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HOUSE BILL 71

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

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO ALCOHOLIC BEVERAGE REGULATION; PROVIDING FOR
EXCUSAL OR RECUSAL OF HEARING OFFICERS; DECLARING AN
EMERGENCY.

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

Section 1. Section 60-3A-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 1, as amended) is amended to read:

"60-3A-1. SHORT TITLE. -- Chapter 60, Articles 3A, 4B, 4C,
5A, 6A, 6B, 6C, 6D, 7A, 7B and 8A [~~of Chapter 60~~] NMSA 1978
may be cited as the "Liquor Control Act". "

Section 2. A new section of the Liquor Control Act is
enacted to read:

" [NEW MATERIAL] ADMINISTRATIVE HEARINGS-- EXCUSAL OR
RECUSAL OF DIRECTOR OR HEARING OFFICER. --

A. A party to an administrative hearing may file a

underscored material = new
[bracketed material] = delete

1 notice of excusal with the department. Upon receipt by the
2 department of a notice of excusal, neither the hearing officer
3 assigned to the case nor the director shall hear the case. An
4 alternate hearing officer shall be appointed immediately. No
5 party may excuse more than one hearing officer. The notice of
6 excusal shall be filed after notice is received by the party
7 of a hearing but at least three days prior to the date on
8 which the hearing is scheduled. A notice of excusal may be
9 filed at the time of a preliminary hearing.

10 B. The director or a hearing officer shall recuse
11 himself in an administrative hearing in which he is unable to
12 make a fair and impartial decision or in which there is a
13 reasonable doubt about whether he can make a fair and
14 impartial decision, including:

15 (1) when the director or hearing officer has
16 a personal bias or prejudice concerning a party or its
17 representative or has prejudged a disputed evidentiary fact
18 involved in a proceeding prior to hearing. For the purposes
19 of this section, "personal bias or prejudice" means a
20 predisposition toward a person based on a previous or ongoing
21 relationship, including a professional, personal, familial or
22 other intimate relationship, that may sway judgment and render
23 the hearing officer unable to exercise his functions
24 impartially;

25 (2) when he has a pecuniary interest in the

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[bracketed material] = delete

1 outcome of the proceeding other than as a customer of a party;
2 or

3 (3) when in previous employment he served as
4 an attorney, adviser, consultant or witness in the matter in
5 controversy.

6 C. If the director or a hearing officer fails to
7 recuse himself and it appears that grounds exist, a party
8 shall promptly notify the director or hearing officer of the
9 apparent grounds for recusal. If the director or hearing
10 officer declines to recuse himself upon request of a party, he
11 shall provide full disclosure on the record of all facts in
12 support of his refusal to recuse himself. The party may
13 appeal the decision of the director or the hearing officer to
14 the attorney general, who shall review the apparent grounds
15 for recusal and attendant evidence submitted by the party and
16 the facts in support of the director's or hearing officer's
17 refusal to recuse himself and render a decision in writing
18 regarding the recusal of the director or hearing officer. "

19 Section 3. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect
21 immediately.