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SENATE BILL 244

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; CREATING LOCAL EMPOWERMENT
DISTRICTS; PERMITTING RESTRICTIONS ON ALCOHOL SALES AND SERVICE
IN LOCAL EMPOWERMENT DISTRICTS.

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

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

"~~[NEW MATERIAL]~~ LOCAL EMPOWERMENT DISTRICT-- CREATION. --

A. An area within a local option district may be
designated by a governing body as a local empowerment district
if the area is adversely affected by chronic public
intoxication or by illegal activity associated with alcohol
sales or consumption.

B. The governing body of a county that is a local
option district shall not designate a local empowerment

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1 district that includes a municipality, or part of a
2 municipality, without the approval of the governing body of
3 that municipality.

4 C. A local empowerment district shall not cover a
5 geographic area that includes the entire territory of a local
6 option district unless the entire local option district,
7 according to the most recent federal decennial census, has a
8 population of less than fifty thousand. "

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

11 "[NEW MATERIAL] LOCAL EMPOWERMENT DISTRICT DESIGNATION--
12 ORDINANCE REQUIREMENTS.--A governing body may designate an area
13 as a local empowerment district by ordinance. The ordinance
14 shall include:

15 A. a rationale for the establishment of the local
16 empowerment district;

17 B. clearly indicated boundaries of the local
18 empowerment district that are understandable to the general
19 public; and

20 C. findings demonstrating:

21 (1) that chronic public intoxication or
22 illegal activity associated with alcohol sales or consumption
23 is contributing to the deterioration of the quality of life or
24 threatening the public health, safety and welfare of residents
25 in the area;

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1 (2) a pervasive pattern of chronic public
2 intoxication documented in crime statistics, police reports,
3 emergency medical response data, detoxification reports,
4 sanitation reports, public health records or related records
5 concerning the area; and

6 (3) that the governing body has made a good
7 faith effort to control chronic public intoxication or illegal
8 activity associated with alcohol sales or consumption by
9 encouraging voluntary business practices and cooperation with
10 neighborhood, citizen or business organizations and that
11 implementation of voluntary practices has been attempted for at
12 least sixty days. "

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

15 "[NEW MATERIAL] RESTRICTIONS ON LIQUOR SALES. --

16 A. Restrictions on sales and service of alcoholic
17 beverages within a local empowerment district shall be
18 reasonably related to reducing chronic public intoxication or
19 illegal activity associated with alcohol sales or consumption
20 and may include restrictions on:

21 (1) hours of operation for the sale or service
22 of alcoholic beverages; and

23 (2) types of alcoholic beverage products
24 available for sale, including the size of containers.

25 B. A result of a local option election shall not be

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1 modified by restrictions within a local empowerment district."

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

4 "[NEW MATERIAL] APPROVAL BY DIRECTOR--PUBLIC HEARING.--

5 A. Before restrictions may be imposed in a local
6 empowerment district, a governing body shall submit to the
7 director the ordinance designating the area as a local
8 empowerment district and the proposed restrictions.

9 B. Within forty-five days after receipt of the
10 ordinance and proposed restrictions, the director shall hold a
11 public hearing in the local empowerment district on whether:

12 (1) there are sufficient grounds for the
13 designation of the area as a local empowerment district; and

14 (2) the proposed restrictions are reasonably
15 related to reducing chronic public intoxication or illegal
16 activity associated with alcohol sales or consumption in the
17 area.

18 C. Notice of the public hearing shall be given by
19 publishing a notice of the date, time and place of the hearing
20 at least once a week for two consecutive weeks in a newspaper
21 of general circulation within the territorial limits of the
22 local empowerment district.

23 D. The notice shall set forth the ordinance and
24 proposed restrictions in their entirety.

25 E. The director may designate a hearing officer to

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1 conduct the hearing. The director or the hearing officer shall
2 have the power to administer oaths. A record shall be made of
3 the hearing.

4 F. After the hearing, the director shall consider
5 approval of the designation of the area as a local empowerment
6 district if:

7 (1) there are sufficient grounds for the
8 designation;

9 (2) the ordinance meets all statutory
10 requirements; and

11 (3) the designation benefits the public
12 health, safety and welfare of the residents of the area.

13 G. The director shall consider approval of the
14 restrictions proposed by the governing body if the
15 restrictions:

16 (1) are reasonably related to reducing chronic
17 public intoxication or illegal activity associated with alcohol
18 sales or consumption in the district; and

19 (2) would benefit the public health, safety
20 and welfare of the residents of the local empowerment district.

21 H. The director may recommend modifications of the
22 proposed restrictions to the governing body.

23 I. Any subsequent restrictions proposed by the
24 governing body shall be subject to the submission and hearing
25 requirements of this section. "

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

3 "[NEW MATERIAL] END OF STATUS AS LOCAL EMPOWERMENT
4 DISTRICT. --

5 A. The director may, upon the request of the
6 governing body of a local empowerment district, or at the
7 director's own discretion, hold a public hearing in the local
8 empowerment district to determine whether to end the status of
9 an area as the local empowerment district.

10 B. Notice of the public hearing and its purpose
11 shall be given by publishing a notice of the date, time and
12 place of the hearing at least once a week for two consecutive
13 weeks in a newspaper of general circulation within the
14 territorial limits of the local empowerment district.

15 C. The director may designate a hearing officer to
16 conduct the hearing. The director or the hearing officer shall
17 have the power to administer oaths.

18 D. Within ten days after the hearing, the director
19 shall determine whether to end the status of the area as a
20 local empowerment district. "

21 Section 6. Section 60-3A-3 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 3, as amended) is amended to read:

23 "60-3A-3. DEFINITIONS. --As used in the Liquor Control
24 Act:

25 A. "alcoholic beverages" means distilled or

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1 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
2 and aromatic bitters bearing the federal internal revenue strip
3 stamps or any similar alcoholic beverage, including blended or
4 fermented beverages, dilutions or mixtures of one or more of
5 the foregoing containing more than one-half percent alcohol,
6 but excluding medicinal bitters;

7 B. "beer" means an alcoholic beverage obtained by
8 the fermentation of any infusion or decoction of barley, malt
9 and hops or other cereals in water, and includes porter, beer,
10 ale and stout;

11 C. "brewer" means a person who owns or operates a
12 business for the manufacture of beer;

13 D. "chronic public intoxication" means the effects
14 of public consumption of alcoholic beverages or public
15 intoxication that endanger the public health, safety and
16 welfare of a community;

17 [~~D.~~] E. "club" means:

18 (1) any nonprofit group, including an
19 auxiliary or subsidiary group, organized and operated under the
20 laws of this state, with a membership of not less than fifty
21 members who pay membership dues at the rate of not less than
22 five dollars (\$5.00) per year and who, under the constitution
23 and bylaws of the club, have all voting rights and full
24 membership privileges, and which group is the owner, lessee or
25 occupant of premises used exclusively for club purposes and

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1 which group the director finds:

2 (a) is operated solely for recreation,
3 social, patriotic, political, benevolent or athletic purposes;
4 and

5 (b) has been granted an exemption by the
6 United States from the payment of the federal income tax as a
7 club under the provisions of Section 501(a) of the Internal
8 Revenue Code of 1986, as amended, or, if the applicant has not
9 operated as a club for a sufficient time to be eligible for the
10 income tax exemption, it must execute and file with the
11 director a sworn letter of intent declaring that it will, in
12 good faith, apply for such exemption as soon as it is eligible;
13 or

14 (2) an airline passenger membership club
15 operated by an air common carrier that maintains or operates a
16 clubroom at an international airport terminal. For the
17 purposes of this paragraph, "air common carrier" means a person
18 engaged in regularly scheduled air transportation between fixed
19 termini under a certificate of public convenience and necessity
20 issued by the civil aeronautics board;

21 [~~E.~~] E. "commission" means the secretary of public
22 safety when the term is used in reference to the enforcement
23 and investigatory provisions of the Liquor Control Act and
24 means the superintendent of regulation and licensing when the
25 term is used in reference to the licensing provisions of the

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1 Liquor Control Act;

2 ~~[F.]~~ G. "department" means the special
3 investigations division of the department of public safety when
4 the term is used in reference to the enforcement and
5 investigatory provisions of the Liquor Control Act and means
6 the director of the alcohol and gaming division of the
7 regulation and licensing department when the term is used in
8 reference to the licensing provisions of the Liquor Control
9 Act;

10 ~~[G.]~~ H. "director" means the director of the
11 special investigations division of the department of public
12 safety when the term is used in reference to the enforcement
13 and investigatory provisions of the Liquor Control Act and
14 means the director of the alcohol and gaming division of the
15 regulation and licensing department when the term is used in
16 reference to the licensing provisions of the Liquor Control
17 Act;

18 ~~[H.]~~ I. "dispenser" means a person licensed under
19 the provisions of the Liquor Control Act selling, offering for
20 sale or ~~[having in his possession]~~ possessing with the intent
21 to sell alcoholic beverages both by the drink for consumption
22 on the licensed premises and in unbroken packages for
23 consumption and not for resale off the licensed premises;

24 ~~[I.]~~ J. "distiller" means a person engaged in
25 manufacturing spirituous liquors;

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1 ~~[J-]~~ K. "golf course" means a tract of land and
2 facilities used for playing golf and other recreational
3 activities that includes tees, fairways, greens, hazards,
4 putting greens, driving ranges, recreational facilities,
5 patios, pro shops, cart paths and public and private roads that
6 are located within the tract of land;

7 ~~[K-]~~ L. "governing body" means the board of county
8 commissioners of a county or the city council or city
9 commissioners of a municipality;

10 ~~[L-]~~ M. "hotel" means an establishment or complex
11 having a resident of New Mexico as a proprietor or manager and
12 where, in consideration of payment, meals and lodging are
13 regularly furnished to the general public. The establishment
14 or complex must maintain for the use of its guests a minimum of
15 twenty-five sleeping rooms;

16 ~~[M-]~~ N. "licensed premises" means the contiguous
17 areas or areas connected by indoor passageways of a structure
18 and the outside dining, recreation and lounge areas of the
19 structure that are under the direct control of the licensee and
20 from which the licensee is authorized to sell, serve or allow
21 the consumption of alcoholic beverages under the provisions of
22 its license; provided that in the case of a restaurant,
23 including a restaurant that has operated continuously in two
24 separate structures since July 1, 1987 and that is located in a
25 local option district that has voted to disapprove the transfer

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1 of liquor licenses into that local option district, hotel, golf
2 course or racetrack, "licensed premises" includes all public
3 and private rooms, facilities and areas in which alcoholic
4 beverages are sold or served in the customary operating
5 procedures of the restaurant, hotel, golf course or racetrack;

6 0. "local empowerment district" means an area that
7 is adversely affected by chronic public intoxication or illegal
8 activity associated with alcohol sales or consumption and is
9 designated by ordinance of the governing body as a local
10 empowerment district;

11 [~~N.~~] P. "local option district" means a county that
12 has voted to approve the sale, serving or public consumption of
13 alcoholic beverages, or any incorporated municipality that
14 falls within a county that has voted to approve the sale,
15 serving or public consumption of alcoholic beverages, or any
16 incorporated municipality of over five thousand population that
17 has independently voted to approve the sale, serving or public
18 consumption of alcoholic beverages under the terms of the
19 Liquor Control Act or any former act;

20 [~~0.~~] Q. "manufacturer" means a distiller,
21 rectifier, brewer or winer;

22 [~~P.~~] R. "minor" means a person under twenty-one
23 years of age;

24 [~~0.~~] S. "package" means an immediate container of
25 alcoholic beverages that is filled or packed by a manufacturer

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1 or wine bottler for sale by the manufacturer or wine bottler to
2 wholesalers;

3 [R-] T. "person" means an individual, corporation,
4 firm, partnership, copartnership, association or other legal
5 entity;

6 [S-] U. "rectifier" means a person who blends,
7 mixes or distills alcohol with other liquids or substances for
8 the purpose of making an alcoholic beverage for the purpose of
9 sale other than to the consumer by the drink, and includes all
10 bottlers of spirituous liquors;

11 [F-] V. "restaurant" means an establishment having
12 a New Mexico resident as a proprietor or manager that is held
13 out to the public as a place where meals are prepared and
14 served primarily for on-premises consumption to the general
15 public in consideration of payment and that has a dining room,
16 a kitchen and the employees necessary for preparing, cooking
17 and serving meals; provided that "restaurant" does not include
18 establishments as defined in rules promulgated by the director
19 serving only hamburgers, sandwiches, salads and other fast
20 foods;

21 [U-] W. "retailer" means a person licensed under
22 the provisions of the Liquor Control Act selling, offering for
23 sale or ~~[having in his possession]~~ possessing with the intent
24 to sell alcoholic beverages in unbroken packages for
25 consumption and not for resale off the licensed premises;

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