

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 71

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

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

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 of  
7 a hearing but at least three days prior to the date on which  
8 the hearing is scheduled.

9 B. The director or a hearing officer shall recuse  
10 himself in an administrative hearing in which he has a conflict  
11 of interest. A conflict of interest exists when the director  
12 or hearing officer:

13 (1) has a present or past professional  
14 relationship, personal relationship, familial relationship or  
15 other relationship with the licensee;

16 (2) has a pecuniary interest in the outcome of  
17 the proceeding other than as a customer of the party; or

18 (3) served as an attorney, adviser, consultant  
19 or witness in the matter in controversy.

20 C. If the director or a hearing officer fails to  
21 recuse himself and it appears that grounds exist for recusal  
22 pursuant to Subsection B of this section, a party shall  
23 promptly notify the director or hearing officer of the apparent  
24 grounds for recusal. If the director or hearing officer  
25

1 declines to recuse himself upon request of a party, he shall  
2 provide full disclosure on the record of all facts in support  
3 of his refusal to recuse himself.

4 D. As used in this section, "party" means the  
5 licensee, the department or a person who files a complaint in  
6 writing with the department regarding the alleged violation of  
7 the Liquor Control Act about which the hearing is being held."

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