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SENATE BILL 31

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GLORIA HOWES

FOR THE DWI OVERSIGHT TASK FORCE

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AUTHORIZING LOCAL OPTION
ELECTIONS REGARDING THE SALE OF ALCOHOLIC BEVERAGES FROM DRIVE-
UP WINDOWS; AMENDING A SECTION OF THE LIQUOR CONTROL ACT.

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

Section 1. Section 60-7A-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--DRIVE-
UP WINDOW SALES--CHRISTMAS DAY SALES--SUNDAY SALES FOR
CONSUMPTION OFF THE LICENSED PREMISES--ELECTIONS. --

A. Alcoholic beverages shall be sold, served and
consumed on licensed premises only during the following hours
and days:

- (1) on Mondays from 7:00 a.m. until midnight;
- (2) on other weekdays from after midnight of

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1 the previous day until 2:00 a.m., then from 7:00 a.m. until
2 midnight, except as provided in Subsections D, E and H of this
3 section; and

4 (3) on Sundays only after midnight of the
5 previous day until 2:00 a.m., except as provided in Subsections
6 C and F of this section; provided, however, nothing in this
7 section shall prohibit the consumption at any time of alcoholic
8 beverages in guest rooms of hotels.

9 B. Alcoholic beverages shall be sold by a dispenser
10 or a retailer in unbroken packages, for consumption off the
11 licensed premises and not for resale, on Mondays through
12 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day
13 except as provided in Subsections D, E and H of this section.

14 C. Subject to the provisions of Subsections F and I
15 of this section, a dispenser, restaurant licensee or club may,
16 upon payment of an additional fee of one hundred dollars (\$100),
17 obtain a permit to sell, serve or permit the consumption of
18 alcoholic beverages by the drink on the licensed premises on
19 Sundays from 12:00 noon until midnight and in those years when
20 December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of
21 the following day, except as otherwise provided in Subsection F
22 of this section. The permit shall expire on June 30 of each
23 year and may be renewed from year to year upon application for
24 renewal and payment of the required fee. The permit fee shall
25 not be prorated. Sales made pursuant to this subsection or

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1 Subsection I of this section shall be called "Sunday sales".

2 D. Retailers, dispensers, canopy licensees,
3 restaurant licensees, club licensees and governmental licensees
4 or [its] their lessees shall not sell, serve, deliver or allow
5 the consumption of alcoholic beverages on the licensed premises
6 during voting hours on the days of the primary election, general
7 election, elections for officers of a municipality or any other
8 election as prescribed by the rules and regulations of the
9 director.

10 E. Retailers, dispensers, canopy licensees that were
11 replaced by dispenser's licensees pursuant to Section 60-6B-16
12 NMSA 1978, restaurant licensees, club licensees and governmental
13 licensees or [its] their lessees shall not sell, serve, deliver
14 or allow the consumption of alcoholic beverages on the licensed
15 premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the
16 day after Christmas, except as permitted pursuant to Subsection
17 H of this section.

18 F. At the 1984 general election, the secretary of
19 state shall order placed on the ballot in each local option
20 district the question "Shall Sunday sales of alcoholic beverages
21 by the drink for consumption on the licensed premises of
22 licensees be allowed in this local option district?". If the
23 secretary of state determines a need, he may authorize the use
24 of paper ballots for the purpose of the election provided for
25 pursuant to this subsection. Until such election, Sunday sales

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1 shall be permitted on the same basis in any local option
2 district as provided under any former act, and the election held
3 at the first general election following the effective date of
4 the Liquor Control Act shall have no effect on whether Sunday
5 sales are permitted in any local option district. If the
6 question is disapproved by a majority of those voting upon the
7 question in the local option district, Sunday sales shall be
8 unlawful in that local option district upon certification of the
9 election returns, and the question shall not again be placed on
10 the ballot in that local option district until:

11 (1) at least one year has passed; and

12 (2) a petition is filed with the local
13 governing body bearing the signatures of registered qualified
14 electors of the local option district equal in number to ten
15 percent of the number of votes cast and counted in the local
16 option district for governor in the last preceding general
17 election in which a governor was elected. The signatures on the
18 petition shall be verified by the clerk of the county in which
19 the local option district is situated.

20 G. The local governing body of a local option
21 district [~~in an eligible county~~] shall:

22 (1) adopt a resolution within [~~sixty days of~~
23 ~~April 7, 1989~~] ninety days of July 1, 1997 calling for an
24 election to place on the ballot the question "Shall a retailer
25 or dispenser be allowed to sell or deliver alcoholic beverages

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1 at any time from a drive-up window?";

2 (2) arrange for the election to be held [~~within~~
3 ~~sixty days after the date the resolution is adopted~~] in
4 conjunction with the next regular election of the local
5 governing body or the next statewide general election following
6 adoption of the resolution; and

7 (3) ensure that the election is called,
8 conducted, counted and canvassed in the manner provided by law
9 for elections within the county.

10 [~~As used in this subsection, "eligible county" means any~~
11 ~~county that, according to motor vehicle statistics reported to~~
12 ~~the state highway and transportation department during the years~~
13 ~~1985 and 1986, convicted more than twenty-five persons for each~~
14 ~~one thousand licensed drivers of driving while intoxicated~~
15 ~~offenses.~~]

16 H. On and after July 1, 1989, dispensers, canopy
17 licensees that were replaced by dispenser's licensees pursuant
18 to Section 60-6B-16 NMSA 1978, restaurant licensees, club
19 licensees and governmental licensees or lessees of these
20 licensees may sell, serve or allow the consumption of beer and
21 wine with meals on licensed premises from noon until 10:00 p.m.
22 on Christmas day, except in a local option district in which,
23 pursuant to petition and election under this subsection, a
24 majority of the voters voting on the question votes against
25 continuing such sales or consumption on Christmas day. An

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1 election shall be held on the question of whether to continue to
2 allow the sale, service or consumption of beer and wine with
3 meals on licensed premises from noon until 10:00 p.m. on
4 Christmas day in a local option district, if a petition
5 requesting the governing body of that district to call the
6 election is signed by at least ten percent of the registered
7 voters of the district and is filed with the clerk of the
8 governing body of the district. Upon verification by the clerk
9 that the petition contains the required number of signatures of
10 registered voters, the governing body shall adopt a resolution
11 calling an election on the question of allowing the sale,
12 service or consumption of beer and wine with meals on licensed
13 premises from noon until 10:00 p.m. on Christmas day. The
14 election shall be held within sixty days after the date the
15 petition is verified, or it may be held in conjunction with a
16 regular election of the governing body if that election occurs
17 within sixty days of such verification. The election shall be
18 called, conducted, counted and canvassed in substantially the
19 same manner as provided for general elections in the county
20 under the Election Code or for special municipal elections in a
21 municipality under the Municipal Election Code. If a majority
22 of the voters voting on the question votes against continuing
23 the sale, service or consumption of beer and wine with meals on
24 licensed premises from noon until 10:00 p.m. on Christmas day,
25 then such sales and consumption shall be prohibited. If a

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1 majority of the voters voting on the question votes to allow
2 continued sale, service and consumption of beer and wine with
3 meals on licensed premises from noon until 10:00 p. m. on
4 Christmas day, then such sales and consumption shall be allowed
5 to continue. The question then shall not be submitted again to
6 the voters within two years of the date of the last election on
7 the question.

8 I. Notwithstanding the provisions of Subsection F of
9 this section, any Indian tribe or pueblo whose lands are wholly
10 situated within the state that has, by statute, ordinance or
11 resolution, elected to permit the sale, possession or
12 consumption of alcoholic beverages on lands within the
13 territorial boundaries of the tribe or pueblo may, by statute,
14 ordinance or resolution of the governing body of the Indian
15 tribe or pueblo, permit Sunday sales by the drink on the
16 licensed premises of licensees on lands within the territorial
17 boundaries of the tribe or pueblo; provided that a certified
18 copy of such enactment is filed with the office of the director
19 and of the secretary of state.

20 J. Subject to the provisions of Subsection K of this
21 section, a dispenser or retailer, upon payment of an additional
22 fee of one hundred dollars (\$100), may obtain a permit to sell
23 alcoholic beverages in unbroken packages for consumption off the
24 licensed premises on Sundays from 12:00 noon until midnight, and
25 in those years when December 31 falls on a Sunday, from 12:00

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1 noon on December 31 until 2:00 a.m. of the following day. The
2 permit shall expire on June 30 of each year and may be renewed
3 from year to year upon application for renewal and payment of
4 the required fee. The permit fee shall not be prorated. Sales
5 made pursuant to the provisions of this subsection shall be
6 called "Sunday package sales".

7 K. If a petition requesting the governing body of a
8 local option district to call an election on the question of
9 continuing to allow sales of alcoholic beverages in unbroken
10 packages for consumption off the licensed premises on Sundays is
11 filed with the clerk of the governing body and that petition is
12 signed by at least ten percent of the number of registered
13 voters of the local option district and the clerk of the
14 governing body verifies the petition signatures, the governing
15 body shall adopt a resolution calling an election on the
16 question. The election shall be held within sixty days of the
17 date the petition is verified, or it may be held in conjunction
18 with a regular election of the governing body, if the regular
19 election occurs within sixty days of the petition verification.
20 The election shall be called, conducted, counted and canvassed
21 substantially in the manner provided by law for general
22 elections within a county or special municipal elections within
23 a municipality. If a majority of the voters of the local option
24 district voting in the election votes to allow the sale of
25 alcoholic beverages in unbroken packages for consumption off the

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1 licensed premises, then those sales shall continue to be
2 allowed. If a majority of the voters of the local option
3 district voting in the election votes not to allow the Sunday
4 package sales, then those Sunday package sales shall be
5 prohibited commencing the first Sunday after the results of the
6 election are certified. Following the election, the question of
7 allowing the Sunday package sales shall not be submitted again
8 to the voters within two years of the date of the last election
9 on the question. "

10 Section 2. EFFECTIVE DATE. -- The effective date of the
11 provisions of this act is July 1, 1997.

12 - 9 -

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 31/a

3
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6 February 28, 1997

7
8 Mr. President:

9
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 31

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

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19 1. On page 1, line 13, after "ACT", insert "; PROVIDING FOR
20 COMPENSATION".

21
22 2. On page 4, line 21, strike "shall" and insert in lieu
23 thereof "may".

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25 3. On page 9, between lines 9 and 10, insert the following:

"Section 2. [NEW MATERIAL] COMPENSATION FOR MANDATORY DRIVE-
UP WINDOW CLOSURE--PROCESS. --

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1 A. The governing body of a local option district shall
2 prohibit sales or delivery of alcoholic beverages through a drive-
3 up window of a licensee if the majority of the registered
4 qualified electors in the local option district voting on the
5 question "Shall a retailer or dispenser be allowed to sell or
6 deliver alcoholic beverages at any time from a drive-up window?"
7 votes against allowing sales or deliveries of alcoholic beverages
8 from a drive-up window.

9
10 B. A licensee whose sales or deliveries of alcoholic
11 beverages from his licensed premises are conducted through his
12 drive-up window may petition the governing body of the local
13 option district for an arbitration hearing to determine the
14 compensation due the licensee that is a direct result of the
15 closure of the drive-up window.

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24 C. The local governing body of the local option district
25 and the licensee shall choose an arbitrator acceptable to both
parties from a list of arbitrators supplied to them by the
district court of the district in which the local option district
is located.

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The roll call vote was 6 For 1 Against

Yes: 6

No: Smith

Excused: Ingle, Vernon

Absent: None

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