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SENATE BILL 289

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

INTRODUCED BY

JOHN ARTHUR SMITH

AN ACT

RELATING TO ALCOHOL; PROHIBITING 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 60-6C-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 97, as amended) is amended to read:

"60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
ADMINISTRATIVE FINE--REPORTING REQUIREMENT. --

A. The director may suspend or revoke the license or
permit or fine the licensee in an amount not more than ten
thousand dollars (\$10,000), or both, when he finds that any
licensee has:

(1) violated any provision of the Liquor
Control Act or any regulation or order promulgated pursuant to

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1 that act;

2 (2) been convicted of a felony pursuant to the
3 provisions of the Criminal Code, the Liquor Control Act or
4 federal law; or

5 (3) permitted his licensed premises to remain a
6 public nuisance in the neighborhood where it is located after
7 written notice from the director that investigation by the
8 department has revealed that the establishment is a public
9 nuisance in the neighborhood.

10 B. The director shall suspend or revoke the license
11 or permit and may fine the licensee in an amount not to exceed
12 ten thousand dollars (\$10,000), or both, when he finds that any
13 licensee or:

14 (1) his employee or agent knowingly has sold,
15 served or given any alcoholic beverage to a minor in violation
16 of Section 60-7B-1 NMSA 1978 or to an intoxicated person in
17 violation of Section 60-7A-16 NMSA 1978, on two separate
18 occasions within any twelve-month period; or

19 (2) his agent has made any material false
20 statement or concealed any material facts in his application for
21 the license or permit granted him pursuant to the provisions of
22 the Liquor Control Act.

23 ~~[C. In addition to other penalties provided in this~~
24 ~~section, any retailer or dispenser who violates the provisions~~
25 ~~of Section 60-7A-16 or 60-7B-1 NMSA 1978 by selling, serving or~~

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1 ~~delivering alcoholic beverages to an intoxicated person or a~~
2 ~~minor through a drive up window at a minimum shall have:~~

3 (1) ~~upon a first violation of this subsection,~~
4 ~~the privilege to sell alcoholic beverages or any other goods~~
5 ~~from his drive-up window suspended by the director for a period~~
6 ~~of two weeks;~~

7 (2) ~~upon a second violation of this subsection,~~
8 ~~the privilege to sell alcoholic beverages or any other goods~~
9 ~~from his drive-up window suspended by the director for a period~~
10 ~~of thirty days;~~

11 (3) ~~upon a third violation of this subsection,~~
12 ~~the privilege to sell alcoholic beverages or any other goods~~
13 ~~from his drive-up window suspended by the director for a period~~
14 ~~of sixty days; and~~

15 (4) ~~upon a fourth violation of this subsection~~
16 ~~within two years of any other violations of Section 60-7A-16 or~~
17 ~~60-7B-1 NMSA 1978, the privilege to sell alcoholic beverages or~~
18 ~~any other goods from his drive-up window revoked by the director~~
19 ~~and the drive-up window permanently closed.~~

20 ~~D-]~~ C. Any licensee aggrieved by a revocation,
21 suspension or fine proposed to be imposed by the director
22 pursuant to this section shall be entitled to the hearing
23 procedures set forth in [~~Article 6C of Chapter 60 NMSA 1978~~]
24 Chapter 60, Article 6C NMSA 1978 before the revocation,
25 suspension or fine shall be effective.

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1 [~~E-~~] D. Any charge filed against a licensee by the
2 department and the resulting disposition of the charge shall be
3 reported to the department of public safety and local law
4 enforcement agencies whose jurisdictions include the licensed
5 establishment. "

6 Section 2. Section 60-7A-1 NMSA 1978 (being Laws 1981,
7 Chapter 39, Section 47, as amended) is amended to read:

8 "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--
9 CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE
10 LICENSED PREMISES--ELECTIONS. --

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

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

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

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

24 B. Alcoholic beverages shall be sold by a dispenser
25 or a retailer in unbroken packages, for consumption off the

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1 licensed premises and not for resale, on Mondays through
2 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day
3 except as provided in Subsections D, E and [~~H~~] G of this
4 section.

5 C. Subject to the provisions of Subsections F and
6 [~~F~~] H of this section, a dispenser, restaurant licensee or club
7 may, upon payment of an additional fee of one hundred dollars
8 (\$100), obtain a permit to sell, serve or permit the consumption
9 of alcoholic beverages by the drink on the licensed premises on
10 Sundays from [~~12:00~~] noon until midnight and in those years when
11 December 31 falls on a Sunday from [~~12:00~~] noon until 2:00 a.m.
12 of the following day, except as otherwise provided in Subsection
13 F of this section. The permit shall expire on June 30 of each
14 year and may be renewed from year to year upon application for
15 renewal and payment of the required fee. The permit fee shall
16 not be prorated. Sales made pursuant to this subsection or
17 Subsection [~~F~~] H of this section shall be called "Sunday sales".

18 D. Retailers, dispensers, canopy licensees,
19 restaurant licensees, club licensees and governmental licensees
20 or its lessees shall not sell, serve, deliver or allow the
21 consumption of alcoholic beverages on the licensed premises
22 during voting hours on the days of the primary election, general
23 election, elections for officers of a municipality or any other
24 election as prescribed by the rules and regulations of the
25 director.

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

9 F. At the 1984 general election, the secretary of
10 state shall order placed on the ballot in each local option
11 district the question "Shall Sunday sales of alcoholic beverages
12 by the drink for consumption on the licensed premises of
13 licensees be allowed in this local option district?". If the
14 secretary of state determines a need, he may authorize the use
15 of paper ballots for the purpose of the election provided for
16 pursuant to this subsection. Until [~~such~~] the election, Sunday
17 sales shall be permitted on the same basis in any local option
18 district as provided under any former act, and the election held
19 at the first general election following the effective date of
20 the Liquor Control Act shall have no effect on whether Sunday
21 sales are permitted in any local option district. If the
22 question is disapproved by a majority of those voting upon the
23 question in the local option district, Sunday sales shall be
24 unlawful in that local option district upon certification of the
25 election returns, and the question shall not again be placed on

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1 the ballot in that local option district until:

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

3 (2) a petition is filed with the local
4 governing body bearing the signatures of registered qualified
5 electors of the local option district equal in number to ten
6 percent of the number of votes cast and counted in the local
7 option district for governor in the last preceding general
8 election in which a governor was elected. The signatures on the
9 petition shall be verified by the clerk of the county in which
10 the local option district is situated.

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

13 (1) ~~adopt a resolution within sixty days of~~
14 ~~April 7, 1989 calling for an election to place on the ballot the~~
15 ~~question "Shall a retailer or dispenser be allowed to sell or~~
16 ~~deliver alcoholic beverages at any time from a drive-up~~
17 ~~window?";~~

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

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

23 As used in this subsection, "eligible county" means any
24 county that, according to motor vehicle statistics reported to
25 the state highway and transportation department during the years

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1 ~~1985 and 1986, convicted more than twenty-five persons for each~~
2 ~~one thousand licensed drivers of driving while intoxicated~~
3 ~~offenses.~~

4 H.] G. On and after July 1, 1989, dispensers, canopy
5 licensees that were replaced by dispenser's licensees pursuant
6 to Section 60-6B-16 NMSA 1978, restaurant licensees, club
7 licensees and governmental licensees or lessees of these
8 licensees may sell, serve or allow the consumption of beer and
9 wine with meals on licensed premises from noon until 10:00 p.m.
10 on Christmas day, except in a local option district in which,
11 pursuant to petition and election under this subsection, a
12 majority of the voters voting on the question votes against
13 continuing [~~such~~] the sales or consumption on Christmas day. An
14 election shall be held on the question of whether to continue to
15 allow the sale, service or consumption of beer and wine with
16 meals on licensed premises from noon until 10:00 p.m. on
17 Christmas day in a local option district, if a petition
18 requesting the governing body of that district to call the
19 election is signed by at least ten percent of the registered
20 voters of the district and is filed with the clerk of the
21 governing body of the district. Upon verification by the clerk
22 that the petition contains the required number of signatures of
23 registered voters, the governing body shall adopt a resolution
24 calling an election on the question of allowing the sale,
25 service or consumption of beer and wine with meals on licensed

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1 premises from noon until 10:00 p.m. on Christmas day. The
2 election shall be held within sixty days after the date the
3 petition is verified, or it may be held in conjunction with a
4 regular election of the governing body if that election occurs
5 within sixty days of [~~such~~] the verification. The election
6 shall be called, conducted, counted and canvassed in
7 substantially the same manner as provided for general elections
8 in the county under the Election Code or for special municipal
9 elections in a municipality under the Municipal Election Code.
10 If a majority of the voters voting on the question votes against
11 continuing the sale, service or consumption of beer and wine
12 with meals on licensed premises from noon until 10:00 p.m. on
13 Christmas day, then [~~such~~] the sales and consumption shall be
14 prohibited. If a majority of the voters voting on the question
15 votes to allow continued sale, service and consumption of beer
16 and wine with meals on licensed premises from noon until 10:00
17 p.m. on Christmas day, then [~~such~~] the sales and consumption
18 shall be allowed to continue. The question then shall not be
19 submitted again to the voters within two years of the date of
20 the last election on the question.

21 [~~I.~~] H. Notwithstanding the provisions of Subsection
22 F of this section, any Indian tribe or pueblo whose lands are
23 wholly situated within the state that has, by statute, ordinance
24 or resolution, elected to permit the sale, possession or
25 consumption of alcoholic beverages on lands within the

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1 territorial boundaries of the tribe or pueblo may, by statute,
2 ordinance or resolution of the governing body of the Indian
3 tribe or pueblo, permit Sunday sales by the drink on the
4 licensed premises of licensees on lands within the territorial
5 boundaries of the tribe or pueblo; provided that a certified
6 copy of [~~sueh~~] the enactment is filed with the office of the
7 director and of the secretary of state.

8 [~~J.-~~] I. Subject to the provisions of Subsection [~~K~~]
9 J of this section, a dispenser or retailer, upon payment of an
10 additional fee of one hundred dollars (\$100), may obtain a
11 permit to sell alcoholic beverages in unbroken packages for
12 consumption off the licensed premises on Sundays from [~~12:00~~]
13 noon until midnight and, in those years when December 31 falls
14 on a Sunday, from [~~12:00~~] noon on December 31 until 2:00 a. m. of
15 the following day. The permit shall expire on June 30 of each
16 year and may be renewed from year to year upon application for
17 renewal and payment of the required fee. The permit fee shall
18 not be prorated. Sales made pursuant to the provisions of this
19 subsection shall be called "Sunday package sales".

20 [~~K.-~~] J. If a petition requesting the governing body
21 of a local option district to call an election on the question
22 of continuing to allow sales of alcoholic beverages in unbroken
23 packages for consumption off the licensed premises on Sundays is
24 filed with the clerk of the governing body and that petition is
25 signed by at least ten percent of the number of registered

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1 voters of the local option district and the clerk of the
2 governing body verifies the petition signatures, the governing
3 body shall adopt a resolution calling an election on the
4 question. The election shall be held within sixty days of the
5 date the petition is verified, or it may be held in conjunction
6 with a regular election of the governing body, if the regular
7 election occurs within sixty days of the petition verification.
8 The election shall be called, conducted, counted and canvassed
9 substantially in the manner provided by law for general
10 elections within a county or special municipal elections within
11 a municipality. If a majority of the voters of the local option
12 district voting in the election votes to allow the sale of
13 alcoholic beverages in unbroken packages for consumption off the
14 licensed premises, then those sales shall continue to be
15 allowed. If a majority of the voters of the local option
16 district voting in the election votes not to allow the Sunday
17 package sales, then those Sunday package sales shall be
18 prohibited commencing the first Sunday after the results of the
19 election are certified. Following the election, the question of
20 allowing the Sunday package sales shall not be submitted again
21 to the voters within two years of the date of the last election
22 on the question. "

23 Section 3. Section 60-7A-22 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 108, as amended) is amended to read:

25 "60-7A-22. DRINKING IN PUBLIC ESTABLISHMENTS--SELLING OR

1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
3
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5 FEBRUARY 9, 1996
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7 Mr. Presi dent:
8

9 Your COMMI TTEES' COMMI TTEE, to whom has been referred
10

11 SENATE BILL 289
12

13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO HOUSE EXECUTIVE MESSAGE NUMBER 49, and thence referred to the
15 PUBLIC AFFAI RS COMMI TTEE.
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17 Respectfully submi tted,
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23 SENATOR MANNY M. ARAGON, Chai rman
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Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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