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SENATE BILL 383

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

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

Underscored material = new
~~[bracketed material] = delete~~

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4
5
6 February 15, 1998

7
8 Mr. President:

9
10 Your FINANCE COMMITTEE, to whom has been referred

11
12 SENATE BILL 383

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14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

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18 SENATE FINANCE COMMITTEE SUBSTITUTE FOR

19 SENATE BILL 383

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21 DO PASS, and thence referred to the COMMITTEES' COMMITTEE.

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23 Respectfully submitted,

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Underscored material = new
[bracketed material] = delete

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Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

S0383FC1

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 383

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CLOSING DRIVE-UP WINDOWS TO REDUCE THE INCIDENCE OF DWI;
IMPOSING PENALTIES; DECLARING AN EMERGENCY.

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

Section 1. Section 60-6C-1 NMSA 1978 (being Laws 1981,
Chapter 39, Section 97, as amended) is amended to read:

"60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
ADMINISTRATIVE FINE--REPORTING REQUIREMENT. --

A. The director may suspend or revoke the license or
permit or fine the licensee in an amount not more than ten
thousand dollars (\$10,000), or both, when he finds that any
licensee has:

(1) violated any provision of the Liquor
Control Act or any regulation or order promulgated pursuant to

. 123463. 1

that act;

(2) been convicted of a felony pursuant to the provisions of the Criminal Code, the Liquor Control Act or federal law; or

(3) permitted his licensed premises to remain a public nuisance in the neighborhood where it is located after written notice from the director that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.

B. The director shall suspend or revoke the license or permit and may fine the licensee in an amount not to exceed ten thousand dollars (\$10,000), or both, when he finds that any licensee or:

(1) his employee or agent knowingly has sold, served or given any alcoholic beverage to a minor in violation of Section 60-7B-1 NMSA 1978 or to an intoxicated person in violation of Section 60-7A-16 NMSA 1978, on two separate occasions within any twelve-month period; or

(2) his agent has made any material false statement or concealed any material facts in his application for the license or permit granted him pursuant to the provisions of the Liquor Control Act.

C. In addition to other penalties provided in this section, any retailer or dispenser who violates the provisions of Subsection G of [Section 60-7A-16 or 60-7B-1 NMSA 1978] 60-7A-1 NMSA 1978 by selling, serving or delivering alcoholic beverages [~~to an intoxicated person or a minor~~] through a drive-up window [~~at a minimum~~] shall have

. 123463. 1

1 ~~[(1) upon a first violation of this subsection,~~
2 ~~the privilege to sell alcoholic beverages or any other goods from~~
3 ~~his drive-up window suspended by the director for a period of two~~
4 ~~weeks;~~

5 ~~(2) upon a second violation of this subsection,~~
6 ~~the privilege to sell alcoholic beverages or any other goods from~~
7 ~~his drive-up window suspended by the director for a period of~~
8 ~~thirty days;~~

9 ~~(3) upon a third violation of this subsection, the~~
10 ~~privilege to sell alcoholic beverages or any other goods from his~~
11 ~~drive-up window suspended by the director for a period of sixty~~
12 ~~days; and~~

13 ~~(4) upon a fourth violation of this subsection~~
14 ~~within two years of any other violations of Section 60-7A-16 or~~
15 ~~60-7B-1 NMSA 1978, the privilege to sell alcoholic beverages or~~
16 ~~any other goods from his drive-up window revoked by the director~~
17 ~~and the drive-up window permanently closed] his license suspended~~
18 ~~for a minimum of sixty days.~~

19 D. Any licensee aggrieved by a revocation, suspension
20 or fine proposed to be imposed by the director pursuant to this
21 section shall be entitled to the hearing procedures set forth in
22 ~~[Article 6C]~~ of Chapter 60, Article 6C NMSA 1978 before the
23 revocation, suspension or fine shall be effective.

24 E. Any charge filed against a licensee by the
25 department and the resulting disposition of the charge shall be

underscored material = new
[bracketed material] = delete

1 reported to the department of public safety and local law
2 enforcement agencies whose jurisdictions include the licensed
3 establishment. "

4 Section 2. Section 60-7A-1 NMSA 1978 (being Laws 1981,
5 Chapter 39, Section 47, as amended) is amended to read:

6 "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--
7 CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE
8 LICENSED PREMISES--ELECTIONS. --

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

12 (1) on Mondays from 7:00 a.m. until midnight;

13 (2) on other weekdays from after midnight of the
14 previous day until 2:00 a.m., then from 7:00 a.m. until midnight,
15 except as provided in Subsections D, E and H of this section; and

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

21 B. Alcoholic beverages shall be sold by a dispenser or
22 a retailer in unbroken packages, for consumption off the licensed
23 premises and not for resale, on Mondays through Saturdays from
24 7:00 a.m. until 12:00 a.m. on the following day except as
25 provided in Subsections D, E and H of this section.

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underscored material = new
[bracketed material] = delete

1 C. Subject to the provisions of Subsections F and I of
2 this section, a dispenser, restaurant licensee or club may, upon
3 payment of an additional fee of one hundred dollars (\$100),
4 obtain a permit to sell, serve or permit the consumption of
5 alcoholic beverages by the drink on the licensed premises on
6 Sundays from 12:00 noon until midnight and in those years when
7 December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of
8 the following day, except as otherwise provided in Subsection F
9 of this section. The permit shall expire on June 30 of each year
10 and may be renewed from year to year upon application for renewal
11 and payment of the required fee. The permit fee shall not be
12 prorated. Sales made pursuant to this subsection or Subsection I
13 of this section shall be called "Sunday sales".

14 D. Retailers, dispensers, canopy licensees, restaurant
15 licensees, club licensees and governmental licensees or [~~its~~]
16 their lessees shall not sell, serve, deliver or allow the
17 consumption of alcoholic beverages on the licensed premises
18 during voting hours on the days of the primary election, general
19 election, elections for officers of a municipality or any other
20 election as prescribed by the rules and regulations of the
21 director.

22 E. Retailers, dispensers, canopy licensees that were
23 replaced by dispenser's licensees pursuant to Section 60-6B-16
24 NMSA 1978, restaurant licensees, club licensees and governmental
25 licensees or [~~its~~] their lessees shall not sell, serve, deliver

1 or allow the consumption of alcoholic beverages on the licensed
 2 premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the
 3 day after Christmas, except as permitted pursuant to Subsection H
 4 of this section.

5 F. At the 1984 general election, the secretary of state
 6 shall order placed on the ballot in each local option district
 7 the question "Shall Sunday sales of alcoholic beverages by the
 8 drink for consumption on the licensed premises of licensees be
 9 allowed in this local option district?". If the secretary of
 10 state determines a need, he may authorize the use of paper
 11 ballots for the purpose of the election provided for pursuant to
 12 this subsection. Until such election, Sunday sales shall be
 13 permitted on the same basis in any local option district as
 14 provided under any former act, and the election held at the first
 15 general election following the effective date of the Liquor
 16 Control Act shall have no effect on whether Sunday sales are
 17 permitted in any local option district. If the question is
 18 disapproved by a majority of those voting upon the question in
 19 the local option district, Sunday sales shall be unlawful in that
 20 local option district upon certification of the election returns,
 21 and the question shall not again be placed on the ballot in that
 22 local option district until:

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

24 (2) a petition is filed with the local governing
 25 body bearing the signatures of registered qualified electors of

1 the local option district equal in number to ten percent of the
2 number of votes cast and counted in the local option district for
3 governor in the last preceding general election in which a
4 governor was elected. The signatures on the petition shall be
5 verified by the clerk of the county in which the local option
6 district is situated.

7 ~~[G.—The local governing body of a local option district~~
8 ~~in an eligible county shall:—~~

9 ~~(1)—adopt a resolution within sixty days of April~~
10 ~~7, 1989 calling for an election to place on the ballot the~~
11 ~~question "Shall a retailer or dispenser be allowed to sell or~~
12 ~~deliver alcoholic beverages at any time from a drive-up window?";—~~

13 ~~(2)—arrange for the election to be held within~~
14 ~~sixty days after the date the resolution is adopted; and—~~

15 ~~(3)—ensure that the election is called, conducted,~~
16 ~~counted and canvassed in the manner provided by law for elections~~
17 ~~within the county.—~~

18 ~~As used in this subsection, "eligible county" means any~~
19 ~~county that, according to motor vehicle statistics reported to~~
20 ~~the state highway and transportation department during the years~~
21 ~~1985 and 1986, convicted more than twenty-five persons for each~~
22 ~~one thousand licensed drivers of driving while intoxicated~~
23 ~~offenses.]~~

24 G. Beginning on the effective date of this act, no licensee
25 shall sell, serve or deliver alcoholic beverages from a drive-up

1 window on his licensed premises. The liquor license of a
 2 licensee who continues to sell, serve or deliver alcoholic
 3 beverages from a drive-up window on his licensed premises on or
 4 after the effective date of this provision is subject to
 5 suspension or revocation.

6 H. On and after July 1, 1989, dispensers, canopy
 7 licensees that were replaced by dispenser's licensees pursuant to
 8 Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees
 9 and governmental licensees or lessees of these licensees may
 10 sell, serve or allow the consumption of beer and wine with meals
 11 on licensed premises from noon until 10:00 p.m. on Christmas day,
 12 except in a local option district in which, pursuant to petition
 13 and election under this subsection, a majority of the voters
 14 voting on the question votes against continuing such sales or
 15 consumption on Christmas day. An election shall be held on the
 16 question of whether to continue to allow the sale, service or
 17 consumption of beer and wine with meals on licensed premises from
 18 noon until 10:00 p.m. on Christmas day in a local option
 19 district, if a petition requesting the governing body of that
 20 district to call the election is signed by at least ten percent
 21 of the registered voters of the district and is filed with the
 22 clerk of the governing body of the district. Upon verification
 23 by the clerk that the petition contains the required number of
 24 signatures of registered voters, the governing body shall adopt a
 25 resolution calling an election on the question of allowing the

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1 sale, service or consumption of beer and wine with meals on
2 licensed premises from noon until 10:00 p.m. on Christmas day.
3 The election shall be held within sixty days after the date the
4 petition is verified, or it may be held in conjunction with a
5 regular election of the governing body if that election occurs
6 within sixty days of such verification. The election shall be
7 called, conducted, counted and canvassed in substantially the
8 same manner as provided for general elections in the county under
9 the Election Code or for special municipal elections in a
10 municipality under the Municipal Election Code. If a majority of
11 the voters voting on the question votes against continuing the
12 sale, service or consumption of beer and wine with meals on
13 licensed premises from noon until 10:00 p.m. on Christmas day,
14 then such sales and consumption shall be prohibited. If a
15 majority of the voters voting on the question votes to allow
16 continued sale, service and consumption of beer and wine with
17 meals on licensed premises from noon until 10:00 p.m. on
18 Christmas day, then such sales and consumption shall be allowed
19 to continue. The question then shall not be submitted again to
20 the voters within two years of the date of the last election on
21 the question.

22 I. Notwithstanding the provisions of Subsection F of
23 this section, any Indian tribe or pueblo whose lands are wholly
24 situated within the state that has, by statute, ordinance or
25 resolution, elected to permit the sale, possession or consumption

underscored material = new
[bracketed material] = delete

1 of alcoholic beverages on lands within the territorial boundaries
 2 of the tribe or pueblo may, by statute, ordinance or resolution
 3 of the governing body of the Indian tribe or pueblo, permit
 4 Sunday sales by the drink on the licensed premises of licensees
 5 on lands within the territorial boundaries of the tribe or
 6 pueblo; provided that a certified copy of such enactment is filed
 7 with the office of the director and of the secretary of state.

8 J. Subject to the provisions of Subsection K of this
 9 section, a dispenser or retailer, upon payment of an additional
 10 fee of one hundred dollars (\$100), may obtain a permit to sell
 11 alcoholic beverages in unbroken packages for consumption off the
 12 licensed premises on Sundays from 12:00 noon until midnight, and
 13 in those years when December 31 falls on a Sunday, from 12:00
 14 noon on December 31 until 2:00 a.m. of the following day. The
 15 permit shall expire on June 30 of each year and may be renewed
 16 from year to year upon application for renewal and payment of the
 17 required fee. The permit fee shall not be prorated. Sales made
 18 pursuant to the provisions of this subsection shall be called
 19 "Sunday package sales".

20 K. If a petition requesting the governing body of a
 21 local option district to call an election on the question of
 22 continuing to allow sales of alcoholic beverages in unbroken
 23 packages for consumption off the licensed premises on Sundays is
 24 filed with the clerk of the governing body and that petition is
 25 signed by at least ten percent of the number of registered voters

1 of the local option district and the clerk of the governing body
 2 verifies the petition signatures, the governing body shall adopt
 3 a resolution calling an election on the question. The election
 4 shall be held within sixty days of the date the petition is
 5 verified, or it may be held in conjunction with a regular
 6 election of the governing body, if the regular election occurs
 7 within sixty days of the petition verification. The election
 8 shall be called, conducted, counted and canvassed substantially
 9 in the manner provided by law for general elections within a
 10 county or special municipal elections within a municipality. If
 11 a majority of the voters of the local option district voting in
 12 the election votes to allow the sale of alcoholic beverages in
 13 unbroken packages for consumption off the licensed premises, then
 14 those sales shall continue to be allowed. If a majority of the
 15 voters of the local option district voting in the election votes
 16 not to allow the Sunday package sales, then those Sunday package
 17 sales shall be prohibited commencing the first Sunday after the
 18 results of the election are certified. Following the election,
 19 the question of allowing the Sunday package sales shall not be
 20 submitted again to the voters within two years of the date of the
 21 last election on the question. "

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

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 16, 1998

Mr. President:

Your COMMITTEES' COMMITTEE, to whom has been referred

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 383

has had it under consideration and finds same to be GERMANE, in
accordance with constitutional provisions.

Respectfully submitted,

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SFC/SB 383

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Manny M. Aragon, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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FORTY-THIRD LEGISLATURE

SECOND SESSION

February 18, 1998

HOUSE FLOOR AMENDMENT number _____ to SENATE FINANCE COMMITTEE
SUBSTITUTE FOR SENATE BILL 383

Amendment sponsored by Representative Rita G. Getty

1. On page 1, line 12, before "CLOSING" insert "AUTHORIZING
LOCAL OPTION ELECTIONS REGARDING".

2. On page 1, line 13, strike "IMPOSING PENALTIES;".

3. On pages 1 through 4, strike Section 1 in its entirety.

4. On page 4, line 9, after "SALES--" insert "DRIVE-UP WINDOW
SALES--".

5. On page 7, lines 11 through 21, remove the brackets and line-

FORTY-THIRD LEGISLATURE
SECOND SESSION

SFC/SB 383

HFL/SFC/SB 383

Page 18

through.

6. On page 7, line 12, strike "in an eligible county shall" and insert in lieu thereof "may".

7. On page 7, lines 13 and 14, strike "within sixty days of April 7, 1989".

8. On page 7, lines 17 and 18, strike "within sixty days after the date the resolution is adopted" and insert in lieu thereof "in conjunction with the next regular election of the local governing body or the next statewide general election following adoption of the resolution".

9. On page 8, strike all of lines 3 through 9.

10. On page 12, line 1, after "Section 3." insert "EMERGENCY.".

FORTY-THIRD LEGISLATURE
SECOND SESSION

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HF1/SFC/SB 383

Page 19

Rita G. Getty

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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SFC/SB 383

**FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998**

February 18, 1998

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has been referred

**SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 383**

has had it under consideration and reports same WITHOUT RECOMMENDATION.

underscored material = new
[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HBIC/SFCS/SB 383

Page 21

4 Respectfully submitted,
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8 _____
9 Fred Luna, Chairman
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12 Adopted _____ Not Adopted _____
13 (Chief Clerk) (Chief Clerk)
14

15 Date _____
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17 The roll call vote was 10 For 2 Against

18 Yes: 10

19 No: Hobbs, Lutz

20 Excused: Varela

21 Absent: None
22
23

24 . 123554. 2

25 C:\Reports\S0383BI1.wpd