

1 HOUSE BILL 235

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Larry R. Scott and James G. Townsend

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10 AN ACT

11 RELATING TO LIQUOR LICENSES; REQUIRING THE DIRECTOR OF THE  
12 ALCOHOLIC BEVERAGE CONTROL DIVISION OF THE REGULATION AND  
13 LICENSING DEPARTMENT TO ANNUALLY OFFER TO ISSUE NEW DISPENSER  
14 LICENSES IN AN AMOUNT EQUAL TO FIVE PERCENT OF THE TOTAL NUMBER  
15 OF DISPENSER LICENSES ISSUED; PROVIDING FOR A SEALED BID  
16 PROCESS TO AWARD OPPORTUNITIES TO APPLY FOR A LICENSE; REMOVING  
17 THE LIMIT ON THE NUMBER OF DISPENSER LICENSES THAT CAN BE  
18 ISSUED; REMOVING THE LOTTERY PROCESS FOR ISSUING NEW LICENSES;  
19 PROVIDING FOR A FEE.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. A new section of the Liquor Control Act is  
23 enacted to read:

24 "[NEW MATERIAL] DETERMINATION OF AVAILABLE LICENSES--  
25 INVITATION TO BID--BID APPROVAL--LICENSE APPLICATION.--

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1           A. On June 30 of each year, the director shall  
2 determine the total number of dispenser licenses issued and  
3 shall offer new dispenser licenses in an amount equal to five  
4 percent of that number.

5           B. The director shall offer the opportunity to  
6 obtain a new dispenser license to the public through a  
7 competitive sealed bid process.

8           C. The director shall issue an invitation for  
9 sealed bids through publication at least once in at least three  
10 newspapers of general circulation in the state and may publish  
11 the invitation electronically on the department's website. The  
12 invitation for bids shall specify an opening date and time, a  
13 fixed closing date and time and, for electronic submissions, an  
14 email account or other secure electronic location to which the  
15 electronic bid may be directed.

16           D. The director may allow electronic submission of  
17 sealed bids; provided that the submission process shall  
18 include:

19                   (1) appropriate security to prevent  
20 unauthorized access to electronically submitted bids prior to  
21 the date and time set for opening of bids; and

22                   (2) accurate retrieval or conversion of  
23 electronic forms of information into a medium that permits  
24 inspection and copying.

25           E. Bids shall be opened publicly in the presence of

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1 one or more witnesses at the time and place designated in the  
2 invitation for sealed bids. The amount of each bid, together  
3 with the name of each bidder, shall be recorded, and the record  
4 and each bid shall be open to public inspection.

5 F. The offer process shall proceed so that the  
6 opportunity to apply for the first new license shall be offered  
7 to the person that offered the highest bid, the opportunity to  
8 apply for the second new license shall be offered to the person  
9 that offered the second highest bid, and the process shall  
10 proceed thus until the opportunity to apply for the last new  
11 license has been offered.

12 G. A bidder that receives an offer to apply for a  
13 new license shall, on the date the director extends the offer,  
14 file a completed application pursuant to Section 60-2B-3 NMSA  
15 1978 together with an irrevocable letter of credit or similar  
16 guarantee acceptable to the director ensuring that money in the  
17 bid amount shall be paid upon issuance of the license. The  
18 money shall be deposited into the general fund upon issuance of  
19 the license.

20 H. If a bidder declines an offer, fails to comply  
21 with Subsection G of this section, is denied a license or the  
22 license is not issued to the bidder for any other reason, the  
23 director shall offer the opportunity to apply for the new  
24 license to the next highest bidder.

25 I. The director shall return the irrevocable letter

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1 of credit or other guarantee ensuring payment of the bid amount  
2 if an application is denied. If the license is not issued for  
3 any reason other than denial of the license, the state shall  
4 return the irrevocable letter of credit or other guarantee  
5 ensuring bid payment, but shall retain a fee equal to five  
6 percent of the total bid amount. The fee shall be deposited  
7 into the general fund."

8 SECTION 2. Section 60-6A-18 NMSA 1978 (being Laws 1981,  
9 Chapter 39, Section 35, as amended) is amended to read:

10 "60-6A-18. LIMITATION ON NUMBER OF LICENSES--  
11 EXCEPTIONS.--

12 A. The maximum number of licenses to be issued  
13 under the provisions of [~~Sections~~] Section 60-6A-2 [~~and 60-6A-~~  
14 ~~3~~] NMSA 1978 shall be as follows:

15 (1) in incorporated municipalities, not more  
16 than [~~one dispenser's or~~] one retailer's license [~~including~~  
17 ~~canopy licenses which are replaced by dispenser's licenses as~~  
18 ~~provided in Section 60-6B-16 NMSA 1978~~] for each two thousand  
19 inhabitants or major fraction thereof; and

20 (2) in unincorporated areas of each county,  
21 not more than [~~one dispenser's or~~] one retailer's license  
22 [~~including canopy licenses which are replaced by dispenser's~~  
23 ~~licenses as provided in Section 60-6B-16 NMSA 1978~~] for each  
24 two thousand inhabitants or major fraction thereof, excluding  
25 the population of incorporated municipalities within the

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1 county.

2 B. For the purpose of this section, the number of  
3 inhabitants of a local option district shall be determined by  
4 annual population estimates published by the economic  
5 development department.

6 C. Subsection A of this section shall not be  
7 construed to prevent [~~any~~] a licensee holding a valid license  
8 issued under the Liquor Control Act, or [~~his~~] the licensee's  
9 transferee, from continuing the licensed business or from  
10 renewing [~~his~~] the license, subject to compliance with the  
11 Liquor Control Act and department regulations, notwithstanding  
12 that the continuance or renewal may result in an excess over  
13 the maximum number of licenses permitted in Subsection A of  
14 this section."

15 SECTION 3. Section 60-6A-19 NMSA 1978 (being Laws 1981,  
16 Chapter 39, Section 36, as amended) is amended to read:

17 "60-6A-19. NO PROPERTY RIGHT IN LICENSE--EXCEPTION.--

18 A. The holder of [~~any~~] a license issued under the  
19 Liquor Control Act or any former act has no vested property  
20 right in the license, which is the property of the state;  
21 provided that [~~retailer's licenses, dispenser's licenses and~~  
22 ~~canopy licenses that were replaced by dispenser's licenses~~  
23 ~~pursuant to Section 60-6B-16 NMSA 1978]~~ licenses:

24 (1) shall be considered property subject to  
25 execution, attachment, a security transaction, liens,

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1 receivership and ~~all~~ other incidents of tangible personal  
2 property under the laws of this state, except as otherwise  
3 provided in the Liquor Control Act;

4 (2) may be assigned, transferred from person  
5 to person or leased, provided all requirements of the Liquor  
6 Control Act and department regulations are fulfilled; and

7 (3) shall be transferred as personal property  
8 upon attachment, execution, repossession by a secured party or  
9 lienor, foreclosure by a creditor, appointment of a receiver  
10 for the licensee, death of the licensee, filing of a petition  
11 of bankruptcy by or for the licensee, incapacity of the  
12 licensee or dissolution of the licensee. The director may, by  
13 rule or regulation, determine ~~any~~ an application or notice  
14 requirement for a person who temporarily holds a license  
15 pursuant to this subsection.

16 B. ~~Any~~ A license issued under the Liquor Control  
17 Act may be transferred to any location not otherwise contrary  
18 to law within the same local option district where the license  
19 is then located, provided all requirements of the Liquor  
20 Control Act and department regulations are fulfilled."

21 SECTION 4. Section 60-6B-2 NMSA 1978 (being Laws 1981,  
22 Chapter 39, Section 38, as amended) is amended to read:

23 "60-6B-2. APPLICATIONS.--

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

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1 the license shall:

2 (1) submit to the director a written  
3 application for the license under oath, in the form prescribed  
4 by and stating the information required by the director,  
5 together with a nonrefundable application fee of two hundred  
6 dollars (\$200);

7 (2) submit to the director for approval a  
8 description, including floor plans, in a form prescribed by the  
9 director, that shows the proposed licensed premises for which  
10 the license application is submitted. The area represented by  
11 the approved description shall become the licensed premises;

12 (3) submit the name and street address of a  
13 New Mexico resident who is not a felon, who has power of  
14 attorney and authority to bind the applicant to matters related  
15 to liquor sales and operations and upon whom the director may  
16 serve any notice related to ownership or operation of the  
17 license, including any notice of charge pursuant to Chapter 60,  
18 Article 6C NMSA 1978;

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

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

24 (b) the names and addresses of all  
25 officers and directors and those stockholders owning ten

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1 percent or more of the voting stock of the corporation and the  
2 amounts of stock held by each stockholder; provided, however, a  
3 corporation may not be licensed if an officer, manager,  
4 director or holder of more than a ten percent interest in the  
5 applicant entity would not be eligible to hold a license  
6 pursuant to the Liquor Control Act; and

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

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

13 (a) a certified copy of its certificate  
14 of limited partnership;

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

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

24 (c) such additional information  
25 regarding the limited partnership as the director may require

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1 to assure full disclosure of the limited partnership's  
2 structure and financial responsibility;

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

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

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

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

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

21 (a) the names and addresses of the  
22 trustees;

23 (b) the names and addresses of any  
24 beneficiaries having control over the property of the trust or  
25 receiving regular and substantial distributions of principal

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

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

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

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

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1 police, a police officer in a foreign country or an individual  
2 qualified to take fingerprints by virtue of training or  
3 experience, for each of the following individuals:

4 (1) if the applicant is a person, for the  
5 applicant;

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

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

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

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

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

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 temporary  
10 license may be extended by the director for an additional  
11 ninety days if the director determines there is not sufficient  
12 time to complete the background investigation or obtain reviews  
13 of fingerprints from appropriate agencies. A temporary license  
14 shall be surrendered immediately upon order of the director.

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

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

24                   F. Before issuing a license, the department shall  
25 hold a public hearing within thirty days after receipt of the

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1 application pursuant to Subsection [K] H of this section.

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

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

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1 ~~be filed. A person shall not file more than one application~~  
2 ~~for each available license and no more than three applications~~  
3 ~~per calendar year.~~

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

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

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

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

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

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1 posting may be accomplished by the licensee, the licensee's  
2 representative or the director's designee.

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

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

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

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

24 **SECTION 5. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2020.

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