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HOUSE MEMORIAL 88

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Jim R. Trujillo

A MEMORIAL

REQUESTING THE INTERIM LEGISLATIVE REVENUE STABILIZATION AND  
TAX POLICY COMMITTEE TO STUDY THE POSSIBLE NEED FOR CHANGES TO  
THE WHOLESALE AND RETAIL PRICING STRUCTURE OF ALCOHOLIC  
BEVERAGES IN ORDER TO ENSURE COMPETITIVE MARKETING AMONG  
RETAILERS AND TO REGULATE THE PROLIFERATION OF LOW-COST  
ALCOHOLIC BEVERAGES.

WHEREAS, in the exercise of the state's police power, the  
legislature may strictly regulate the sale, service, possession  
and consumption of alcoholic beverages; and

WHEREAS, the sale, service, possession and consumption of  
alcoholic beverages at each level of distribution are regulated  
in New Mexico; and

WHEREAS, New Mexico regulates certain trade practices of  
and between manufacturers, suppliers, wholesalers and retailers

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1 of alcoholic beverages to prevent unfair competition; and

2 WHEREAS, New Mexico does not regulate the pricing  
3 practices between wholesalers and retailers of alcoholic  
4 beverages; and

5 WHEREAS, wholesalers in New Mexico offer incentives or  
6 discounts on alcoholic beverages to retailers who place large-  
7 volume orders or have multiple outlets for the sale of  
8 alcoholic beverages; and

9 WHEREAS, wholesalers do not offer similar incentives or  
10 discounts on alcoholic beverages to small-volume and individual  
11 retailers, resulting in the sale of alcoholic beverages to  
12 small-volume and individual retailers at prices higher than to  
13 large-volume or multiple-outlet retailers; and

14 WHEREAS, large-volume retailers, due to incentives and  
15 discounts on their purchase of alcoholic beverages and their  
16 ability to spread profit margin over a large inventory that in  
17 many cases includes non-alcoholic beverage products, are able  
18 to sell alcoholic beverages to consumers at below cost or at  
19 cost or at a lower markup and lower prices per product line  
20 than small-volume retailers; and

21 WHEREAS, the differential in wholesale pricing structure  
22 between large- and small-volume retailers puts small-volume  
23 retailers at a competitive disadvantage; and

24 WHEREAS, the lower prices offered by large-volume  
25 retailers encourages more sales and consumption of alcoholic

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1 beverages; and

2 WHEREAS, prior to 1966, New Mexico laws did regulate the  
3 pricing between wholesalers and retailers by requiring uniform  
4 minimum fair trade prices and mandatory minimum markups, but  
5 the approach to fair trade represented by those laws was found  
6 by the state supreme court, in *Drink, Inc. v. Babcock*, 77 N.M.  
7 277, 421 P.2d 798 (S. Ct. 1966), to be an inappropriate  
8 exercise of the state's police power; and

9 WHEREAS, the supreme court, in *Drink, Inc. v. Babcock*,  
10 also held "that the legislature has the power to act on the  
11 subject of below-cost sales and their effect on free  
12 competition, and may adopt legislation relating to the  
13 establishing of prices on alcoholic beverages with the view and  
14 purpose of regulating and controlling the liquor business in  
15 the interest of the public welfare";

16 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF  
17 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the interim  
18 legislative revenue stabilization and tax policy committee be  
19 requested to conduct a study of the wholesale and retail  
20 pricing structure of alcoholic beverages in New Mexico, the  
21 lack of fair competition in the retail sale of alcoholic  
22 beverages and the effects of this unfair competition on the  
23 proliferation of alcoholic beverages in New Mexico and to  
24 develop recommendations to address those effects; and

25 BE IT FURTHER RESOLVED that the committee make specific

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1 recommendations for changes needed in the constitution of New  
2 Mexico, the Liquor Control Act and alcoholic beverage sales  
3 regulation and endorse legislation to enact these changes; and

4 BE IT FURTHER RESOLVED that copies of this memorial be  
5 transmitted to the chair of the interim legislative revenue  
6 stabilization and tax policy committee, the co-chairs of the  
7 New Mexico legislative council and the director of the  
8 legislative council service.