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SENATE BILL 485

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Don Kidd

AN ACT

RELATING TO ALCOHOLIC BEVERAGE SERVERS; RE-CREATING A SERVER EDUCATION PROGRAM; ESTABLISHING PENALTIES AND FINES; ENACTING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL. --

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to

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1 appeal to the district court pursuant to the provisions of
2 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

3 B. No appeal shall have the effect of suspending
4 the operation of the order of suspension, revocation or fine,
5 but the liquor control hearing officer may, for good cause
6 shown and upon such terms and conditions as he may find are
7 just, in his discretion suspend the operation of the order of
8 suspension, revocation or fine pending the appeal. The court
9 shall tax costs against the losing party.

10 C. For purposes of this section, "licensee"
11 includes a person issued a server permit pursuant to the
12 Alcohol Server Education Article of the Liquor Control Act. "

13 Section 2. A new section of the Liquor Control Act is
14 enacted to read:

15 "60-6D-11. [NEW MATERIAL] ARTICLE DESIGNATION--ALCOHOL
16 SERVER EDUCATION.--Chapter 60, Article 6D NMSA 1978 may be
17 cited as the "Alcohol Server Education Article of the Liquor
18 Control Act". "

19 Section 3. A new section of the Liquor Control Act is
20 enacted to read:

21 "60-6D-12. [NEW MATERIAL] PURPOSE.--The purpose of
22 Chapter 60, Article 6D NMSA 1978 is to:

23 A. enhance the professionalism of persons employed
24 in the alcoholic beverage service industry;

25 B. establish a program for servers, licensees and

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1 their lessees that includes the study of:

2 (1) the effect alcohol has on the body and
3 behavior, including the effect on a person's ability to
4 operate a motor vehicle when intoxicated;

5 (2) state law concerning liquor licensure,
6 liquor liability issues and driving under the influence of
7 intoxicating liquor;

8 (3) methods of recognizing problem drinkers
9 and techniques for intervening with problem drinkers;

10 (4) methods of identifying false drivers'
11 licenses and other documents used as evidence of age and
12 identity to prevent the sale of alcohol to minors; and

13 (5) prevention of fetal alcohol syndrome;

14 C. reduce the number of persons who drive while
15 under the influence of intoxicating liquor and mitigate the
16 physical and property damage caused by that behavior; and

17 D. reduce the frequency of alcohol-related birth
18 defects. "

19 Section 4. A new section of the Liquor Control Act is
20 enacted to read:

21 "60- 6D- 13. [NEW MATERIAL] DEFINITIONS. --As used in
22 Chapter 60, Article 6D NMSA 1978:

23 A. "director" means the director of the division;

24 B. "division" means the alcohol and gaming
25 division of the regulation and licensing department;

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1 C. "licensee" means a person issued a license
2 pursuant to the provisions of the Liquor Control Act to sell,
3 serve or dispense alcoholic beverages for consumption and not
4 for resale;

5 D. " program" means an alcohol server education
6 course and examination approved by the director to be
7 administered by providers;

8 E. "provider" means an individual, partnership,
9 corporation, public or private school or any other legal
10 entity certified by the director to provide a program;

11 F. "server" means an individual who sells, serves
12 or dispenses alcoholic beverages for consumption on or off
13 licensed premises, including persons who manage, direct or
14 control the sale or service of alcohol. "Server" does not
15 include officers of a corporate licensee or lessee who do not
16 manage, direct or control the sale or service of alcohol; and

17 G. "server permit" means an authorization issued
18 by the director for a person to be employed or engaged to
19 sell, serve or dispense alcoholic beverages. "

20 Section 5. A new section of the Liquor Control Act is
21 enacted to read:

22 "60- 6D- 4. [NEW MATERIAL] SERVER PERMITS REQUIRED--
23 ALCOHOL SERVICE OR SALES. --No person shall be employed as a
24 server on a licensed premises unless that person has obtained
25 a server permit pursuant to the provisions of Chapter 60,

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1 Article 6D NMSA 1978. "

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

4 "60-6D-15. [NEW MATERIAL] PROGRAMS REQUIRED--APPROVAL BY
5 DIRECTOR--CONTENT OF PROGRAM-SURETY BOND.--

6 A. The director shall have the authority to
7 approve programs offered by providers.

8 B. The program curriculum shall include the
9 following subjects:

10 (1) the effect alcohol has on the body and
11 behavior, including the effect on a person's ability to
12 operate a motor vehicle when intoxicated;

13 (2) the effect alcohol has on a person when
14 used in combination with legal or illegal drugs;

15 (3) state laws concerning liquor licensure,
16 liquor liability issues and driving under the influence of
17 intoxicating liquor;

18 (4) methods of recognizing problem drinkers
19 and techniques for intervening with problem drinkers;

20 (5) methods of identifying false driver's
21 licenses and other documents used as evidence of age and
22 identity to prevent the sale of alcohol to minors; and

23 (6) the incidence of alcohol-related birth
24 defects.

25 C. The director shall require each provider to

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1 post a surety bond in the amount of five thousand dollars
2 (\$5,000). The director may, in the director's discretion,
3 allow a provider to submit other evidence of financial
4 responsibility satisfactory to the director in lieu of posting
5 a surety bond in the amount of five thousand dollars
6 (\$5,000). "

7 Section 7. A new section of the Liquor Control Act is
8 enacted to read:

9 "60-6D-16. [NEW MATERIAL] SERVER PERMITS--FAILURE TO
10 PRODUCE PROOF.--

11 A. Every licensee shall maintain on the licensed
12 premises copies of the server permits of the licensee, his
13 lessee, if any, and each server then employed by the licensee
14 or lessee at all times and make copies available to the
15 director and to the agents or employees of the department of
16 public safety upon request.

17 B. Failure to produce a copy of a server permit is
18 prima facie evidence that a server permit has not been issued
19 and shall subject the licensee to fines and penalties as
20 determined by rule adopted by the director. "

21 Section 8. A new section of the Liquor Control Act is
22 enacted to read:

23 "60-6D-17. [NEW MATERIAL] SERVER PERMITS--ISSUANCE--
24 OWNERSHIP--FEES.--

25 A. The director shall issue a server permit to

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1 each applicant who obtains a certificate of program completion
2 and provides such other information as may be required by the
3 director. The director may, in the director's discretion,
4 issue temporary server permits if circumstances warrant such
5 issuance.

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

8 C. A server permit is the property of the server
9 to whom it is issued.

10 D. The director may charge a fee for the issuance
11 of the server permit.

12 E. Server permits shall be valid for a period of
13 five years from the date the server permit was issued.

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

17 Section 9. A new section of the Liquor Control Act is
18 enacted to read:

19 "60-6D-18. [NEW MATERIAL] SERVER PERMIT--SUSPENSION--
20 REVOCATION--ADMINISTRATIVE FINES--PENALTIES.--In addition to
21 any other penalties available, the following penalties may be
22 imposed for sales to minors or intoxicated persons in
23 violation of the provisions of the Liquor Control Act or rules
24 of the division:

25 A. The director may suspend a server's server

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1 permit for a period of thirty days or fine the server in an
2 amount not to exceed five hundred dollars (\$500), or both,
3 when he finds that the server is guilty of a first offense of
4 selling, serving or dispensing an alcoholic beverage to an
5 intoxicated person in violation of Section 60-7A-16 NMSA 1978
6 or to a minor in violation of Section 60-7B-1 NMSA 1978;

7 B. The director shall suspend a server's server
8 permit for a period of one year when he finds that the server
9 is guilty of a second offense of selling, serving or
10 dispensing alcoholic beverages to intoxicated persons in
11 violation of Section 60-7A-16 NMSA 1978 or to minors in
12 violation of Section 60-7B-1 NMSA 1978 arising separately from
13 the incident giving rise to his first offense;

14 C. The director shall permanently revoke a
15 server's server permit when he finds that the server is guilty
16 of a third offense of selling, serving or dispensing alcoholic
17 beverages to intoxicated persons in violation of Section
18 60-7A-16 NMSA 1978 or to minors in violation of Section
19 60-7B-1 NMSA 1978 arising separately from the incidents giving
20 rise to his first and second offenses.

21 D. No person whose server permit is suspended or
22 revoked pursuant to the provisions of this section may be a
23 server of alcoholic beverages on a licensed premises during
24 the period of suspension or revocation.

25 E. No person whose server permit is suspended may

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1 serve alcoholic beverages on or after the date of suspension
2 unless the person obtains a new server permit in accordance
3 with the provisions of Article 6D of Chapter 60. "

4 Section 10. A new section of the Liquor Control Act is
5 enacted to read:

6 "60-6D-19. [NEW MATERIAL] ALCOHOL SERVER EDUCATION;
7 REQUIRED FOR LICENSE RENEWAL. --A licensee seeking renewal of a
8 license shall submit to the division, as a condition of
9 license renewal, proof that the licensee, his lessee, if any,
10 and each server employed by the licensee or lessee during the
11 prior licensing year have or had valid server permits at all
12 times that alcoholic beverages were sold, served or
13 dispensed. "

14 Section 11. A new section of the Liquor Control Act is
15 enacted to read:

16 "60-6D-20. [NEW MATERIAL] ADMINISTRATIVE PROCEEDINGS--
17 HEARINGS. --

18 A. Hearings for the suspension or revocation of
19 any server's server permit or for imposing a fine on the
20 server, or both, shall be conducted in accordance with the
21 provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

22 B. The director may suspend or revoke a server
23 permit or impose a fine on a server, or impose a combination
24 of those penalties, only if the server violates the provisions
25 of Section 60-7A-16 or 60-7B-1 NMSA 1978. "

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1 Section 12. A new section of the Liquor Control Act is
2 enacted to read:

3 "60-6D-21 [NEW MATERIAL] ADVISORY COMMITTEE CREATED--
4 MEMBERS-- MEETINGS. --

5 A. The "alcohol server education advisory
6 committee" is created and is administratively attached to the
7 division. The membership of the committee shall consist of:

- 8 (1) the director;
- 9 (2) the secretary of public safety or his
10 designee;
- 11 (3) the secretary of health or his designee;
- 12 (4) the chief of the traffic safety bureau of
13 the state highway and transportation department or his
14 designee;
- 15 (5) three representatives from the retail
16 liquor industry;
- 17 (6) a representative from the wholesale
18 liquor industry;
- 19 (7) a representative from the insurance
20 industry; and
- 21 (8) a representative from a nonprofit
22 organization whose primary purpose is to reduce drunk driving
23 in New Mexico.

24 B. The representative members of the committee
25 shall be selected by the director. The director shall serve

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1 as chair of the committee.

2 C. The committee shall meet as often as necessary
3 to conduct business, but no less than twice a year. Meetings
4 shall be called by the director. Five members shall
5 constitute a quorum."

6 Section 13. A new section of the Liquor Control Act is
7 enacted to read:

8 "60-6D-22. [NEW MATERIAL] ~~ADVISORY COMMITTEE--DUTIES.--~~
9 The alcohol server education advisory committee shall assist
10 the division with development of:

11 A. standards, course requirements and materials
12 for the program;

13 B. procedures attendant to the program;

14 C. certification standards for providers and
15 instructors; and

16 D. certification of alcohol server education
17 programs that meet the minimum standards of the alcohol server
18 education advisory committee."

19 Section 14. Section 60-7A-12 NMSA 1978 (being Laws 1981,
20 Chapter 39, Section 78, as amended) is amended to read:

21 "60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES,
22 RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR LESSEES
23 AND CLUBS.--It is a violation of the Liquor Control Act for
24 any dispenser, canopy licensee, restaurant licensee,
25 governmental licensee or its lessee or club to:

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1 A. receive any alcoholic beverages for the purpose
2 of or with the intent of reselling the same from any person
3 other than one duly licensed to sell alcoholic beverages to
4 dispensers for resale;

5 B. sell, possess for the purpose of sale or to
6 bottle any bulk wine for sale other than by the drink for
7 immediate consumption on his licensed premises;

8 C. directly, indirectly or through any subterfuge
9 own, operate or control any interest in any wholesale liquor
10 establishment or liquor manufacturing or wine bottling firm;
11 provided that this section shall not prevent a dispenser from
12 owning an interest in any legal entity, directly or indirectly
13 or through an affiliate, that wholesales alcoholic beverages
14 and that operates or controls an interest in an establishment
15 operating [~~under~~] pursuant to the provisions of Subsection B
16 of Section 60-7A-10 NMSA 1978; [~~or~~]

17 D. sell or possess for the purpose of sale any
18 alcoholic beverages at any location or place except his
19 licensed premises or the location permitted [~~under~~] pursuant
20 to the provisions of Section 60-6A-12 NMSA 1978;

21 E. employ or engage a person to sell, serve or
22 dispense alcoholic beverages if the person has not been issued
23 a server permit; or

24 F. employ or engage a person to sell, serve or
25 dispense alcoholic beverages during a period when the server

1 permit of that person is suspended or revoked. "

2 Section 15. REPEAL. -- Sections 60-6D-1 through 60-6D-8
3 NMSA 1978 (being Laws 1993, Chapter 68, Sections 28 through
4 35, as amended) are repealed.

5 Section 16. EFFECTIVE DATE. -- The effective date of the
6 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5 March 1, 1999

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8 Mr. President:

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

12
13 SENATE BILL 485

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

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19 Respectfully submitted,

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Shannon Robinson, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Garcia, Ingle, Stockard, Smith

Absent: None

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FORTY-FOURTH LEGISLATURE

FIRST SESSION, 1999

SB 485/a

March 12, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 485

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

1. On page 9, between lines 3 and 4, insert the following:

"F. Nothing in this act shall be interpreted to waive any
license holder's liability that may arise pursuant to the
provisions of this act."

Respectfully submitted,

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FIRST SESSI ON, 1999

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Michael S. Sanchez, Chair man

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Payne, Tsosie

Absent: None

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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