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HOUSE BILL 417

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

CISCO MCSORLEY

AN ACT

RELATING TO ALCOHOL; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES FROM A DRIVE-UP WINDOW; AUTHORIZING LOCAL OPTION ELECTIONS TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FROM A DRIVE-UP WINDOW; AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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

Section 1. Section 60-7A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES-- CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE LICENSED PREMISES--DRIVE-UP WINDOW SALES--ELECTIONS.--

A. Alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

(1) on Mondays from 7:00 a.m. until midnight;

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1 (2) on other weekdays from after midnight of  
2 the previous day until 2:00 a.m., then from 7:00 a.m. until  
3 midnight, except as provided in Subsections D, E and [H] G of  
4 this section; and

5 (3) on Sundays only after midnight of the  
6 previous day until 2:00 a.m., except as provided in Subsections  
7 C and F of this section; provided, however, nothing in this  
8 section shall prohibit the consumption at any time of alcoholic  
9 beverages in guest rooms of hotels.

10 B. Alcoholic beverages shall be sold by a dispenser  
11 or a retailer in unbroken packages, for consumption off the  
12 licensed premises and not for resale, on Mondays through  
13 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day  
14 except as provided in Subsections D, E and [H] G of this  
15 section.

16 C. Subject to the provisions of Subsections F and  
17 [H] H of this section, a dispenser, restaurant licensee or club  
18 may, upon payment of an additional fee of one hundred dollars  
19 (\$100), obtain a permit to sell, serve or permit the consumption  
20 of alcoholic beverages by the drink on the licensed premises on  
21 Sundays from [12:00] noon until midnight and in those years when  
22 December 31 falls on a Sunday from [12:00] noon until 2:00 a.m.  
23 of the following day, except as otherwise provided in Subsection  
24 F of this section. The permit shall expire on June 30 of each  
25 year and may be renewed from year to year upon application for

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1 renewal and payment of the required fee. The permit fee shall  
2 not be prorated. Sales made pursuant to this subsection or  
3 Subsection [~~F~~] H of this section shall be called "Sunday sales".

4 D. Retailers, dispensers, canopy licensees,  
5 restaurant licensees, club licensees and governmental licensees  
6 or its lessees shall not sell, serve, deliver or allow the  
7 consumption of alcoholic beverages on the licensed premises  
8 during voting hours on the days of the primary election, general  
9 election, elections for officers of a municipality or any other  
10 election as prescribed by the rules and regulations of the  
11 director.

12 E. Retailers, dispensers, canopy licensees that were  
13 replaced by dispenser's licensees pursuant to Section 60-6B-16  
14 NMSA 1978, restaurant licensees, club licensees and governmental  
15 licensees or its lessees shall not sell, serve, deliver or allow  
16 the consumption of alcoholic beverages on the licensed premises  
17 from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after  
18 Christmas, except as permitted pursuant to Subsection [~~H~~] G of  
19 this section.

20 F. At the 1984 general election, the secretary of  
21 state shall order placed on the ballot in each local option  
22 district the question "Shall Sunday sales of alcoholic beverages  
23 by the drink for consumption on the licensed premises of  
24 licensees be allowed in this local option district?". If the  
25 secretary of state determines a need, he may authorize the use

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1 of paper ballots for the purpose of the election provided for  
2 pursuant to this subsection. Until [~~sueh~~] the election, Sunday  
3 sales shall be permitted on the same basis in any local option  
4 district as provided under any former act, and the election held  
5 at the first general election following the effective date of  
6 the Liquor Control Act shall have no effect on whether Sunday  
7 sales are permitted in any local option district. If the  
8 question is disapproved by a majority of those voting upon the  
9 question in the local option district, Sunday sales shall be  
10 unlawful in that local option district upon certification of the  
11 election returns, and the question shall not again be placed on  
12 the ballot in that local option district until:

13 (1) at least one year has passed; and

14 (2) a petition is filed with the local  
15 governing body bearing the signatures of registered qualified  
16 electors of the local option district equal in number to ten  
17 percent of the number of votes cast and counted in the local  
18 option district for governor in the last preceding general  
19 election in which a governor was elected. The signatures on the  
20 petition shall be verified by the clerk of the county in which  
21 the local option district is situated.

22 ~~[G. The local governing body of a local option~~  
23 ~~district in an eligible county shall:~~

24 ~~(1) adopt a resolution within sixty days of~~  
25 ~~April 7, 1989 calling for an election to place on the ballot the~~

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1 ~~question "Shall a retailer or dispenser be allowed to sell or~~  
2 ~~deliver alcoholic beverages at any time from a drive-up~~  
3 ~~window?";~~

4 ~~(2) arrange for the election to be held within~~  
5 ~~sixty days after the date the resolution is adopted; and~~

6 ~~(3) ensure that the election is called,~~  
7 ~~conducted, counted and canvassed in the manner provided by law~~  
8 ~~for elections within the county.~~

9 ~~As used in this subsection, "eligible county" means any~~  
10 ~~county that, according to motor vehicle statistics reported to~~  
11 ~~the state highway and transportation department during the years~~  
12 ~~1985 and 1986, convicted more than twenty-five persons for each~~  
13 ~~one thousand licensed drivers of driving while intoxicated~~  
14 ~~offenses.~~

15 ~~H.] G.~~ On and after July 1, 1989, dispensers, canopy  
16 licensees that were replaced by dispenser's licensees pursuant  
17 to Section 60-6B-16 NMSA 1978, restaurant licensees, club  
18 licensees and governmental licensees or lessees of these  
19 licensees may sell, serve or allow the consumption of beer and  
20 wine with meals on licensed premises from noon until 10:00 p.m.  
21 on Christmas day, except in a local option district in which,  
22 pursuant to petition and election under this subsection, a  
23 majority of the voters voting on the question votes against  
24 continuing [~~such~~] the sales or consumption on Christmas day. An  
25 election shall be held on the question of whether to continue to

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1 allow the sale, service or consumption of beer and wine with  
2 meals on licensed premises from noon until 10:00 p. m. on  
3 Christmas day in a local option district, if a petition  
4 requesting the governing body of that district to call the  
5 election is signed by at least ten percent of the registered  
6 voters of the district and is filed with the clerk of the  
7 governing body of the district. Upon verification by the clerk  
8 that the petition contains the required number of signatures of  
9 registered voters, the governing body shall adopt a resolution  
10 calling an election on the question of allowing the sale,  
11 service or consumption of beer and wine with meals on licensed  
12 premises from noon until 10:00 p. m. on Christmas day. The  
13 election shall be held within sixty days after the date the  
14 petition is verified, or it may be held in conjunction with a  
15 regular election of the governing body if that election occurs  
16 within sixty days of [~~such~~] the verification. The election  
17 shall be called, conducted, counted and canvassed in  
18 substantially the same manner as provided for general elections  
19 in the county under the Election Code or for special municipal  
20 elections in a municipality under the Municipal Election Code.  
21 If a majority of the voters voting on the question votes against  
22 continuing the sale, service or consumption of beer and wine  
23 with meals on licensed premises from noon until 10:00 p. m. on  
24 Christmas day, then [~~such~~] the sales and consumption shall be  
25 prohibited. If a majority of the voters voting on the question

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1 votes to allow continued sale, service and consumption of beer  
2 and wine with meals on licensed premises from noon until 10:00  
3 p.m. on Christmas day, then [~~such~~] the sales and consumption  
4 shall be allowed to continue. The question then shall not be  
5 submitted again to the voters within two years of the date of  
6 the last election on the question.

7 [~~F.~~] H. Notwithstanding the provisions of Subsection  
8 F of this section, any Indian tribe or pueblo whose lands are  
9 wholly situated within the state that has, by statute, ordinance  
10 or resolution, elected to permit the sale, possession or  
11 consumption of alcoholic beverages on lands within the  
12 territorial boundaries of the tribe or pueblo may, by statute,  
13 ordinance or resolution of the governing body of the Indian  
14 tribe or pueblo, permit Sunday sales by the drink on the  
15 licensed premises of licensees on lands within the territorial  
16 boundaries of the tribe or pueblo; provided that a certified  
17 copy of [~~such~~] the enactment is filed with the office of the  
18 director and of the secretary of state.

19 [~~J.~~] I. Subject to the provisions of Subsection [~~K~~]  
20 J of this section, a dispenser or retailer, upon payment of an  
21 additional fee of one hundred dollars (\$100), may obtain a  
22 permit to sell alcoholic beverages in unbroken packages for  
23 consumption off the licensed premises on Sundays from [~~12:00~~]  
24 noon until midnight and, in those years when December 31 falls  
25 on a Sunday, from [~~12:00~~] noon on December 31 until 2:00 a.m. of

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1 the following day. The permit shall expire on June 30 of each  
2 year and may be renewed from year to year upon application for  
3 renewal and payment of the required fee. The permit fee shall  
4 not be prorated. Sales made pursuant to the provisions of this  
5 subsection shall be called "Sunday package sales".

6 [K-] J. If a petition requesting the governing body  
7 of a local option district to call an election on the question  
8 of continuing to allow sales of alcoholic beverages in unbroken  
9 packages for consumption off the licensed premises on Sundays is  
10 filed with the clerk of the governing body and that petition is  
11 signed by at least ten percent of the number of registered  
12 voters of the local option district and the clerk of the  
13 governing body verifies the petition signatures, the governing  
14 body shall adopt a resolution calling an election on the  
15 question. The election shall be held within sixty days of the  
16 date the petition is verified, or it may be held in conjunction  
17 with a regular election of the governing body, if the regular  
18 election occurs within sixty days of the petition verification.  
19 The election shall be called, conducted, counted and canvassed  
20 substantially in the manner provided by law for general  
21 elections within a county or special municipal elections within  
22 a municipality. If a majority of the voters of the local option  
23 district voting in the election votes to allow the sale of  
24 alcoholic beverages in unbroken packages for consumption off the  
25 licensed premises, then those sales shall continue to be

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1 allowed. If a majority of the voters of the local option  
2 district voting in the election votes not to allow the Sunday  
3 package sales, then those Sunday package sales shall be  
4 prohibited commencing the first Sunday after the results of the  
5 election are certified. Following the election, the question of  
6 allowing the Sunday package sales shall not be submitted again  
7 to the voters within two years of the date of the last election  
8 on the question.

9 K. Notwithstanding the provisions of Subsection C of  
10 Section 60-7A-22 NMSA 1978 that prohibit the sale of alcoholic  
11 beverages at a drive-up window, the governing body of a local  
12 option district shall adopt a resolution calling for an election  
13 on the question of whether to allow the sale or delivery of  
14 alcoholic beverages at any time from a drive-up window, when a  
15 petition to call an election on that question is filed with the  
16 clerk of the governing body and that petition is signed by at  
17 least ten percent of the number of registered voters in the  
18 local option district and the clerk of the governing body  
19 verifies the signatures. The election shall be held in  
20 conjunction with the next regular election of the governing body  
21 or the next statewide general election following verification of  
22 the petition. The election shall be called, conducted, counted  
23 and canvassed substantially in the manner provided by law for  
24 general elections within a county or municipality. If a  
25 majority of the voters in the local option district voting in

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1 the election votes to continue the prohibition on the sale of  
2 alcoholic beverages from a drive-up window, then those sales  
3 shall continue to be prohibited. If a majority of the voters in  
4 the local option district voting in the election votes to allow  
5 the sale of alcoholic beverages from a drive-up window, then  
6 those sales shall be allowed commencing the first Saturday after  
7 the results of the election are certified. Following the  
8 election, the question of whether to allow the sale or delivery  
9 of alcoholic beverages at any time from a drive-up window shall  
10 not be submitted again to the voters within two years of the  
11 date of the last election on the question."

12 Section 2. Section 60-7A-22 NMSA 1978 (being Laws 1981,  
13 Chapter 39, Section 108, as amended) is amended to read:

14 "60-7A-22. DRINKING IN PUBLIC ESTABLISHMENTS--SELLING OR  
15 SERVING ALCOHOLIC BEVERAGES OTHER THAN IN LICENSED  
16 ESTABLISHMENTS--SELLING ALCOHOLIC BEVERAGES AT A DRIVE-UP  
17 WINDOW. --

18 A. It is a violation of the Liquor Control Act for  
19 any person to consume alcoholic beverages in any public  
20 establishment unless the establishment is licensed to sell and  
21 serve alcoholic beverages.

22 B. It is a violation of the Liquor Control Act for  
23 any person not a licensee to sell, serve or permit the  
24 consumption of alcoholic beverages in his public establishment  
25 or private club.

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C. ~~[On or after the effective date of the Liquor Control Act, no new drive-up windows used for the sale of alcoholic beverages shall be permitted by the director; provided, however, licensed premises that include drive-up windows may be relocated and include a drive-up window if the lease on the current licensed premises expires.]~~ It is a violation of the Liquor Control Act for any licensee to sell alcoholic beverages at a drive-up window. "

Section 3. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1996.

# State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 6, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 417

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, and thence referred to  
the JUDICIARY COMMITTEE.

Respectfully submitted,

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Fred Luna, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 5 Against

Yes: 7

No: Alwin, Gubbels, Hobbs, Macko, R. R. Sanchez

Excused: None

Absent: None

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