfers of liquor~~
25 ~~licenses into that local option district is filed with the~~

185176.2

underscored material = new
[bracketed material] = delete

1 ~~clerk of the local option district and the petition is signed~~
2 ~~by at least five percent of the number of registered voters of~~
3 ~~the district. The clerk of the district shall verify the~~
4 ~~petition signatures. If the petition is verified as containing~~
5 ~~the required number of signatures of registered voters, the~~
6 ~~governing body shall adopt a resolution calling an election on~~
7 ~~the question of approving or disapproving statewide transfers~~
8 ~~of liquor licenses into that district. Notice of such election~~
9 ~~shall be published as provided in Section 3-8-35 NMSA 1978, and~~
10 ~~the election shall be held within sixty days after the date the~~
11 ~~petition is verified or it may be held in conjunction with a~~
12 ~~regular election of the governing body if such election occurs~~
13 ~~within sixty days after the date of verification. If a~~
14 ~~majority of the registered voters of the district voting in~~
15 ~~such election votes to approve statewide transfers of liquor~~
16 ~~licenses into the local option district, each license proposing~~
17 ~~to be transferred shall be subject to the approval of the~~
18 ~~governing body. If the voters of the district voting in the~~
19 ~~election vote against the approval, then all statewide~~
20 ~~transfers of liquor licenses pursuant to Subsection A of this~~
21 ~~section shall be prohibited in that district, unless a petition~~
22 ~~is filed requesting the question be again submitted to the~~
23 ~~voters as provided in this subsection. The question of~~
24 ~~approving or disapproving statewide transfers of liquor~~
25 ~~licenses into the local option district shall not be submitted~~

185176.2

underscored material = new
[bracketed material] = delete

1 ~~again within two years from the date of the last election on~~
2 ~~the question.]~~

3 C. Any dispenser's license transferred pursuant to
4 this section outside its local option district shall only
5 entitle the licensee to sell, serve or permit the consumption
6 of alcoholic beverages by the drink on the licensed premises.

7 D. Until July 1, 2021, rural dispenser's and rural
8 retailer's [~~and rural club~~] licenses issued under any former
9 act may be transferred to any location, subject to the
10 restrictions as to location contained in the Liquor Control
11 Act, within the unincorporated area of the county in which they
12 are currently located; provided that they shall not be
13 transferred to any location within ten miles of another
14 licensed premises; and provided further that all requirements
15 of the Liquor Control Act and department regulations for the
16 transfer of licenses are fulfilled.

17 E. On and after July 1, 2021, a dispenser's,
18 retailer's, rural dispenser's or rural retailer's license
19 issued pursuant to the Liquor Control Act or any former law
20 shall not be transferred from its then-current location."

21 SECTION 12. Section 60-6B-16 NMSA 1978 (being Laws 1988,
22 Chapter 12, Section 4) is amended to read:

23 "60-6B-16. SPECIAL PROVISIONS FOR REPLACEMENT OF CANOPY
24 LICENSES--TRANSFER TAX.--

25 A. On July 1, 1988, [~~notwithstanding the provisions~~

185176.2

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

1 ~~of Section 60-6A-18 NMSA 1978]~~ each canopy license, upon the
2 payment to the department of a one-time transfer tax of five
3 thousand dollars (\$5,000) and the applicable annual license
4 renewal fee, shall become a dispenser's license.

5 B. The location of a dispenser's license issued
6 pursuant to this section may only be transferred within the
7 local option district in which the replaced canopy license was
8 located on January 1, 1988, subject to the requirements of
9 Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set
10 forth in Subsection E of this section. After a transfer of
11 location as provided in this subsection, the license shall be
12 operated by the person who transfers the location of the
13 license for a period of at least one year from the date of
14 approval of the transfer by the department.

15 C. Ownership of a dispenser's license issued
16 pursuant to this section may be transferred in the same manner
17 as provided for the transfer of ownership of dispenser's
18 licenses issued under any former act to the Liquor Control Act,
19 subject to the requirements of Sections 60-6B-2 and 60-6B-4
20 NMSA 1978 and the limitations set forth in Subsection E of this
21 section. After a transfer of ownership as provided in this
22 subsection, the location of the license shall not be
23 transferred for a period of at least one year from the date of
24 approval of the transfer of ownership by the department.

25 D. A dispenser's license issued pursuant to this

185176.2

underscored material = new
[bracketed material] = delete

1 section may be leased in the same manner as provided for the
2 lease of dispenser's licenses issued under any former act to
3 the Liquor Control Act, subject to approval of the department
4 and the limitations set forth in Subsection E of this section.

5 E. If the location of a canopy license or a
6 dispenser's license issued pursuant to this section is
7 transferred prior to June 30, 1995 by a person who applies to
8 the department to acquire ownership of the license after
9 January 1, 1988 or if the location of a canopy license or a
10 dispenser's license issued pursuant to this section is
11 transferred prior to June 30, 1995 pursuant to a lease
12 agreement entered into after January 1, 1988, the license shall
13 only entitle the licensee or [~~his~~] the licensee's lessee to
14 sell, serve or permit the consumption of alcoholic beverages by
15 the drink on the licensed premises. Sale of alcoholic
16 beverages in unbroken packages for consumption off the licensed
17 premises shall not be permitted after a transfer described in
18 this subsection.

19 F. [~~Any~~] A canopy license for which the transfer
20 tax imposed by this section is not paid to the department by
21 August 31, 1988 shall be subject to cancellation by the
22 director as provided in Section 60-6B-5 NMSA 1978.

23 G. The department shall deposit all transfer taxes
24 collected as provided in this section in the general fund."

25 SECTION 13. REPEAL.--Section 60-6A-18 NMSA 1978 (being

185176.2

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

1 Laws 1981, Chapter 39, Section 35, as amended) is repealed.

2 SECTION 14. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2011.

4 - 36 -

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