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SENATE BILL 195

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

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO FIREWORKS; LIMITING THE SALE OR USE OF FIREWORKS  
UNDER CERTAIN CIRCUMSTANCES; BANNING THE SALE OR USE OF BOTTLE  
ROCKETS; CHANGING DUTIES PERTAINING TO RECORDS; DECLARING AN  
EMERGENCY.

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

Section 1. Section 60-2C-1 NMSA 1978 (being Laws 1989,  
Chapter 346, Section 1) is amended to read:

"60-2C-1. SHORT TITLE. -- [~~Sections 1 through 11 of this  
act~~] Chapter 60, Article 2C NMSA 1978 may be cited as the  
"Fireworks Licensing and Safety Act". "

Section 2. Section 60-2C-2 NMSA 1978 (being Laws 1989,  
Chapter 346, Section 2, as amended) is amended to read:

"60-2C-2. DEFINITIONS. -- As used in the Fireworks Licensing  
and Safety Act:

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1           ~~[A. "aerial device" means a fireworks device that~~  
2 ~~upon ignition propels itself or an insert a significant distance~~  
3 ~~into the air, but does not include a firework that produces a~~  
4 ~~shower of sparks;]~~

5           A. "bottle rocket" means a cylindrical tube with a  
6 casing size of less than one-half of an inch for the outside  
7 diameter and less than three and one-half inches in casing  
8 length containing no more than twenty grams of chemical  
9 composition with a wooden stick attached for guidance and  
10 stability that rises into the air upon ignition and produces a  
11 burst of color or sound at or near the height of flight;

12           B. "chaser" means a paper or cardboard tube venting  
13 out the fuse end of the tube that contains no more than twenty  
14 grams of chemical composition and travels along the ground,  
15 producing a whistling effect or other noise; an explosive  
16 composition not to exceed fifty milligrams may be included to  
17 produce a report;

18           ~~[B.]~~ C. "chemical composition" includes all  
19 pyrotechnic and explosive composition contained in a fireworks  
20 device, but does not include inert materials such as clay used  
21 for plugs or organic matter such as rice hulls used for density  
22 control;

23           ~~[C. "common fireworks" means any fireworks device~~  
24 ~~suitable for use by the public that complies with the~~  
25 ~~construction, performance, composition and labeling requirements~~

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1 ~~promulgated by the United States consumer product safety~~  
2 ~~commission in Title 16, C.F.R. and that is classified as a class~~  
3 ~~C explosive by the United States department of transportation;]~~

4 D. "cone fountain" means a cardboard or heavy paper  
5 cone containing no more than fifty grams of pyrotechnic  
6 composition that has the same effect as a cylindrical fountain;  
7 and when more than one cone is mounted on a common base, total  
8 pyrotechnic composition shall not exceed two hundred grams;

9 E. "crackling device" means a sphere or paper tube  
10 that contains no more than twenty grams of pyrotechnic  
11 composition that produces a flash of light and a mild, audible  
12 crackling effect upon ignition, which effect is not considered  
13 to be an explosion; crackling devices are not subject to the  
14 fifty-milligram limit of firecrackers;

15 F. "cylindrical fountain" means a cylindrical tube  
16 containing not more than seventy-five grams of pyrotechnic  
17 composition that produces a shower of colored sparks and  
18 sometimes a whistling effect or smoke; the device may be  
19 provided with a spike for insertion into the ground or a wood or  
20 cardboard handle to be hand held; and when more than one tube is  
21 mounted on a common base, total pyrotechnic composition shall  
22 not exceed two hundred grams;

23 ~~[D-]~~ G. "display distributor" means any person, firm  
24 or corporation selling [special] display fireworks;

25 H. "display fireworks" means devices primarily

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1 intended for commercial displays that are designed to produce  
2 visible or audible effects by combustion, deflagration or  
3 detonation, including salutes containing more than one hundred  
4 thirty milligrams of explosive composition; aerial shells  
5 containing more than forty grams of chemical composition  
6 exclusive of lift charge; and other exhibition display items  
7 that exceed the limits for permissible fireworks;

8 [E.-] I. "distributor" means any person, firm or  
9 corporation selling fireworks to wholesalers and retailers for  
10 resale;

11 [F.-] J. "explosive composition" means any chemical  
12 compound or mixture, the primary purpose of which is to function  
13 by explosion, producing an audible effect in a fireworks device;

14 K. "firecracker" means a small, paper-wrapped or  
15 cardboard tube containing no more than fifty milligrams of  
16 explosive composition that produces noise and a flash of light;  
17 provided that firecrackers used in aerial devices may contain up  
18 to one hundred thirty milligrams of explosive composition per  
19 report;

20 [G.—"firework"] L. "fireworks" means [~~any~~  
21 ~~composition or device for the purpose of producing~~] devices  
22 intended to produce a visible or audible effect by combustion,  
23 deflagration or detonation [~~Fireworks are further classified in~~  
24 ~~the Fireworks Licensing and Safety Act as common fireworks and~~  
25 ~~special fireworks, as defined by the United States department of~~

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1 ~~transportation, C.F.R. Title 49, transportation, parts 173.88(d)~~  
2 ~~and 173.00(r)]~~ and are categorized as "permissible fireworks" or  
3 "display fireworks":

4 ~~[H. "ground audible device" means a fireworks device~~  
5 ~~intended to function on the ground that produces an audible~~  
6 ~~effect;]~~

7 M. "flitter sparkler" means a narrow paper tube  
8 attached to a stick or wire and filled with no more than five  
9 grams of pyrotechnic composition that produces color and sparks  
10 upon ignition and the paper at one end of the tube is ignited to  
11 make the device function;

12 N. "ground spinner" means a small, rapidly spinning  
13 device containing no more than twenty grams of pyrotechnic  
14 composition venting out an orifice usually on the side of the  
15 tube that when ignited produces a shower of sparks and color;

16 O. "helicopter" or "aerial spinner" means a tube  
17 containing no more than twenty grams of chemical composition  
18 with a propeller or blade attached that spins rapidly as it  
19 rises into the air with a visible or audible effect produced at  
20 or near the height of flight;

21 P. "illuminating torch" means a cylindrical tube  
22 containing no more than one hundred grams of pyrotechnic  
23 composition that produces a colored flame upon ignition and may  
24 be spiked, based or hand held; and when more than one tube is  
25 mounted on a common base, total pyrotechnic composition shall

. 112873. 4

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1 not exceed two hundred grams:

2 [I.] Q. "manufacturer" means any person, firm or  
3 corporation engaged in the manufacture of fireworks;

4 R. "mine" or "shell" means a heavy cardboard or  
5 paper tube usually attached to a wooden or plastic base and  
6 containing no more than forty grams of chemical composition plus  
7 not more than twenty grams of lift charge that produces a star  
8 effect and that contains components producing reports containing  
9 a maximum one hundred thirty milligrams of explosive composition  
10 per report; a mine may contain more than one tube, but the tubes  
11 must fire in sequence upon ignition of one external fuse and the  
12 total chemical composition, including lift charges, of a  
13 multiple tube device shall not exceed two hundred grams;

14 S. "missile-type rocket" means a device similar to a  
15 stick-type rocket in size, composition and effect that uses fins  
16 rather than a stick for guidance and stability and that contains  
17 no more than twenty grams of chemical composition;

18 [J.] T. "permissible fireworks" means fireworks  
19 legal for sale to and use in New Mexico [~~under the provisions of~~  
20 ~~the Fireworks Licensing and Safety Act~~] by the general public  
21 that contain no more than two hundred grams of total chemical  
22 composition;

23 [K.] U. "pyrotechnic composition" means a chemical  
24 mixture [~~which~~] that on burning and without explosion produces  
25 visible or brilliant displays or bright lights or whistles or

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1 motion;

2 [E-] V. "retailer" means any person, firm or  
3 corporation purchasing fireworks for resale to consumers;

4 [M- "special fireworks" means fireworks devices  
5 primarily intended for commercial displays which are designed to  
6 produce visible or audible effects by combustion, deflagration  
7 or detonation, including salutes containing more than one  
8 hundred thirty milligrams (two grains) of explosive composition,  
9 aerial shells containing more than forty grams of chemical  
10 composition exclusive of lift charge and other exhibition  
11 display items that exceed the limits contained in the Fireworks  
12 Licensing and Safety Act for common fireworks;]

13 W. "roman candle" means a heavy paper or cardboard  
14 tube containing no more than twenty grams of chemical  
15 composition that individually expels pellets of pressed  
16 pyrotechnic composition that burn with bright color in a star  
17 effect;

18 [N-] X. "specialty retailer" means any person, firm  
19 or corporation purchasing permissible fireworks for year-round  
20 resale in permanent retail stores whose primary business is  
21 tourism; [and]

22 Y. "stick-type rocket" means a cylindrical tube with  
23 a minimum casing size of one-half of an inch for the outside  
24 diameter and a minimum casing length of three and one-half  
25 inches containing no more than twenty grams of chemical

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1 composition with a wooden stick attached for guidance and  
2 stability that rises into the air upon ignition and produces a  
3 burst of color or sound at or near the height of flight;

4 Z. "toy smoke device" means a small plastic or paper  
5 item containing no more than one hundred grams of pyrotechnic  
6 composition that produces white or colored smoke as the primary  
7 effect;

8 AA. "wheel" means a pyrotechnic device that is made  
9 to attach to a post or other surface that revolves, producing a  
10 shower of color and sparks and sometimes a whistling effect, and  
11 that may have one or more drivers, each of which contains no  
12 more than sixty grams of pyrotechnic composition and the total  
13 wheel contains no more than two hundred grams total pyrotechnic  
14 composition; and

15 ~~[0-]~~ BB. "wholesaler" means any person, firm or  
16 corporation purchasing fireworks for resale to retailers."

17 Section 3. Section 60-2C-3 NMSA 1978 (being Laws 1989,  
18 Chapter 346, Section 3, as amended) is amended to read:

19 "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF  
20 FIREWORKS-- ADMINISTRATION-- PERMITS AND LICENSES. --

21 A. No person may sell, hold for sale, import,  
22 distribute or offer for sale, as manufacturer, distributor,  
23 wholesaler or retailer, any fireworks in this state unless such  
24 person has first obtained the appropriate license or permit.

25 B. The state fire marshal shall enforce the

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1 Fireworks Licensing and Safety Act. All license applications  
2 shall be submitted to the office of the state fire marshal. All  
3 retailers shall be required to purchase a retail fireworks  
4 permit for each retail location. The retail permit may be  
5 purchased from any licensed manufacturer, distributor or  
6 wholesaler or from the state fire marshal's office. [~~These~~]  
7 Retail permits may be purchased at any time by the licensed  
8 manufacturer, distributor or wholesaler in books of [~~twenty~~] ten  
9 permits per book from the state fire marshal. Permits shall be  
10 numbered, and it shall be the responsibility of the licensed  
11 manufacturer, distributor or wholesaler to keep records of the  
12 purchases of these permits and to [~~submit these records to the~~  
13 ~~state fire marshal semi-annually on January 31 and July 31 of~~  
14 ~~each year. Each semi-annual report is to cover the preceding~~  
15 ~~six-month period~~] return books containing duplicate copies of  
16 each issued permit to the state fire marshal's office within a  
17 week of the time the last permit in each book was issued. The  
18 returned copies of each book shall be the official record of  
19 retail permits sold. Retail permits [~~which~~] that are unsold may  
20 be exchanged for new permits.

21 C. The state fire marshal shall appoint the deputies  
22 and employees required to carry out the provisions of the  
23 Fireworks Licensing and Safety Act. The state fire marshal may  
24 also appoint any commissioned law enforcement officer or duly  
25 appointed fire chief or his [~~designate~~] designee with approval

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1 from the local governing body required to carry out the  
2 provisions of that act.

3 D. The state fire board shall formulate, adopt,  
4 promulgate and amend or revise rules and regulations for the  
5 safe handling of fireworks. "

6 Section 4. Section 60-2C-4 NMSA 1978 (being Laws 1989,  
7 Chapter 346, Section 4, as amended) is amended to read:

8 "60-2C-4. LICENSE AND PERMIT FEES. --

9 A. An applicant for a license or permit under the  
10 Fireworks Licensing and Safety Act shall pay to the state fire  
11 marshal's office the following fees, which shall not be  
12 refundable:

- 13 (1) manufacturer license . . . . . \$1,500;
- 14 (2) distributor license. . . . . 2,000;
- 15 (3) wholesaler license . . . . . 1,000;
- 16 (4) display distributor. . . . . 1,000;
- 17 (5) specialty retailer license . . . . . 750; or
- 18 (6) retailer permit. . . . . 100.

19 B. All licenses and permits shall be issued for one  
20 year beginning on February 1 of each year. All licenses and  
21 permits shall be issued within thirty days from the date of  
22 receipt of application, except that no application shall be  
23 processed by the state fire marshal's office from ~~May 10~~ June  
24 10 through July 10 of each year.

25 C. Licenses issued under the Fireworks Licensing and

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1 Safety Act shall not be restricted in number or limited to any  
2 person without cause. Municipalities and counties may require  
3 licenses or permits and reasonable fees, not to exceed fifty  
4 dollars (\$50.00), for the sale of fireworks.

5 D. Permit and license fees paid to the state fire  
6 marshal's office shall be deposited in the fire protection fund  
7 to be used by the state fire marshal to enforce and carry out  
8 the provisions and purposes of the Fireworks Licensing and  
9 Safety Act."

10 Section 5. Section 60-2C-7 NMSA 1978 (being Laws 1989,  
11 Chapter 346, Section 7, as amended) is amended to read:

12 "60-2C-7. PERMISSIBLE FIREWORKS. --

13 A. Permissible fireworks [~~for sale to the general~~  
14 ~~public as that term is used in the Fireworks Licensing and~~  
15 ~~Safety Act shall be understood to mean common fireworks except~~  
16 ~~stick-type rockets having a tube less than one-quarter inch~~  
17 ~~inside diameter] are:~~

18 (1) ground and hand-held sparkling and smoke  
19 devices:

20 (a) cone fountains;

21 (b) crackling devices;

22 (c) cylindrical fountains;

23 (d) flutter sparklers;

24 (e) ground spinners;

25 (f) illuminating torches;

- 1                                    (g) toy smoke devices; and
- 2                                    (h) wheels;
- 3                                    (2) aerial devices:
- 4                                    (a) aerial spinners;
- 5                                    (b) helicopters;
- 6                                    (c) mines;
- 7                                    (d) missile-type rockets; and
- 8                                    (e) roman candles;
- 9                                    (f) shells; and
- 10                                   (g) stick-type rockets;
- 11                                   (3) ground audible devices:
- 12                                   (a) chasers; and
- 13                                   (b) firecrackers.

14                                   B. Bottle rockets are not permissible fireworks.

15                                   C. A municipality or county shall not by ordinance  
16 regulate and prohibit the sale or use of any permissible  
17 firework except aerial devices and ground audible devices. "

18                                   Section 6. Section 60-2C-8 NMSA 1978 (being Laws 1989,  
19 Chapter 346, Section 8, as amended) is amended to read:

20                                   "60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED  
21 ACTIVITIES. --

22                                   A. No fireworks may be sold at retail without a  
23 retail permit. The permit shall be at the location where the  
24 retail sale takes place.

25                                   B. It is unlawful to offer for sale or to sell any

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1 fireworks to children under the age of [~~twelve~~] sixteen years or  
2 to any intoxicated person.

3 C. At all places where fireworks are stored, sold or  
4 displayed, the words "NO SMOKING" shall be posted in letters at  
5 least four inches in height. Smoking, open flames and any  
6 ignition source are prohibited within twenty-five feet of any  
7 fireworks stock.

8 D. No fireworks shall be stored, kept, sold or  
9 discharged within fifty feet of any gasoline pump or gasoline  
10 bulk station or any building in which gasoline or volatile  
11 liquids are sold in quantities in excess of one gallon, except  
12 in stores where cleaners, paints and oils are handled in sealed  
13 containers only.

14 E. All fireworks permittees and licensees shall keep  
15 and maintain upon the premises a fire extinguisher bearing an  
16 underwriters laboratories [~~inc.~~] incorporated rated capacity of  
17 at least [~~5-lb.~~] five-pound ABC per five hundred square feet of  
18 space used for fireworks sales or storage.

19 F. A sales clerk who is at least sixteen years of  
20 age shall be on duty to serve consumers at the time of purchase  
21 or delivery. [~~All fireworks sold and shipped to consumers~~  
22 ~~within New Mexico shall be sold and shipped only by an~~  
23 ~~individual firm, partnership or corporation holding the proper~~  
24 ~~New Mexico fireworks license or permit.~~] Permissible fireworks  
25 may be offered for sale only at state-permitted or state-

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1 licensed retail locations.

2 G. No fireworks shall be discharged within one  
3 hundred fifty feet of any fireworks retail sales location.

4 H. No fireworks shall be sold or used on state  
5 forest land.

6 [~~H.~~] I. No person shall ignite any fireworks within  
7 a motor vehicle or throw fireworks from a motor vehicle, nor  
8 shall any person place or throw any ignited article of fireworks  
9 into or at a motor vehicle or at or near any person or group of  
10 people.

11 [~~I.~~] J. Any fireworks devices that are readily  
12 accessible to handling by consumers or purchasers in a retail  
13 sales location shall have their exposed fuses protected in a  
14 manner to protect against accidental ignition of an item by a  
15 spark, cigarette ash or other ignition source. If the fuse is a  
16 thread-wrapped safety fuse which has been coated with a  
17 nonflammable coating, only the outside end of the safety fuse  
18 shall be covered. If the fuse is not a safety fuse, then the  
19 entire fuse shall be covered.

20 [~~J.~~] K. Permissible fireworks may be sold at retail  
21 between June 20 and July 6 of each year and [~~three~~] six days  
22 preceding and including new year's day and three days preceding  
23 and including Chinese new year and Cinco de Mayo of each year,  
24 except that permissible fireworks may be sold all year in  
25 permanent retail stores whose primary business is tourism.

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1                    L. All retail mail order sales of permissible  
2 fireworks are prohibited. "

3                    Section 7. Section 60-2C-9 NMSA 1978 (being Laws 1989,  
4 Chapter 346, Section 9, as amended) is amended to read:

5                    "60-2C-9. ~~[PUBLIC] DISPLAY [OF] FIREWORKS.~~ -- Nothing in the  
6 Fireworks Licensing and Safety Act shall prohibit the ~~[public]~~  
7 display of display fireworks, except that any individual,  
8 association, partnership, corporation, organization, county or  
9 municipality shall secure a written permit from the governing  
10 body of the county or municipality where the ~~[public]~~ display is  
11 to be fired and the display fireworks shall be purchased from a  
12 distributor or display distributor licensed by the state fire  
13 marshal and the bureau of alcohol, tobacco and firearms at the  
14 United States department of the treasury. "

15                    Section 8. A new section of the Fireworks Licensing and  
16 Safety Act is enacted to read:

17                    "[NEW MATERIAL] NOVELTIES NOT FIREWORKS. -- Novelties are  
18 not fireworks and are not subject to the provisions of the  
19 Fireworks Licensing and Safety Act. For the purposes of this  
20 section, "novelties" means devices containing small amounts of  
21 pyrotechnic or explosive composition that produce limited  
22 visible or audible effects, including party poppers, snappers,  
23 snakes, glowworms, sparklers or toy caps and devices intended to  
24 produce unique visual or audible effects that contain sixteen  
25 milligrams or less of explosive composition and limited amounts

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1 of other pyrotechnic composition, including cigarette loads,  
2 trick matches, explosive auto alarms and other trick  
3 noisemakers. "

4 Section 9. A new section of the Fireworks Licensing and  
5 Safety Act is enacted to read:

6 " [NEW MATERIAL] EXTREME DROUGHT CONDITIONS-- RESTRICTED SALE  
7 AND USE. --

8 A. The state fire board may hold a hearing to  
9 determine if fireworks restrictions should be imposed in all or  
10 a portion of the state affected by extreme drought conditions.  
11 The findings of the state fire board shall be based on current  
12 drought indices published by the national weather service.

13 B. The state fire board may issue a proclamation  
14 declaring an extreme drought condition in all or a portion of  
15 the state. The state fire board's proclamation:

16 (1) shall ban the sale and use of missile-type  
17 rockets, helicopters, aerial spinners, stick-type rockets and  
18 ground audible devices within the affected drought area;

19 (2) shall give local governments the power to:

20 (a) limit the use within their  
21 jurisdictions of any fireworks not listed in Paragraph (1) of  
22 this subsection to areas that are paved or barren or that have a  
23 readily accessible source of water for use by the homeowner or  
24 the general public; and

25 (b) ban or restrict the sale or use of

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1 display fireworks; and

2 (3) may ban or restrict the use of any type of  
3 fireworks on state lands within the affected drought area.

4 C. The state fire board's proclamation declaring an  
5 extreme drought condition shall be issued before:

6 (1) June 15 for the July 4 fireworks season; or

7 (2) five days prior to any other holiday

8 selling period.

9 D. Except as otherwise provided in this subsection,  
10 a proclamation shall be effective for thirty days, and the state  
11 fire board may issue succeeding proclamations if extreme drought  
12 conditions warrant. A proclamation may be modified or rescinded  
13 within its thirty-day period if weather conditions improve  
14 sufficiently to alleviate fire dangers. "

15 Section 10. EMERGENCY. --It is necessary for the public  
16 peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 195/a

3  
4  
5 February 7, 1997

6  
7 Mr. President:

8  
9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
10 referred

11  
12 SENATE BILL 195

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17 1. On page 14, line 23, after the first occurrence of "year"  
18 insert ", the sixteenth of September",

19  
20 and thence referred to the JUDICIARY COMMITTEE.

21  
22 Respectfully submitted,

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Page 19

Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Ingle, Smith

Absent: None

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

SENATE BILL 195, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Fred Luna, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HBIC/SB 195

Page 21

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Getty, Gubbels, Kissner, Olguin, J.G. Taylor

Absent: None

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