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SENATE BILL 294

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC SAFETY; ENACTING THE CONVENIENCE STORE SAFETY ACT; PROVIDING MINIMUM SECURITY STANDARDS FOR CONVENIENCE STORES; PROVIDING FOR ENFORCEMENT OF THE STANDARDS AND THE IMPOSITION OF CIVIL PENALTIES; PROVIDING REMEDIES FOR INJURED PERSONS, INCLUDING EMPLOYEES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Convenience Store Safety Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Convenience Store Safety Act is to protect the lives, health, safety and welfare of late-night convenience store customers and employees from the ever present danger of violence by

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1 implementing and enforcing statewide standards that will
2 provide tangible, reasonable and effective solutions to
3 minimize or eliminate the excessive incidence of robbery,
4 battery and other violent crimes at late-night convenience
5 stores.

6 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
7 Convenience Store Safety Act:

8 A. "claimant" means a person who on the person's own
9 behalf or as personal representative of the estate of another
10 brings a legal action against a convenience store or owner for
11 damages suffered as a result of a violation of the Convenience
12 Store Safety Act or a rule issued pursuant to that act;

13 B. "convenience store" means a business
14 establishment that:

15 (1) is primarily engaged in the retail sale to
16 the public of a limited quantity and variety of merchandise,
17 including groceries, or other articles of value in their
18 original containers or both gasoline and merchandise;

19 (2) operates at any time between the hours of
20 11:00 p.m. and 5:00 a.m.;

21 (3) does not sell or offer for sale
22 prescription drugs;

23 (4) occupies less than ten thousand square
24 feet of retail floor space;

25 (5) is not solely or primarily a restaurant;

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1 and

2 (6) is not a hotel, tavern or lodging
3 facility;

4 C. "employee" means an individual hired or
5 contracted to work at a convenience store; and

6 D. "owner" means the person having ownership or
7 proprietary interest in a convenience store and who is legally
8 responsible for the day-to-day operation of the convenience
9 store.

10 Section 4. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
11 LIGHTING.--

12 A. At any time when an employee or a customer is on
13 the premises, all areas within a convenience store, including
14 store rooms and offices, shall be lighted and maintained at a
15 minimum of eight foot-candles per square foot. The level of
16 lighting shall be measured at ground levels and shall be
17 uniform between light and dark areas at a ratio not exceeding
18 four to one.

19 B. At any time when an employee or a customer is on
20 the premises, all exterior areas of a convenience store,
21 including a canopied or open parking lot and perimeter areas of
22 the property, shall be illuminated at the same intensity as the
23 interior lighting.

24 Section 5. [NEW MATERIAL] MINIMUM SECURITY STANDARDS.--
25 WINDOWS AND SIGNS.--

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1 A. Window signs in a convenience store shall be
2 located so that there is a clear and unobstructed view from the
3 outside of the building to the cash register and sales
4 transaction areas.

5 B. No signs shall cover windows of a convenience
6 store in the area between three feet and eleven feet above
7 ground level.

8 C. Window tinting in a convenience store shall not
9 reduce exterior or interior views.

10 Section 6. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
11 CASH MANAGEMENT.--

12 A. A convenience store shall be equipped with a
13 drop safe or time-release safe that restricts access to cash
14 receipts and is bolted to the floor, installed in the floor or
15 weighs a minimum of five hundred pounds.

16 B. Between 8:00 p.m. and 6:00 a.m. a convenience
17 store shall maintain no more than fifty dollars (\$50.00) in
18 cash readily available to employees. The convenience store
19 shall post a conspicuous sign at the entrance to the store
20 stating that, between 8:00 p.m. and 6:00 a.m., the store
21 employees do not have access to more than fifty dollars
22 (\$50.00).

23 Section 7. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
24 EMPLOYEE TRAINING.--

25 A. Each employee of a convenience store, once

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1 before being assigned to work any shift and annually thereafter
2 within thirty days of each anniversary of the employee's hiring
3 date, shall complete a course in workplace security and proper
4 robbery response approved by the department of environment.

5 B. Complete and accurate records of employee
6 training shall be maintained by the owner for a period lasting
7 at least four years after the end of an employee's employment.

8 C. All costs of employee training shall be borne by
9 the convenience store.

10 Section 8. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
11 VIDEO SURVEILLANCE.--

12 A. During all times that an employee is on the
13 premises, a convenience store shall maintain functioning video
14 security cameras capable of producing a retrievable image on
15 film, tape or other recording medium that can be made a
16 permanent record and enlarged through projection or other
17 means. At least one such camera shall be focused on each cash
18 register area, and at least one such camera shall be focused on
19 each entrance to the store.

20 B. For the purpose of summoning law enforcement
21 when criminal activity is taking place, via closed circuit
22 interactive television or an off-site entity with the ability
23 to summon law enforcement, the video security cameras required
24 by Subsection A of this section shall be monitored in real time
25 at an off-premises location at all times that the convenience

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1 store is open to the public between 8:00 p.m. and 6:00 a.m.

2 C. Film, tapes or other recording medium from the
3 cameras required by Subsection A of this section shall not be
4 recorded over, erased, destroyed or disposed of for at least
5 thirty days; provided, however, that any film, tape or other
6 recording medium that may demonstrate a crime shall not be
7 recorded over, erased, destroyed or disposed of for at least
8 four years.

9 Section 9. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
10 STAFFING.--No less than two employees shall continuously be on
11 duty at all times that a convenience store is open to the
12 public between 8:00 p.m. and 6:00 a.m. unless:

13 A. the doors to the store are locked and customers
14 are served through a trough trapdoor or window; or

15 B. the employee is located in a bullet-resistant
16 security booth, constructed of transparent polycarbonate or
17 other material that meets one of the following standards:

18 (1) the American society for testing and
19 materials standard D3935 and a thickness of at least three-
20 eighths inch and an impact strength of at least two hundred
21 foot pounds; or

22 (2) underwriters laboratory standard UL 752
23 for medium small arms, bullet resisting equipment.

24 Section 10. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
25 ADDITIONAL SECURITY MEASURES.--

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1 A. Each employee of a convenience store shall be
2 provided by the store with a functioning individual-monitored
3 panic alarm that shall be worn at all times while the employee
4 is on the store premises. No convenience store shall permit an
5 employee to work at any time unless the employee is wearing
6 such a monitored panic alarm. The alarm shall be linked to a
7 law enforcement agency or a private security company.

8 B. The cash register and any additional sales area
9 of a convenience store shall be located so that they are
10 clearly visible from the outside of the store.

11 C. Telephones, other than pay phones, shall be
12 located in a convenience store at the cash register area and in
13 at least one other location away from the cash register area.
14 The telephones shall be accessible to employees at all times.

15 D. A height marker, visible from at least one video
16 camera, shall be placed at each entrance to a convenience
17 store.

18 Section 11. [NEW MATERIAL] LOCAL ORDINANCES.--

19 A. Nothing in the Convenience Store Safety Act
20 prohibits the governing body of a county or municipal
21 government from enacting security standards that are more
22 stringent than those contained in the Convenience Store Safety
23 Act; provided, however, that no county or municipality shall
24 adopt standards that are less stringent than those contained in
25 that act.

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1 B. Any security standards for convenience stores
2 existing on the effective date of the Convenience Store Safety
3 Act that are less stringent than those required by that act are
4 null and void.

5 Section 12. [NEW MATERIAL] ENFORCEMENT OF ACT--CIVIL
6 PENALTIES.--

7 A. The environmental improvement board shall
8 promulgate such rules as are necessary for the department of
9 environment to administer and enforce the provisions of the
10 Convenience Store Safety Act. The department of environment is
11 responsible for the administration and enforcement of the
12 provisions of the Convenience Store Safety Act and of all rules
13 adopted by the board pursuant to the provisions of that act.
14 The department may take all actions necessary and appropriate
15 to carry out its responsibilities.

16 B. In order to carry out the provisions of the
17 Convenience Store Safety Act, the department of environment's
18 authorized representatives, upon presenting appropriate
19 credentials to an owner, may:

20 (1) enter and inspect any convenience store at
21 reasonable times and without delay; and

22 (2) question privately the owner and employees
23 and inspect and investigate during regular working hours and at
24 other reasonable times, within reasonable limits and in a
25 reasonable manner, the convenience store and all pertinent

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1 conditions, structures, machines, apparatus, devices, equipment
2 and materials therein; provided, however, the department's
3 representative is not authorized to question privately the
4 owner or employees until the environmental improvement board
5 has adopted rules protecting the rights of such owner and
6 employees.

7 C. A representative of the department of
8 environment, making an inspection pursuant to Subsection B of
9 this section, may issue a field citation imposing a civil
10 penalty for a violation of the Convenience Store Safety Act or
11 a rule issued pursuant to that act. The penalty shall be in an
12 amount not to exceed five hundred dollars (\$500) per day of
13 violation. A field citation issued pursuant to this subsection
14 shall be final unless the owner named in the citation files a
15 written request for a public hearing with the secretary of
16 environment no later than fifteen days after the date on which
17 the field citation is served, in which case the enforcement of
18 the field citation shall be suspended pending the issuance of a
19 final order of the secretary after hearing.

20 D. Within five days of receipt of a request for a
21 hearing pursuant to Subsection C of this section, the secretary
22 shall set a date for a public hearing. The hearing date shall
23 be at least fifteen days and not more than twenty days after
24 the date the notice of hearing is mailed to the respondent by
25 certified mail, return receipt requested. The secretary shall

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1 appoint an independent hearing officer to conduct the public
2 hearing. The hearing officer shall make and preserve a
3 complete record of the proceedings. Within five days after the
4 hearing is completed, the hearing officer shall submit the
5 record and his recommendations for a decision to the secretary.
6 Within ten days after receipt of the recommendations of the
7 hearing officer, the secretary shall make his decision and
8 issue his order. The order of the secretary is final and an
9 owner, adversely affected by the order, may obtain a review of
10 the order in the district court pursuant to Section 39-3-1.1
11 NMSA 1978. The secretary may seek enforcement of the order by
12 filing an action for enforcement in the district court.

13 E. Payment of a civil penalty pursuant to this
14 section shall not be a defense to further enforcement by the
15 department to correct a violation.

16 F. Penalties collected pursuant to this section
17 shall be deposited with the state treasurer to be credited to
18 the general fund.

19 Section 13. [NEW MATERIAL] VIOLATION OF SECURITY
20 STANDARDS--PRIVATE REMEDIES.--

21 A. A claimant, including an employee, who has been
22 injured as a result of a crime occurring in a convenience store
23 that failed to comply with a provision of the Convenience Store
24 Safety Act or a rule issued pursuant to that act may bring an
25 action against the convenience store or its owner to recover

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1 actual damages plus reasonable attorney fees and costs. In the
2 action:

3 (1) the claimant is not required to show
4 negligence or fault on the part of the convenience store or the
5 owner and the store or owner shall be strictly liable upon a
6 showing by the claimant that, at the time of the crime, the
7 convenience store failed to comply with a standard required by
8 the Convenience Store Safety Act or a rule issued pursuant to
9 that act; and

10 (2) the convenience store or the owner may not
11 raise the defense of comparative negligence.

12 B. The remedies provided in this section are in
13 addition to any available remedies otherwise provided by law
14 and, for employee claimants, are in addition to, and not
15 precluded by, remedies available pursuant to the Workers'
16 Compensation Act.

17 C. No claimant may prevail in an action brought
18 pursuant to this section if the claimant, or the person on
19 whose behalf the claimant is bringing the action, was injured
20 while committing a crime on the premises of the convenience
21 store.

22 Section 14. Section 52-1-6 NMSA 1978 (being Laws 1990
23 (2nd S.S.), Chapter 2, Section 4) is amended to read:

24 "52-1-6. APPLICATION OF PROVISIONS OF ACT.--

25 A. The provisions of the Workers' Compensation Act

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1 shall apply to employers of three or more workers; provided
2 that the act shall apply to all employers engaged in activities
3 required to be licensed under the provisions of the
4 Construction Industries Licensing Act regardless of the number
5 of employees. The provisions of the Workers' Compensation Act
6 shall not apply to employers of private domestic servants and
7 farm and ranch laborers.

8 B. An election to be subject to the Workers'
9 Compensation Act by employers of private domestic servants or
10 farm and ranch laborers, by persons for whom the services of
11 qualified real estate salespersons are performed or by a
12 partner or self-employed person may be made by filing, in the
13 office of the director, either a sworn statement to the effect
14 that the employer accepts the provisions of the Workers'
15 Compensation Act or an insurance or security undertaking as
16 required by Section 52-1-4 NMSA 1978.

17 C. Every worker shall be conclusively presumed to
18 have accepted the provisions of the Workers' Compensation Act
19 if his employer is subject to the provisions of that act and
20 has complied with its requirements, including insurance.

21 D. [~~Such~~] Unless specifically otherwise provided by
22 law, compliance with the provisions of the Workers'
23 Compensation Act, including the provisions for insurance, shall
24 be [~~and construed to be~~] a surrender by the employer and the
25 worker of their rights to any other method, form or amount of

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1 compensation or determination thereof or to any cause of action
2 at law, suit in equity or statutory or common-law right to
3 remedy or proceeding whatever for or on account of personal
4 injuries or death of the worker than as provided in the
5 Workers' Compensation Act and shall be an acceptance of all of
6 the provisions of the Workers' Compensation Act and shall bind
7 the worker himself and, for compensation for his death, shall
8 bind his personal representative, his surviving spouse and next
9 of kin, as well as the employer and those conducting his
10 business during bankruptcy or insolvency.

11 E. Unless specifically otherwise provided by law, the
12 Workers' Compensation Act provides exclusive remedies, and no
13 cause of action outside the Workers' Compensation Act shall be
14 brought by an employee or dependent against the employer or his
15 representative, including the insurer, guarantor or surety of
16 any employer, for any matter relating to the occurrence of or
17 payment for any injury or death covered by the Workers'
18 Compensation Act. Nothing in the Workers' Compensation Act,
19 however, shall affect [~~or be construed to affect~~] in any way
20 the existence of or the mode of trial of any claim or cause of
21 action that the worker has against any person other than his
22 employer or another employee of his employer, including a
23 management or supervisory employee, or the insurer, guarantor
24 or surety of his employer."

25 Section 15. Section 52-1-9 NMSA 1978 (being Laws 1937,

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1 Chapter 92, Section 4, as amended) is amended to read:

2 "52-1-9. RIGHT TO COMPENSATION--EXCLUSIVE.--Unless
3 specifically otherwise provided by law, the right to the
4 compensation provided for in [~~this~~] the Workers' Compensation
5 Act, in lieu of any other liability [~~whatsoever~~], to any and
6 all persons [~~whomsoever~~], for any personal injury accidentally
7 sustained or death resulting therefrom, shall obtain in all
8 cases where the following conditions occur:

9 A. at the time of the accident, the employer has
10 complied with the provisions [~~thereof~~] of that act regarding
11 insurance;

12 B. at the time of the accident, the employee is
13 performing service arising out of and in the course of his
14 employment; and

15 C. the injury or death is proximately caused by
16 accident arising out of and in the course of his employment and
17 is not intentionally self-inflicted."

18 Section 16. Section 74-1-7 NMSA 1978 (being Laws 1971,
19 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,
20 Section 1 and also by Laws 2000, Chapter 96, Section 1) is
21 amended to read:

22 "74-1-7. DEPARTMENT--DUTIES.--

23 A. The department is responsible for environmental
24 management and consumer protection programs. In that respect,
25 the department shall maintain, develop and enforce rules and

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1 standards in the following areas:

2 (1) food protection;

3 (2) water supply, including implementing a
4 capacity development program to assist water systems in
5 acquiring and maintaining technical, managerial and financial
6 capacity in accordance with Section 1420 of the federal Safe
7 Drinking Water Act and establishing administrative penalties
8 for enforcement;

9 (3) liquid waste, including exclusive authority
10 to collect on-site liquid waste system fees that are no more
11 than the average charged by the contiguous states to New Mexico
12 for similar permits and services and to implement and
13 administer an inspection and permitting program for on-site
14 liquid waste systems;

15 (4) air quality management as provided in the
16 Air Quality Control Act;

17 (5) radiation control and collection of license,
18 registration and other related fees as provided in the
19 Radiation Protection Act;

20 (6) noise control;

21 (7) nuisance abatement;

22 (8) vector control;

23 (9) occupational health and safety as provided
24 in the Occupational Health and Safety Act;

25 (10) sanitation of public swimming pools and

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1 public baths;

2 (11) plumbing, drainage, ventilation and
3 sanitation of public buildings in the interest of public
4 health;

5 (12) medical radiation, health and safety
6 certification and standards for radiologic technologists as
7 provided in the Medical Radiation Health and Safety Act;

8 (13) hazardous wastes and underground storage
9 tanks as provided in the Hazardous Waste Act; ~~and~~

10 (14) solid waste as provided in the Solid Waste
11 Act; and

12 (15) convenience store safety as provided in the
13 Convenience Store Safety Act.

14 B. Nothing in Subsection A of this section imposes
15 requirements for the approval of subdivision plats in addition
16 to those required elsewhere by law. Nothing in Subsection A of
17 this section preempts the authority of any political
18 subdivision to approve subdivision plats."

19 Section 17. Section 74-1-8 NMSA 1978 (being Laws 1971,
20 Chapter 277, Section 11, as amended by Laws 2000, Chapter 86,
21 Section 2 and also by Laws 2000, Chapter 96, Section 2) is
22 amended to read:

23 "74-1-8. BOARD--DUTIES.--

24 A. The board is responsible for environmental
25 management and consumer protection. In that respect, the board

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1 shall promulgate rules and standards in the following areas:

2 (1) food protection;

3 (2) water supply, including a capacity
4 development program to assist water systems in acquiring and
5 maintaining technical, managerial and financial capacity in
6 accordance with Section 1420 of the federal Safe Drinking Water
7 Act and rules authorizing imposition of administrative
8 penalties for enforcement;

9 (3) liquid waste, including exclusive authority
10 to establish on-site liquid waste system fees that are no more
11 than the average charged by the contiguous states to New Mexico
12 for similar permits and services and to implement and
13 administer an inspection and permitting program for on-site
14 liquid waste systems;

15 (4) air quality management as provided in the
16 Air Quality Control Act;

17 (5) radiation control and establishment of
18 license, registration and other related fees not to exceed fees
19 charged by the United States nuclear regulatory commission for
20 similar licenses as provided in the Radiation Protection Act;

21 (6) noise control;

22 (7) nuisance abatement;

23 (8) vector control;

24 (9) occupational health and safety as provided
25 in the Occupational Health and Safety Act;

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1 (10) sanitation of public swimming pools and
2 public baths;

3 (11) plumbing, drainage, ventilation and
4 sanitation of public buildings in the interest of public
5 health;

6 (12) medical radiation, health and safety
7 certification and standards for radiologic technologists as
8 provided in the Medical Radiation Health and Safety Act;

9 (13) hazardous wastes and underground storage
10 tanks as provided in the Hazardous Waste Act; ~~and~~

11 (14) solid waste as provided in the Solid Waste
12 Act; and

13 (15) convenience store safety as provided in the
14 Convenience Store Safety Act.

15 B. Nothing in Subsection A of this section imposes
16 requirements for the approval of subdivision plats in addition
17 to those required elsewhere by law. Nothing in Subsection A of
18 this section preempts the authority of any political
19 subdivision to approve subdivision plats.

20 C. Administrative penalties collected pursuant to
21 Paragraph (2) of Subsection A of this section shall be
22 deposited in the water conservation fund.

23 D. On-site liquid waste system fees shall be
24 deposited in the liquid waste fund.

25 E. Radiation license, registration and other related

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1 fees shall be deposited in the radiation protection fund."

2 Section 18. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2004.

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