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SENATE BILL 441

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

INTRODUCED BY

Pete Campos

AN ACT

**RELATING TO LIQUOR LICENSING; REQUIRING LICENSEES OR THEIR
LESSEES TO HAVE EVIDENCE OF FINANCIAL RESPONSIBILITY; AMENDING
AND ENACTING SECTIONS OF THE NMSA 1978.**

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,
together with a nonrefundable application fee of one hundred**

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1 fifty dollars (\$150);

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

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

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

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

23 (c) the name of the resident agent of
24 the corporation authorized to accept service of process for
25 all purposes, including orders and notices of the director,

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1 which agent shall be approved by the director with respect to
2 his character;

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

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

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

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

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

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1 Control Act; and

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

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

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

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

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

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

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

25 F. Before issuing a license, the department shall

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1 hold a public hearing within thirty days after receipt of the
2 application pursuant to Subsection K of this section.

3 G. An application for transfer of ownership shall
4 be filed with the department no later than thirty days after
5 the date a person acquired an ownership interest in a license.
6 It shall contain the actual date of sale of the license and
7 shall be accompanied by a sworn affidavit from the owner of
8 record of the license agreeing to the sale of the license to
9 the applicant as well as attesting to the accuracy of the
10 information required by this section to be filed with the
11 department. No license shall be transferred unless it will be
12 placed into operation in an actual location within one hundred
13 twenty days of issuance of the license, unless for good cause
14 shown the director grants an additional extension for a length
15 of time determined by the director.

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

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1 reasonable deadline by which applications for the available
2 licenses shall be filed. No person shall file more than one
3 application for each available license and no more than three
4 applications per calendar year.

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

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

21 K. The director shall notify the applicant by
22 certified mail of the date, time and place of the hearing.
23 The hearing shall be held in Santa Fe. The director may
24 designate a hearing officer to take evidence at the hearing.
25 The director or the hearing officer shall have the power to

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1 administer oaths.

2 L. In determining whether a license shall be
3 issued, the director shall take into consideration all
4 requirements of the Liquor Control Act. In the issuance of a
5 license, the director shall specifically consider the nature
6 and number of prior violations of the Liquor Control Act by
7 the applicant or of any citations issued within the prior five
8 years against a license held by the applicant or in which the
9 applicant had an ownership interest required to be disclosed
10 under the Liquor Control Act. The director shall disapprove
11 the issuance of a retailer's, dispenser's or restaurant
12 license if an applicant does not have proof of financial
13 responsibility as required by the Liquor Control Act. The
14 director shall disapprove the issuance or give preliminary
15 approval of the issuance of the license based upon a review of
16 all documentation submitted and any investigation deemed
17 necessary by the director.

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

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1 sought, on a billboard not smaller than five feet by five
2 feet. The contents of the notice shall be in the form
3 prescribed by the department, and such posting shall be over a
4 continuous period of twenty days prior to preliminary approval
5 of the license.

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

8 O. All costs of publication and posting shall be
9 paid by the applicant.

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

16 Q. Any person aggrieved by any decision made by
17 the director as to the approval or disapproval of the issuance
18 of a license may appeal to the district court pursuant to the
19 provisions of Section 39-3-1.1 NMSA 1978. 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. "

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1 Section 2. A new section of the Liquor Control Act,
2 Section 60-6B-2.1 NMSA 1978, is enacted to read:

3 "60-6B-2.1. [NEW MATERIAL] PROOF OF FINANCIAL
4 RESPONSIBILITY--REQUIRED FOR LICENSURE. --

5 A. Included with an application for a retailer's,
6 dispenser's or restaurant license shall be proof of financial
7 responsibility against liability claims filed pursuant to the
8 provisions of Section 41-11-1 NMSA 1978.

9 B. The director may approve the form of financial
10 responsibility in an amount of not less than one hundred
11 twenty thousand dollars (\$120,000) in the form of cash,
12 unencumbered securities, a policy of liquor liability
13 insurance, a constant value bond executed by a surety company
14 authorized to do business in the state or other valid security
15 instrument.

16 C. Bankruptcy of the licensee shall not discharge
17 an insurer or surety under this section from liability.

18 D. A licensee shall not cancel a liquor liability
19 insurance policy or any other form of financial responsibility
20 used to satisfy the requirements of this section except upon
21 thirty days prior written notice to the director and unless
22 new proof of financial responsibility complying with this
23 section is procured by the licensee and presented to the
24 director within twenty-four hours from the date on which the
25 first form of financial responsibility becomes invalid. A

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1 licensee changing the issuer or form of financial
2 responsibility shall do it in such a manner that there is no
3 gap in coverage between the forms of financial
4 responsibility. "

5 Section 3. Section 60-6B-5 NMSA 1978 (being Laws 1981,
6 Chapter 39, Section 41, as amended) is amended to read:

7 "60-6B-5. EXPIRATION AND RENEWAL OF LICENSES. --

8 A. All licenses provided for in the Liquor Control
9 Act, except nonresident licenses and common carrier
10 registrations, shall expire on June 30 of each year and may be
11 renewed [~~from year to year~~] annually under the rules of the
12 department.

13 B. Current nonresident licenses and common carrier
14 registrations shall expire on June 30, 1998 and may be renewed
15 for three-year periods thereafter.

16 C. Prior to renewal of a license, the director
17 shall determine [~~whether~~] if:

18 (1) any of the licensees under his
19 jurisdiction are delinquent in any taxes administered by the
20 taxation and revenue department as of June 1 of each renewal
21 period; [~~The director shall also determine whether or not~~]

22 (2) a licensee seeking renewal of a
23 dispenser's, retailer's or restaurant license has sufficient
24 proof of financial responsibility as required in Section
25 60-6B-2.1 NMSA 1978 to permit renewal of the license; or

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(3) there exists any other reason why a license should not be renewed.

D. If the director determines that the license should not be renewed, he shall enter an order requiring the licensee, after notice, to show cause why his license should be renewed, and he shall conduct a hearing on the matter. If, after the hearing, the director finds that the licensee is qualified, he shall renew the license."

Section 4. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 2001.