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SENATE BILL 464

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

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO PUBLIC SAFETY; ENACTING THE CONVENIENCE STORE PROTECTION ACT; PROVIDING MINIMUM SECURITY STANDARDS FOR CONVENIENCE STORES; PROVIDING FOR ENFORCEMENT OF THE STANDARDS AND THE IMPOSITION OF CIVIL PENALTIES; 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 11 of this act may be cited as the "Convenience Store Protection Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Convenience Store Protection 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 implementing and enforcing statewide standards that

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

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

7 A. "convenience store" means a business
8 establishment that:

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

13 (2) operates at any time between the hours of
14 11:00 p.m. and 5:00 a.m.;

15 (3) does not sell or offer for sale
16 prescription drugs;

17 (4) occupies less than ten thousand square
18 feet of retail floor space;

19 (5) is not solely or primarily a restaurant;
20 and

21 (6) is not a hotel, tavern or lodging
22 facility;

23 B. "employee" means an individual hired or
24 contracted to work at a convenience store; and

25 C. "owner" means the person having ownership or

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1 proprietary interest in a convenience store and who is legally
2 responsible for the day-to-day operation of the convenience
3 store.

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

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

13 B. At any time when an employee or a customer is on
14 the premises, all exterior areas of a convenience store,
15 including a canopied or open parking lot and perimeter areas of
16 the property, shall be illuminated at the same intensity as the
17 interior lighting.

18 Section 5. [NEW MATERIAL] MINIMUM SECURITY STANDARDS.--
19 WINDOWS AND SIGNS.--

20 A. Window signs in a convenience store shall be
21 located so that there is a clear and unobstructed view from the
22 outside of the building to the cash register and sales
23 transaction areas.

24 B. No signs shall cover windows of a convenience
25 store in the area between three feet and eleven feet above

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1 ground level.

2 C. Window tinting in a convenience store shall not
3 reduce exterior or interior views.

4 Section 6. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
5 CASH MANAGEMENT.--

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

10 B. Between 8:00 p.m. and 6:00 a.m. a convenience
11 store shall maintain no more than fifty dollars (\$50.00) in
12 cash readily available to employees. The convenience store
13 shall post a conspicuous sign at the entrance to the store
14 stating that, between 8:00 p.m. and 6:00 a.m., the store
15 employees do not have access to more than fifty dollars
16 (\$50.00).

17 Section 7. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
18 EMPLOYEE TRAINING.--

19 A. Each employee of a convenience store, once
20 before being assigned to work any shift and annually thereafter
21 within thirty days of each anniversary of the employee's hiring
22 date, shall complete a course in workplace security and proper
23 robbery response approved by the department of environment.

24 B. Complete and accurate records of employee
25 training shall be maintained by the owner for a period lasting

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1 at least four years after the end of an employee's employment.

2 C. All costs of employee training shall be borne by
3 the convenience store.

4 Section 8. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
5 VIDEO SURVEILLANCE.--

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

14 B. For the purpose of summoning law enforcement
15 when criminal activity is taking place, via closed circuit
16 interactive television or an off-site entity with the ability
17 to summon law enforcement, the video security cameras required
18 by Subsection A of this section shall be monitored in real time
19 at an off-premises location at all times that the convenience
20 store is open to the public between 8:00 p.m. and 6:00 a.m.

21 C. Film, tapes or other recording medium from the
22 cameras required by Subsection A of this section shall not be
23 recorded over, erased, destroyed or disposed of for at least
24 thirty days; provided, however, that any film, tape or other
25 recording medium that may demonstrate a crime shall not be

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1 recorded over, erased, destroyed or disposed of for at least
2 four years.

3 Section 9. [NEW MATERIAL] MINIMUM SECURITY STANDARDS--
4 ADDITIONAL SECURITY MEASURES.--

5 A. The cash register and any additional sales area
6 of a convenience store shall be located so that they are
7 clearly visible from the outside of the store.

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

12 C. A height marker, visible from at least one video
13 camera, shall be placed at each entrance to a convenience
14 store.

15 Section 10. [NEW MATERIAL] LOCAL ORDINANCES.--

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

23 B. Any security standards for convenience stores
24 existing on the effective date of the Convenience Store
25 Protection Act that are less stringent than those required by

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1 that act are null and void.

2 Section 11. [NEW MATERIAL] ENFORCEMENT OF ACT--CIVIL
3 PENALTIES.--

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

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

18 (1) enter and inspect any convenience store at
19 reasonable times and without delay; and

20 (2) question privately the owner and employees
21 and inspect and investigate during regular working hours and at
22 other reasonable times, within reasonable limits and in a
23 reasonable manner, the convenience store and all pertinent
24 conditions, structures, machines, apparatus, devices, equipment
25 and materials therein; provided, however, the department's

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1 representative is not authorized to question privately the
2 owner or employees until the environmental improvement board
3 has adopted rules protecting the rights of such owner and
4 employees.

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

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

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

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

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

17 Section 12. Section 74-1-7 NMSA 1978 (being Laws 1971,
18 Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,
19 Section 1 and also by Laws 2000, Chapter 96, Section 1) is
20 amended to read:

21 "74-1-7. DEPARTMENT--DUTIES.--

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

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- 1 (1) food protection;
- 2 (2) water supply, including implementing a
- 3 capacity development program to assist water systems in
- 4 acquiring and maintaining technical, managerial and financial
- 5 capacity in accordance with Section 1420 of the federal Safe
- 6 Drinking Water Act and establishing administrative penalties
- 7 for enforcement;
- 8 (3) liquid waste, including exclusive
- 9 authority to collect on-site liquid waste system fees that are
- 10 no more than the average charged by the contiguous states to
- 11 New Mexico for similar permits and services and to implement
- 12 and administer an inspection and permitting program for on-site
- 13 liquid waste systems;
- 14 (4) air quality management as provided in the
- 15 Air Quality Control Act;
- 16 (5) radiation control and collection of
- 17 license, registration and other related fees as provided in the
- 18 Radiation Protection Act;
- 19 (6) noise control;
- 20 (7) nuisance abatement;
- 21 (8) vector control;
- 22 (9) occupational health and safety as provided
- 23 in the Occupational Health and Safety Act;
- 24 (10) sanitation of public swimming pools and
- 25 public baths;

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

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

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

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

11 (15) convenience store safety as provided in
12 the Convenience Store Protection Act.

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

18 Section 13. Section 74-1-8 NMSA 1978 (being Laws 1971,
19 Chapter 277, Section 11, as amended by Laws 2000, Chapter 86,
20 Section 2 and also by Laws 2000, Chapter 96, Section 2) is
21 amended to read:

22 "74-1-8. BOARD--DUTIES.--

23 A. The board is responsible for environmental
24 management and consumer protection. In that respect, the board
25 shall promulgate rules and standards in the following areas:

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- 1 (1) food protection;
- 2 (2) water supply, including a capacity
- 3 development program to assist water systems in acquiring and
- 4 maintaining technical, managerial and financial capacity in
- 5 accordance with Section 1420 of the federal Safe Drinking Water
- 6 Act and rules authorizing imposition of administrative
- 7 penalties for enforcement;
- 8 (3) liquid waste, including exclusive
- 9 authority to establish on-site liquid waste system fees that
- 10 are no more than the average charged by the contiguous states
- 11 to New Mexico for similar permits and services and to implement
- 12 and administer an inspection and permitting program for on-site
- 13 liquid waste systems;
- 14 (4) air quality management as provided in the
- 15 Air Quality Control Act;
- 16 (5) radiation control and establishment of
- 17 license, registration and other related fees not to exceed fees
- 18 charged by the United States nuclear regulatory commission for
- 19 similar licenses as provided in the 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
11 Waste Act; and

12 (15) convenience store safety as provided in
13 the Convenience Store Protection 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 C. Administrative penalties collected pursuant to
20 Paragraph (2) of Subsection A of this section shall be
21 deposited in the water conservation fund.

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

24 E. Radiation license, registration and other
25 related fees shall be deposited in the radiation protection

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1 fund."

2 Section 14. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2004.

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