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HOUSE BILL 461

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

INTRODUCED BY

MIGUEL P. GARCIA

AN ACT

RELATING TO LIQUOR LICENSE LEASING; REQUIRING HEARINGS;
DECLARING AN EMERGENCY.

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

Section 1. A new section of the Liquor Control Act is
enacted to read:

" [NEW MATERIAL] AGENT LESSEE-- HEARINGS REQUIRED-- NOTICE--
PENALTIES. --

A. Before a license issued by the director may be
leased by an agent lessee, the proposed agent lessee and the
licensee shall:

(1) submit to the director a written
application on a form provided by the department requesting
licensure of the agent lessee;

(2) submit to the director all information

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1 required by the director, including all information required
2 of a new license applicant pursuant to Section 60-6B-2 NMSA
3 1978; and

4 (3) appear before the director or a hearing
5 officer in a hearing held on the record in Santa Fe to
6 determine if the proposed agent lessee is qualified to be
7 licensed, all requirements of the Liquor Control Act have been
8 met and the transfer of control of the license to the proposed
9 agent lessee furthers the policy of the Liquor Control Act to
10 protect the health, safety and morals of the public.

11 B. Each person who is required to file fingerprints
12 pursuant to rules of the department shall submit an affidavit
13 stating that the person has not been convicted of a felony in
14 any jurisdiction. An applicant for a license as an agent
15 lessee who files a false affidavit shall be denied a license
16 to act as an agent lessee. When the director determines a
17 false affidavit has been filed, he shall refer the matter to
18 the attorney general or district attorney for prosecution of
19 perjury.

20 C. The director shall notify the licensee and
21 proposed agent lessee by certified mail of the date, time and
22 place of the hearing. The director shall cause a notice of
23 intent to license an agent lessee to be posted in a manner
24 that conforms with the provisions of Subsection M of Section
25 60-6B-2 NMSA 1978 for a continuous period of at least twenty

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1 days prior to the hearing. The contents of the notice of
2 intent to license an agent lessee shall state the date, time
3 and place of the hearing to be held regarding the application
4 and shall provide an address to which comments may be sent
5 regarding the licensure of the agent lessee for inclusion in
6 the record.

7 D. In determining whether a license shall be
8 issued, the director shall take into consideration the record
9 of the hearing and all requirements of the Liquor Control Act.
10 In the issuance of a license the director shall specifically
11 consider the nature and number of violations of the Liquor
12 Control Act by the applicant or the licensee or of citations
13 issued within the prior five years against a license held or
14 operated pursuant to a lease by the applicant or the licensee
15 or against a license in which the applicant or licensee had an
16 ownership interest required to be disclosed pursuant to
17 provisions of the Liquor Control Act. The director shall
18 approve or disapprove the issuance of the license based upon a
19 review of all documentation.

20 E. No license shall be issued until all
21 requirements of the Liquor Control Act are satisfactorily
22 completed as determined by the director.

23 F. All costs of posting a notice of intent to
24 license an agent lessee shall be paid by the licensee.

25 G. It is unlawful for any person to remove or

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1 deface a notice posted in accordance with this section. A
2 person convicted of a violation of this subsection shall be
3 punished by a fine of not more than three hundred dollars
4 (\$300) or by imprisonment in the county jail for not more than
5 one hundred twenty days or both. "

6 Section 2. Section 60-3A-3 NMSA 1978 (being Laws 1981,
7 Chapter 39, Section 3, as amended) is amended to read:

8 "60-3A-3. DEFINITIONS. -- As used in the Liquor Control
9 Act:

10 A. "agent lessee" means a person who operates a
11 liquor license pursuant to a lease agreement with a licensee,
12 who compensates the licensee for the use of the license and
13 who is entitled to all profits and responsible for all losses
14 from the operation of the license;

15 [~~A.~~] B. "alcoholic beverages" means distilled or
16 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
17 and aromatic bitters bearing the federal internal revenue
18 strip stamps or any similar alcoholic beverage, including
19 blended or fermented beverages, dilutions or mixtures of one
20 or more of the foregoing containing more than one-half of one
21 percent alcohol, but excluding medicinal bitters;

22 [~~B.~~] C. "beer" means any alcoholic beverage
23 obtained by the fermentation of any infusion or decoction of
24 barley, malt and hops or other cereals in water, and includes
25 porter, beer, ale and stout;

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1 ~~[C.]~~ D. "brewer" means any person who owns or
2 operates a business for the manufacture of beer;

3 ~~[D.]~~ E. "club" means:

4 (1) any nonprofit group, including an
5 auxiliary or subsidiary group, organized and operated under
6 the laws of this state with a membership of not less than
7 fifty members who pay membership dues at the rate of not less
8 than five dollars (\$5.00) per year and who, under the
9 constitution and bylaws of the club, have all voting rights
10 and full membership privileges and which group is the owner,
11 lessee or occupant of premises used exclusively for club
12 purposes and which group the director finds:

13 (a) is operated solely for recreation,
14 social, patriotic, political, benevolent or athletic purposes;
15 and

16 (b) the proposed licensee has been
17 granted an exemption by the United States from the payment of
18 the federal income tax as a club under the provisions of
19 Section 501(a) of the Internal Revenue Code of 1954, as
20 amended or, if the applicant has not operated as a club for a
21 sufficient time to be eligible for the income tax exemption,
22 it must execute and file with the director a sworn letter of
23 intent declaring that it will, in good faith, apply for such
24 exemption as soon as it is eligible; or

25 (2) an airline passenger membership club

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1 operated by an air common carrier which maintains or operates
2 a clubroom at an international airport terminal. For the
3 purposes of this paragraph, "air common carrier" means a
4 person engaged in regularly scheduled air transportation
5 between fixed termini under a certificate of public
6 convenience and necessity issued by the civil aeronautics
7 board;

8 [E-] F. "commission" means the secretary of public
9 safety when the term is used in reference to the enforcement
10 and investigatory provisions of the Liquor Control Act and
11 means the superintendent of regulation and licensing when the
12 term is used in reference to the licensing provisions of the
13 Liquor Control Act;

14 [F-] G. "department" means the special
15 investigations division of the department of public safety
16 [~~department~~] when the term is used in reference to the
17 enforcement and investigatory provisions of the Liquor Control
18 Act and means the superintendent of regulation and licensing
19 when the term is used in reference to the licensing provisions
20 of the Liquor Control Act;

21 [G-] H. "director" means the director of the
22 special investigations division of the department of public
23 safety [~~department~~] when the term is used in reference to the
24 enforcement and investigatory provisions of the Liquor Control
25 Act and means the superintendent of regulation and licensing

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1 when the term is used in reference to the licensing provisions
2 of the Liquor Control Act;

3 ~~[H.]~~ I. "dispenser" means any person licensed
4 under the provisions of the Liquor Control Act selling,
5 offering for sale or having in his possession with the intent
6 to sell alcoholic beverages both by the drink for consumption
7 on the licensed premises and in unbroken packages for
8 consumption and not for resale off the licensed premises;

9 ~~[I.]~~ J. "distiller" means any person engaged in
10 manufacturing spirituous liquors;

11 ~~[J.]~~ K. "governing body" means the board of county
12 commissioners of a county or the city council or city
13 commissioners of a municipality;

14 ~~[K.]~~ L. "hotel" means any establishment or complex
15 having a resident of New Mexico as a proprietor or manager and
16 where, in consideration of payment, meals and lodging are
17 regularly furnished to the general public. The establishment
18 or complex must maintain for the use of its guests a minimum
19 of twenty-five sleeping rooms;

20 ~~[L.]~~ M. "licensed premises" means the contiguous
21 areas or areas connected by indoor passageways of a structure
22 and the outside dining, recreation and lounge areas of the
23 structure ~~[which]~~ that are under the direct control of the
24 licensee and from which the licensee is authorized to sell,
25 serve or allow the consumption of alcoholic beverages under

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1 the provisions of its license; provided that in the case of a
2 restaurant, hotel or racetrack, "licensed premises" includes
3 all public and private rooms, facilities and areas in which
4 alcoholic beverages are sold or served in the customary
5 operating procedures of the restaurant, hotel or racetrack;

6 ~~[M-]~~ N. "local option district" means any county
7 which has voted to approve the sale, serving or public
8 consumption of alcoholic beverages or any incorporated
9 municipality which falls within a county which has voted to
10 approve the sale, serving or public consumption of alcoholic
11 beverages or any incorporated municipality of over five
12 thousand population which has independently voted to approve
13 the sale, serving or public consumption of alcoholic beverages
14 under the terms of the Liquor Control Act or any former act;

15 ~~[N-]~~ O. "manufacturer" means a distiller,
16 rectifier, brewer or winer;

17 ~~[O-]~~ P. "minor" means any person under twenty-one
18 years of age;

19 ~~[P-]~~ Q. "package" means any immediate container of
20 alcoholic beverages which is filled or packed by a
21 manufacturer or wine bottler for sale by the manufacturer or
22 wine bottler to wholesalers;

23 ~~[Q-]~~ R. "person" means an individual, corporation,
24 firm, partnership, copartnership, association or other legal
25 entity;

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1 ~~[R.]~~ S. "rectifier" means any person who blends,
2 mixes or distills alcohol with other liquids or substances for
3 the purpose of making an alcoholic beverage for the purpose of
4 sale other than to the consumer by the drink, and includes all
5 bottlers of spirituous liquors;

6 ~~[S.]~~ T. "restaurant" means any establishment
7 having a New Mexico resident as a proprietor or manager which
8 is held out to the public as a place where meals are prepared
9 and served primarily for on-premises consumption to the
10 general public in consideration of payment and which has a
11 dining room, a kitchen and the employees necessary for
12 preparing, cooking and serving meals; provided that
13 "restaurant" does not include establishments as defined in
14 regulations promulgated by the director serving only
15 hamburgers, sandwiches, salads and other fast foods;

16 ~~[T.]~~ U. "retailer" means any person licensed under
17 the provisions of the Liquor Control Act selling, offering for
18 sale or having in his possession with the intent to sell any
19 alcoholic beverages in unbroken packages for consumption and
20 not for resale off the licensed premises;

21 ~~[U.]~~ V. "spirituous liquors" means alcoholic
22 beverages as defined in Subsection A of this section except
23 fermented beverages such as wine, beer and ale;

24 ~~[V.]~~ W. "wholesaler" means any person whose place
25 of business is located in New Mexico and who sells, offers for

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1 sale or possesses for the purpose of sale any alcoholic
2 beverages for resale by the purchaser;

3 [W-] X. "wine" includes the words "fruit juices"
4 and means alcoholic beverages obtained by the fermentation of
5 the natural sugar contained in fruit or other agricultural
6 products, with or without the addition of sugar or other
7 products, [~~which~~] that do not contain less than one-half of
8 one percent nor more than twenty-one percent alcohol by
9 volume;

10 [~~X-~~] Y. "wine bottler" means any New Mexico
11 wholesaler who is licensed to sell wine at wholesale for
12 resale only and who buys wine in bulk and bottles it for
13 wholesale resale; and

14 [~~Y-~~] Z. "winer" means any person who owns or
15 operates a business for the manufacture of wine. "

16 Section 3. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect
18 immediately.