

1 HOUSE BILL 585

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

11 RELATING TO ALCOHOLIC BEVERAGES; CHANGING APPLICATION
12 REQUIREMENTS FOR CLUB LICENSES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 60-6B-2 NMSA 1978 (being Laws 1981,
16 Chapter 39, Section 38, as amended) is amended to read:

17 "60-6B-2. APPLICATIONS.--

18 A. Before a new license authorized by the Liquor
19 Control Act may be issued by the director, the applicant for
20 the license shall:

21 (1) submit to the director a written
22 application for the license under oath, in the form prescribed
23 by and stating the information required by the director,
24 together with a nonrefundable application fee of two hundred
25 dollars (\$200);

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1 (2) submit to the director for 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) submit the name and street address of a
7 New Mexico resident who is not a felon, who has power of
8 attorney and authority to bind the applicant to matters related
9 to liquor sales and operations and upon whom the director may
10 serve any notice related to ownership or operation of the
11 license, including any notice of charge pursuant to Chapter 60,
12 Article 6C NMSA 1978;

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

15 (a) a certified copy of its articles of
16 incorporation or, if a foreign corporation, a certified copy of
17 its certificate of authority;

18 (b) the names and addresses of all
19 officers and directors and those stockholders owning ten
20 percent or more of the voting stock of the corporation and the
21 amounts of stock held by each stockholder; provided, however, a
22 corporation may not be licensed if an officer, manager,
23 director or holder of more than a ten percent interest in the
24 applicant entity would not be eligible to hold a license
25 pursuant to the Liquor Control Act; and

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

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

7 (a) a certified copy of its certificate
8 of limited partnership;

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

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

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

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

24 (a) a copy of the articles of
25 organization, with a copy of the certificate of filing with the

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1 public regulation commission;

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

9 (c) such additional information
10 regarding the limited liability company as the director may
11 require to assure full disclosure of the limited liability
12 company's structure and financial responsibility;

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

15 (a) the names and addresses of the
16 trustees;

17 (b) the names and addresses of any
18 beneficiaries having control over the property of the trust or
19 receiving regular and substantial distributions of principal
20 and income from the trust. Any beneficiary receiving regular
21 and substantial distributions from the trust shall qualify to
22 hold a license. The director may request a copy of the trust
23 agreement for review, which trust agreement need not become
24 part of the application. Affidavits as to the operation and
25 distribution of the principal and income may be requested in

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1 lieu of, or in addition to, the copy of the trust agreement
2 that is supplied for review by the department; and

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

7 (8) if the applicant is a group applying for a
8 club license, submit as part of its application the following:

9 (a) the names and addresses of the
10 officers of the group. The names and addresses of the group's
11 board of directors need not be submitted, and the provisions of
12 Subsection B of this section shall not apply to the group's
13 board of directors; and

14 (b) such additional information
15 regarding the group as the director may require to assure full
16 disclosure of the group's structure and financial
17 responsibility; and

18 ~~(8)~~ (9) obtain approval for the issuance
19 from the governing body of the local option district in which
20 the proposed licensed premises are to be located in accordance
21 with the provisions of the Liquor Control Act.

22 B. Except for individual officers, directors,
23 shareholders, members or partners of entities that are publicly
24 traded on a national stock exchange and for individuals who
25 have been fingerprinted for another New Mexico license and had

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1 no prior criminal or arrest record, every applicant for a new
2 license or for a transfer of ownership of a license shall file
3 with the application two complete sets of fingerprints taken
4 under the supervision of and certified to by an officer of the
5 New Mexico state police, a county sheriff, a municipal chief of
6 police, a police officer in a foreign country or an individual
7 qualified to take fingerprints by virtue of training or
8 experience, for each of the following individuals:

9 (1) if the applicant is a person, for the
10 applicant;

11 (2) if the applicant or the holder of a ten
12 percent or greater interest in the applicant entity is a
13 corporation, for each principal officer, for each member of the
14 board of directors and for each stockholder with a ten percent
15 or greater interest in the applicant entity;

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

19 (4) if the applicant or the holder of a ten
20 percent or greater interest in the applicant entity is a
21 limited partnership, for each general partner, for each limited
22 partner holding a ten percent or greater interest in the
23 applicant entity and for any principal officers of the limited
24 partnership;

25 (5) if the applicant or the holder of a ten

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1 percent or greater interest in the applicant entity is a
2 limited liability company, for each managing member, for each
3 member who owns a ten percent or greater interest in the
4 applicant entity and for any principal officer of the limited
5 liability company; and

6 (6) if the applicant is a trust, for each
7 trustee and for each beneficiary who has control over trust
8 property and income or who receives substantial and regular
9 distributions from the trust.

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

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

25 E. If an applicant is not a resident of

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1 New Mexico, fingerprints may be taken under supervision and
2 certification of comparable officers in the state of residence
3 of the applicant.

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

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

20 H. Whenever it appears to the director that there
21 will be more applications for new licenses than the available
22 number of new licenses during any time period, a random
23 selection method for the qualification, approval and issuance
24 of new licenses shall be provided by the director. The random
25 selection method shall allow each applicant an equal

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1 opportunity to obtain an available license, provided that all
2 dispenser's and retailer's licenses issued in a calendar year
3 shall be issued to residents of the state. For the purposes of
4 random selection, the director shall also set a reasonable
5 deadline by which applications for the available licenses shall
6 be filed. A person shall not file more than one application
7 for each available license and no more than three applications
8 per calendar year.

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

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

25 K. The director shall notify the applicant by

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1 certified mail of the date, time and place of the hearing. The
2 hearing shall be held in Santa Fe. The director may designate
3 a hearing officer to take evidence at the hearing. The
4 director or the hearing officer shall have the power to
5 administer oaths.

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

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

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1 billboard not smaller than five feet by five feet. The
2 contents of the notice shall be in the form prescribed by the
3 department, and such posting shall be over a continuous period
4 of twenty days prior to preliminary approval of the license.
5 The director shall prescribe the manner in which the posting
6 may be accomplished by the licensee, the licensee's
7 representative or the director's designee.

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

10 O. All costs of publication and posting shall be
11 paid by the applicant.

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

18 Q. A person aggrieved by a decision made by the
19 director as to the approval or disapproval of the issuance of a
20 license may appeal to the district court pursuant to the
21 provisions of Section 39-3-1.1 NMSA 1978. If the disapproval
22 is based upon local option district disapproval pursuant to
23 Subsection H of Section 60-6B-4 NMSA 1978, the local option
24 district shall be a necessary party to an appeal. The decision
25 of the director shall continue in force, pending a reversal or

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1 modification by the district court, unless otherwise ordered by
2 the court."

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