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SENATE BILL 152

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO ALCOHOLIC BEVERAGE CONTROL; PROVIDING FOR APPOINTMENT OF HEARING OFFICERS; PROVIDING A TIME LIMIT FOR HEARING DISPOSITION; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 60-6C-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 98, as amended) is amended to read:

"60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC--HEARING OFFICER.--All hearings held pursuant to the provisions of the Liquor Control Act shall be:

A. conducted by ~~[the director or]~~ a hearing officer who has been admitted to practice as an attorney in New Mexico, is in good standing with the state bar of New Mexico and who is not or has not been an employee, in any capacity, of the state, appointed by the ~~[director and shall~~

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1 be] attorney general;

2 B. held in the county in which the licensed
3 premises that are the subject matter of the hearing are
4 located; and

5 C. [~~All such hearings shall be~~] open to the
6 public. "

7 Section 2. Section 60-6C-4 NMSA 1978 (being Laws 1981,
8 Chapter 39, Section 100, as amended) is amended to read:

9 "60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS--
10 INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

11 A. Whenever a person lodges a signed, written
12 complaint with the department alleging that a licensee has
13 violated any of the provisions of the Liquor Control Act,
14 unless the complaint is deficient on its face, the director
15 shall request that the department of public safety investigate
16 the complaint.

17 B. The department of public safety shall
18 investigate the complaint and make a written report to the
19 director.

20 C. If the director believes from the report that
21 probable cause exists for filing charges against the licensee
22 for the revocation or suspension of his license or permit or
23 for fining him, or for both, he or his designee shall file in
24 the department a charge against the licensee in the name of
25 the state, stating the nature of the grounds relied upon for

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1 the filing, the approximate date of the alleged violation and
2 the names and addresses of the witnesses who are expected to
3 give testimony or evidence against the licensee.

4 D. After charges have been filed, the director
5 shall issue a signed order for the licensee to appear at a
6 hearing to explain, on the basis of any ground set out in the
7 charge, why the license should not be revoked or suspended or
8 why the licensee should not be fined, or both. The order
9 shall state the date it is issued and the date, time and
10 location of the hearing.

11 E. The director shall keep the original of the
12 charge and the order to show cause on file in his office.

13 F. The [~~director~~] attorney general shall appoint a
14 hearing officer no later than ten days prior to the date set
15 for the hearing at which the licensee shall appear to explain
16 why his license should not be revoked or suspended or why the
17 licensee should not be fined, or both.

18 G. The director shall have a copy of the charge
19 and a copy of the order to show cause sent to the attorney
20 general and the licensee or the licensee's resident agent at
21 the agent's last known address by certified mail at least
22 fourteen days before the date set for the hearing on the order
23 to show cause.

24 H. At any hearing on an order to show cause, the
25 [~~director~~] hearing officer shall cause a record of hearing to

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1 be made, which shall record:

2 (1) the style of the proceedings;

3 (2) the nature of the proceedings, including
4 a copy of the charge and a copy of the order to show cause;

5 (3) the place, date and time of the hearing
6 and all continuances or recesses of the hearing;

7 (4) the appearance or nonappearance of the
8 licensee;

9 (5) if the licensee appears with an attorney,
10 the name and address of the attorney;

11 (6) a record of all evidence and testimony
12 and a copy or record of all exhibits introduced in evidence;

13 (7) the findings of fact and law as to
14 whether ~~[or not]~~ the licensee has violated the Liquor Control
15 Act as set out in the charge; and

16 (8) within six months from the date of the
17 order to show cause, the decision of the ~~[director]~~ hearing
18 officer.

19 I. If the licensee fails to appear without good
20 cause at the time and place designated in the order to show
21 cause for the hearing, the ~~[director]~~ hearing officer shall
22 order the nonappearance of the licensee to be entered in the
23 record of hearing, and the director shall order the license
24 revoked or suspended or the licensee fined, or both, on all
25 the grounds alleged in the charge and shall cause the record

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1 of hearing to show the particulars in detail. In such a case,
2 there shall be no reopening, appeal or review of the
3 proceedings.

4 J. If the licensee admits guilt on all grounds set
5 out in the charge, the director shall order the revocation or
6 suspension of the license or the licensee fined, or both, and
7 cause a record of hearing to be made showing the facts and
8 particulars of his order of revocation or suspension of the
9 license or fine of the licensee, or both. In such a case,
10 there shall be no review or appeal of the proceedings.

11 K. If the licensee appears at the hearing and does
12 not testify or denies guilt of any [~~or all~~] of the grounds set
13 out in the charge, the hearing shall proceed as follows:

14 (1) the [~~director or the~~] hearing officer
15 shall administer oaths to all witnesses, the department shall
16 cause all testimony and evidence in support of the grounds
17 alleged in the charge to be presented in the presence of the
18 licensee and the [~~director~~] hearing officer shall allow the
19 licensee or his attorney to cross-examine all witnesses;

20 (2) the licensee shall be allowed to present
21 testimony and evidence he may have in denial or in mitigation
22 of the grounds set out in the charge;

23 (3) the department shall have the right to
24 cross-examine the licensee or any witness testifying in his
25 favor;

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1 (4) the department shall present any evidence
2 or testimony in rebuttal of that produced by the licensee;

3 (5) within six months from the date of the
4 order to show cause, the [~~director or the~~] hearing officer
5 shall make a finding on each ground alleged and a finding of
6 the guilt or innocence of the licensee on each ground;

7 (6) if the licensee is found guilty on any
8 ground alleged and proved, the director shall make his order
9 of revocation or suspension of the license or fine of the
10 licensee, or both; if the director fails to notify the
11 licensee in writing of the disposition of the grounds within
12 six months from the date of the order to show cause, the
13 charge shall be dismissed with prejudice and a charge arising
14 from the same occurrence or for the same violation cannot be
15 brought by the department; and

16 (7) the rules of evidence shall not be
17 required to be observed, but the order of suspension or
18 revocation or fine, or both, shall be based upon substantial,
19 competent and relevant evidence and testimony appearing in the
20 record of hearing.

21 L. No admission of guilt, admission against
22 interest or transcript of testimony made or given in any
23 hearing pursuant to this section shall be received or used in
24 any criminal proceedings wherein the licensee is a defendant;
25 provided, however, if the licensee commits perjury in a

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1 hearing, the evidence shall be admissible in a perjury trial
2 if otherwise competent and relevant.

3 M The director shall adopt reasonable
4 [~~regulations~~] rules setting forth uniform standards of
5 penalties concerning fines and suspensions imposed by the
6 director. "

7 Section 3. Section 60-6C-5 NMSA 1978 (being Laws 1981,
8 Chapter 39, Section 101, as amended) is amended to read:

9 "60-6C-5. ADMINISTRATION OF OATHS-- PRODUCTION OF
10 DOCUMENTS-- WITNESSES. --The [~~director~~] hearing officer shall
11 have the power to administer oaths and compel the attendance
12 of witnesses and the production of documents, records and
13 physical exhibits in any hearing held under the provisions of
14 the Liquor Control Act by the issuance and service of
15 subpoenas and subpoenas duces tecum. The hearing officer
16 shall have authority to rule upon offers of proof and receive
17 relevant evidence, take, allow or cause depositions to be
18 taken, regulate the course of the hearing, hold conferences
19 for the settlement or simplification of the issues by consent
20 of the parties, dispose of procedural requests or similar
21 matters and reopen the hearing for the taking of additional
22 evidence at any time prior to the taking of an appeal. "