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HOUSE BILL 813

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING LIQUOR CONTROL ENFORCEMENT DUTIES TO LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING FOR THREE-YEAR SERVER PERMITS; MODIFYING VIOLATIONS FOR SERVICE TO MINORS; ADDING EXCEPTIONS; REQUIRING VERTICAL DRIVER'S LICENSES AND IDENTIFICATION CARDS FOR PERSONS CONVICTED OF DWI FOUR OR MORE TIMES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Section 1. Section 3-13-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-12-2, as amended) is amended to read:

"3-13-2. POLICE OFFICERS.--

A. The police officer of a municipality shall:

(1) execute and return all writs and process as directed by the municipal judge of the municipality

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1 employing the police officer;

2 (2) execute and return all criminal process as
3 directed by the municipal judge of any incorporated
4 municipality in the state if the criminal process arises out of
5 a charge of violation of a municipal ordinance prohibiting
6 driving while under the influence of intoxicating liquor or
7 drugs;

8 (3) serve criminal writs and process specified
9 in Paragraphs (1) and (2) of this subsection in any part of the
10 county wherein the municipality is situated; and

11 (4) within the municipality:

12 (a) suppress all riots, disturbances and
13 breaches of the peace;

14 (b) apprehend all disorderly persons;

15 (c) pursue and arrest any person fleeing
16 from justice; and

17 (d) apprehend any person in the act of
18 violating the laws of the state or the ordinances of the
19 municipality and bring ~~[him]~~ the person before competent
20 authority for examination and trial.

21 B. The police officer of a municipality may issue
22 citations for violations of the Liquor Control Act.

23 ~~[B.]~~ C. In the discharge of ~~[his]~~ proper duties, a
24 police officer shall have the same powers and be subject to the
25 same responsibilities as sheriffs in similar cases."

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1 Section 2. Section 4-41-2 NMSA 1978 (being Laws 1865,
2 Chapter 99, Section 3, as amended) is amended to read:

3 "4-41-2. DUTIES OF SHERIFF.--~~[Sec. 199.]~~

4 A. The sheriff shall be conservator of the peace
5 within ~~[his]~~ the sheriff's county, shall suppress assaults and
6 batteries and apprehend and commit to jail all felons and
7 traitors and shall cause all offenders to keep the peace and to
8 appear at the next term of the court and answer such charges as
9 may be preferred against them.

10 B. The sheriff may issue citations for violations
11 of the Liquor Control Act."

12 Section 3. Section 29-1-1 NMSA 1978 (being Laws 1921,
13 Chapter 170, Section 1, as amended) is amended to read:

14 "29-1-1. INVESTIGATION OF CRIMINAL VIOLATIONS--
15 COMMENCEMENT OF PROSECUTION--COOPERATION--REMOVAL.--It is
16 ~~[hereby declared to be]~~ the duty of every sheriff, deputy
17 sheriff ~~[constable]~~ and ~~[every other]~~ peace officer to
18 investigate all violations of the criminal laws of the state,
19 ~~[which]~~ including violations of the Liquor Control Act, that
20 are called to the attention of any such officer or of which
21 ~~[he]~~ the officer is aware ~~[and]~~. It is also ~~[declared]~~ the
22 duty of every such officer to diligently file a complaint or
23 information, if the circumstances are such as to indicate to a
24 reasonably prudent person that ~~[such]~~ the action should be
25 taken ~~[and]~~. It is also ~~[declared his]~~ the officer's duty to

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1 cooperate with and assist the attorney general, district
2 attorney or other prosecutor, if any, in all reasonable ways.
3 [~~Such~~] The cooperation [~~shall include~~] includes the prompt
4 reporting of all arrests for liquor law violations at licensed
5 liquor establishments to the [~~department of alcoholic beverage~~
6 ~~control~~] alcohol and gaming division of the regulation and
7 licensing department. Failure to perform [~~his~~] the officer's
8 duty in any material way shall subject [~~such~~] the officer to
9 removal from office and to payment of all costs of
10 prosecution."

11 Section 4. Section 60-6E-7 NMSA 1978 (being Laws 1999,
12 Chapter 277, Section 8) is amended to read:

13 "60-6E-7. SERVER PERMITS--ISSUANCE--OWNERSHIP--FEES.--

14 A. The director shall issue a server permit to each
15 applicant who obtains a certificate of program completion and
16 provides such other information as may be required by the
17 director. The director may, in the director's discretion,
18 issue temporary server permits if circumstances warrant such
19 issuance.

20 B. Server permits shall not be issued to graduates
21 of programs that are not approved by the director.

22 C. A server permit is the property of the server to
23 whom it is issued.

24 D. The director may charge a fee for the issuance
25 of the server permit.

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1 E. Server permits shall be valid for a period of
2 [~~five~~] three years from the date the server permit was issued.

3 F. A certificate of completion of an alcohol server
4 education program issued pursuant to previous law shall remain
5 valid until the date of its expiration."

6 Section 5. Section 60-7B-1 NMSA 1978 (being Laws 1993,
7 Chapter 68, Section 22, as amended) is amended to read:

8 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO
9 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

10 A. It is a violation of the Liquor Control Act for
11 a person, including a person licensed pursuant to the
12 provisions of the Liquor Control Act, or an employee, agent or
13 lessee of that person, if [~~he~~] the person knows or has reason
14 to know that [~~he~~] the person is violating the provisions of
15 this section, to:

16 (1) sell, serve or give alcoholic beverages to
17 a minor or permit a minor to consume alcoholic beverages on the
18 licensed premises;

19 (2) buy alcoholic beverages for or procure the
20 sale or service of alcoholic beverages to a minor;

21 (3) deliver alcoholic beverages to a minor; or

22 (4) aid or assist a minor to buy, procure or
23 be served with alcoholic beverages.

24 B. It is not a violation of the Liquor Control Act,
25 as provided in Subsection A or C of this section, when:

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1 (1) a parent, legal guardian or adult spouse
2 of a minor serves alcoholic beverages to that minor on real
3 property other than licensed premises, [~~under the control of~~
4 ~~the parent, legal guardian or adult spouse~~] or on licensed
5 premises that derive more than sixty percent of annual gross
6 receipts from the sale of food for consumption on the premises;

7 (2) a parent, legal guardian or adult spouse
8 of a minor serves alcoholic beverages to that minor at
9 traditional ceremonies or at celebrations associated with
10 traditional ceremonies; or

11 [~~2~~] (3) alcoholic beverages are used in the
12 practice of religious beliefs.

13 C. It is a violation of the Liquor Control Act for
14 a minor to buy, attempt to buy, receive, possess or permit
15 [~~himself~~] the minor's self to be served with alcoholic
16 beverages.

17 D. When a person other than a minor procures
18 another person to sell, serve or deliver alcoholic beverages to
19 a minor by actual or constructive misrepresentation of facts or
20 concealment of facts calculated to cause the person selling,
21 serving or delivering the alcoholic beverages to the minor to
22 believe that the minor is legally entitled to be sold, served
23 or delivered alcoholic beverages, and actually deceives that
24 person by that misrepresentation or concealment, then the
25 procurer and not the person deceived shall have violated the

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1 provisions of the Liquor Control Act.

2 E. As used in the Liquor Control Act, "minor" means
3 a person under twenty-one years of age.

4 F. In addition to the penalties provided in Section
5 60-6C-1 NMSA 1978, a violation of the provisions of Subsection
6 A of this section is [~~a fourth degree felony and the offender~~
7 ~~shall be sentenced pursuant to the provisions of Section~~
8 ~~31-18-15 NMSA 1978~~]:

9 (1) for a person other than a server, a fourth
10 degree felony and the offender shall be sentenced pursuant to
11 Section 31-18-15 NMSA 1978;

12 (2) for a server, a misdemeanor for a first,
13 second or third violation and the offender shall be sentenced
14 pursuant to Section 31-19-1 NMSA 1978 and a fourth degree
15 felony for a fourth or subsequent violation and the offender
16 shall be sentenced pursuant to Section 31-18-15 NMSA 1978; and

17 (3) for a server who intentionally and
18 willfully commits a violation, a fourth degree felony and the
19 offender shall be sentenced pursuant to Section 31-18-15 NMSA
20 1978.

21 G. A violation of the provisions of Subsection C of
22 this section is a misdemeanor and the offender shall be
23 punished as follows:

24 (1) for a first violation, the offender shall
25 be:

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1 (a) fined an amount not more than one
2 thousand dollars (\$1,000); and

3 (b) ordered by the sentencing court to
4 perform thirty hours of community service related to reducing
5 the incidence of driving while under the influence of
6 intoxicating liquor;

7 (2) for a second violation, the offender
8 shall:

9 (a) be fined an amount not more than one
10 thousand dollars (\$1,000);

11 (b) be ordered by the sentencing court
12 to perform forty hours of community service related to reducing
13 the incidence of driving while under the influence of
14 intoxicating liquor; and

15 (c) have [~~his~~] the offender's driver's
16 license suspended for a period of ninety days. If the minor is
17 too young to possess a driver's license at the time of the
18 violation, then ninety days shall be added to the date [~~he~~] the
19 offender would otherwise become eligible to obtain a driver's
20 license; and

21 (3) for a third or subsequent violation, the
22 offender shall:

23 (a) be fined an amount not more than one
24 thousand dollars (\$1,000);

25 (b) be ordered by the sentencing court

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1 to perform sixty hours of community service related to reducing
2 the incidence of driving while under the influence of
3 intoxicating liquor; and

4 (c) have [~~his~~] the offender's driver's
5 license suspended for a period of two years or until the
6 offender reaches twenty-one years of age, whichever period of
7 time is greater.

8 H. A violation of the provisions of Subsection D of
9 this section is a fourth degree felony and the offender shall
10 be sentenced pursuant to the provisions of Section
11 31-18-15 NMSA 1978.

12 I. As used in this section, "server" means an
13 individual who sells, serves or dispenses alcoholic beverages
14 for consumption on or off licensed premises, including an
15 individual who manages, directs or controls the sale or service
16 of alcohol. "Server" does not include an officer of a
17 corporate licensee or lessee who does not manage, direct or
18 control the sale or service of alcohol."

19 Section 6. A new section of the Liquor Control Act is
20 enacted to read:

21 "[NEW MATERIAL] SALES AND SERVICE PROHIBITED TO PERSONS
22 WITH CERTAIN DRIVER'S LICENSES OR IDENTIFICATION CARDS.--

23 A. A licensee or a licensee's agent or employee
24 shall not sell, serve or provide alcoholic beverages to a
25 person who has a New Mexico driver's license or an

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1 identification card that is printed in a vertical format.

2 B. It is an affirmative defense to a prosecution
3 brought pursuant to this section that, before selling any
4 alcoholic beverages, the accused in good faith demanded and was
5 shown documentary evidence of age and identity containing a
6 picture and issued by a federal, state, county or municipal
7 government."

8 Section 7. Section 66-5-5 NMSA 1978 (being Laws 1975,
9 Chapter 35, Section 227, as amended by Laws 2007, Chapter 316,
10 Section 1 and by Laws 2007, Chapter 317, Section 1) is amended
11 to read:

12 "66-5-5. PERSONS NOT TO BE LICENSED.--The division shall
13 not issue a driver's license under the Motor Vehicle Code to
14 any person:

15 A. who is under the age of eighteen years, except
16 the division may, in its discretion, issue:

17 (1) an instruction permit to a person fifteen
18 years of age or over who is enrolled in and attending or has
19 completed a driver education course that includes a DWI
20 education and prevention component approved by the bureau or
21 offered by a public school;

22 (2) a provisional license to any person
23 fifteen years and six months of age or older:

24 (a) who has completed a driver education
25 course approved by the bureau or offered by a public school

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1 that includes a DWI education and prevention component and has
2 had an instruction permit for at least six months; and

3 (b) who has successfully completed a
4 practice driving component;

5 (3) a driver's license to any person sixteen
6 years and six months of age or older:

7 (a) who has had a provisional license
8 for the twelve-month period immediately preceding the date of
9 the application for the driver's license;

10 (b) who has complied with restrictions
11 on that license;

12 (c) who has not been convicted of a
13 traffic violation that was committed during the ninety days
14 prior to applying for a driver's license; and

15 (d) who has not been adjudicated for an
16 offense involving the use of alcohol or drugs during that
17 period and who has no pending adjudications alleging an offense
18 involving the use of alcohol or drugs at the time of
19 application; and

20 (4) to any person thirteen years of age or
21 older who passes an examination prescribed by the division, a
22 license restricted to the operation of a motorcycle, provided:

23 (a) the motorcycle is not in excess of
24 one hundred cubic centimeters displacement;

25 (b) no holder of an initial license may

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1 carry any other passenger while driving a motorcycle; and

2 (c) the director approves and certifies
3 motorcycles as not in excess of one hundred cubic centimeters
4 displacement and by rule provides for a method of
5 identification of such motorcycles by all law enforcement
6 officers;

7 B. whose license or driving privilege has been
8 suspended or denied, during the period of suspension or denial,
9 or to any person whose license has been revoked, except as
10 provided in Section 66-5-32 NMSA 1978 and the Ignition
11 Interlock Licensing Act;

12 C. who is an habitual user of narcotic drugs or
13 alcohol or an habitual user of any drug to a degree that
14 renders the person incapable of safely driving a motor vehicle;

15 D. who is four or more times convicted of driving a
16 motor vehicle while under the influence of intoxicating liquor
17 or narcotic drug regardless of whether the convictions are
18 under the laws or ordinances of this state or any municipality
19 or county of this state or under the laws or ordinances of any
20 other state, the District of Columbia or any governmental
21 subdivision thereof, except as provided in the Ignition
22 Interlock Licensing Act. Five years from the date of the
23 fourth conviction and every five years thereafter, the person
24 may apply to any district court of this state for restoration
25 of the license, and the court, upon good cause being shown, may

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1 order restoration of the license applied for; provided that the
2 person has not been subsequently convicted of driving a motor
3 vehicle while under the influence of intoxicating liquor or
4 drugs. Upon issuance of the order of restoration, a certified
5 copy shall immediately be forwarded to the division, and if the
6 person is otherwise qualified for the license applied for, the
7 four previous convictions shall not prohibit issuance of the
8 license; provided that a driver's license issued after four or
9 more convictions shall be printed in a vertical format until
10 ten years from the date of the last conviction;

11 E. who was convicted on or after June 17, 2005 of
12 driving a motor vehicle while under the influence of
13 intoxicating liquor or drugs pursuant to the laws or ordinances
14 of any other state, the District of Columbia or any
15 governmental subdivision thereof, unless the person obtains an
16 ignition interlock license as provided in the Ignition
17 Interlock Licensing Act for a period of one year for a first
18 conviction; a period of two years for a second conviction; a
19 period of three years for a third conviction; or the remainder
20 of the offender's life for a fourth or subsequent conviction,
21 subject to a five-year review as provided in Subsection D of
22 this section. Upon presentation of proof satisfactory to the
23 division, the division may credit time spent by a person
24 operating a motor vehicle with an ignition interlock or
25 comparable device, as a condition of the person's sentence for

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1 a conviction in another jurisdiction pursuant to this
2 subsection, against the ignition interlock time requirements
3 imposed by this subsection. The division shall promulgate
4 rules necessary for granting credit to persons who participate
5 in comparable out-of-state programs following a conviction for
6 driving a motor vehicle while under the influence of
7 intoxicating liquor or drugs. The requirements of this
8 subsection shall not apply to a person who applies for a
9 driver's license ten years or more from the date of the
10 person's last conviction, except for a person who is subject to
11 lifetime driver's license revocation for a conviction in
12 another jurisdiction [~~pursuant to this subsection~~];

13 F. who has previously been afflicted with or who is
14 suffering from any mental disability or disease that would
15 render the person unable to drive a motor vehicle with safety
16 upon the highways and who has not, at the time of application,
17 been restored to health;

18 G. who is required by the Motor Vehicle Code to
19 take an examination, unless the person has successfully passed
20 the examination;

21 H. who is required under the laws of this state to
22 deposit proof of financial responsibility and who has not
23 deposited the proof;

24 I. when the director has good cause to believe that
25 the operation of a motor vehicle on the highways by the person

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1 would be inimical to public safety or welfare; or

2 J. as a motorcycle driver who is less than eighteen
3 years of age and who has not presented a certificate or other
4 evidence of having successfully completed a motorcycle driver
5 education program licensed or offered in conformance with rules
6 of the bureau."

7 Section 8. Section 66-5-47 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 269, as amended) is amended to read:

9 "66-5-47. PHOTOGRAPHS ON DRIVER'S LICENSES--VERTICAL
10 FORMAT--PRINTED LEGEND--EVIDENCE OF APPLICANT'S AGE.--

11 A. The department shall reproduce the likeness of
12 drivers [~~subject to the following conditions:~~

13 ~~(1)] on all driver's licenses. Photographs or
14 other reproductions of the likeness of all persons shall show a
15 full face or front view [~~and~~~~

16 ~~(2) photographs or other reproductions of the~~
17 ~~likeness of all persons].~~

18 B. The driver's license of a person under the age
19 of twenty-one years shall be printed in a vertical format and
20 shall have a printed legend, indicating that the person is
21 under twenty-one years of age, which shall be displayed in such
22 manner as to be easily read by any person inspecting the
23 license.

24 C. The driver's license of a person convicted four
25 or more times for driving while under the influence of

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1 intoxicating liquor or drugs shall be printed in a vertical
2 format and shall have a similar appearance to the license of a
3 person under twenty-one years of age, except without the
4 printed legend indicating that the person is under twenty-one
5 years of age. The requirement of a vertical-format license
6 pursuant to this subsection applies until ten years from the
7 date of the last conviction.

8 [B-] D. Each applicant for an initial license or a
9 replacement license shall produce evidence of the applicant's
10 age. Proof of an applicant's age shall be a birth certificate,
11 certified copy of a birth certificate, a church record
12 purporting to show the date of birth and baptism, an
13 acknowledged copy of the church record, a valid passport or
14 other evidence ~~[which]~~ that the secretary deems sufficient.
15 The date of birth shown on ~~[any]~~ a driver's license or ~~[any]~~
16 instruction permit issued by the department shall coincide with
17 the date of birth shown on the proof of applicant's age."

18 Section 9. Section 66-5-405 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 332, as amended) is amended to read:

20 "66-5-405. CONTENTS OF IDENTIFICATION CARD--VERTICAL
21 FORMAT--PRINTED LEGEND.--

22 A. The identification card shall adequately
23 describe the registrant and bear ~~[his]~~ the registrant's picture
24 that shall show a full face or front view for all registrants
25 and indicate donor status. ~~[All identification cards of~~

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1 ~~persons under the age of twenty-one years shall have a printed~~
2 ~~legend indicating that the person is under twenty-one.]~~ The
3 identification card shall bear the following statement:

4 "STATE OF NEW MEXICO IDENTIFICATION

5 CARD NO. _____

6 This card is provided solely for the purpose of establishing
7 that the bearer described on the card was not the holder of a
8 New Mexico driver's license as of the date of issuance of this
9 card. This identification card is not a license. ISSUED FOR
10 IDENTIFICATION PURPOSES ONLY".

11 B. An identification card of a person under the age
12 of twenty-one years shall be printed in a vertical format and
13 shall have a printed legend indicating that the person is under
14 the age of twenty-one.

15 C. An identification card of a person convicted
16 four or more times for driving while under the influence of
17 intoxicating liquor or drugs shall be printed in a vertical
18 format and shall have a similar appearance to the
19 identification card of a person under twenty-one years of age,
20 except without the printed legend indicating that the person is
21 under twenty-one years of age. The requirement of a vertical-
22 format identification card pursuant to this subsection applies
23 until ten years from the date of the last conviction."

24 Section 10. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.

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