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SENATE BILL 373

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

INTRODUCED BY

CISCO MCSORLEY

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; MAKING IT A VIOLATION OF THE LIQUOR CONTROL ACT TO SELL ALCOHOLIC BEVERAGES AT A DRIVE-UP WINDOW; AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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

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1 that act;

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

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

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

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

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

23 ~~[C. In addition to other penalties provided in this~~  
24 ~~section, any retailer or dispenser who violates the provisions~~  
25 ~~of Section 60-7A-16 or 60-7B-1 NMSA 1978 by selling, serving or~~

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1 ~~delivering alcoholic beverages to an intoxicated person or a~~  
2 ~~minor through a drive-up window at a minimum shall have:~~

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

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

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

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

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

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1           [~~E-~~] D. Any charge filed against a licensee by the  
2 department and the resulting disposition of the charge shall be  
3 reported to the department of public safety and local law  
4 enforcement agencies whose jurisdictions include the licensed  
5 establishment. "

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

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

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

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

15                   (2) on other weekdays from after midnight of  
16 the previous day until 2:00 a.m., then from 7:00 a.m. until  
17 midnight, except as provided in Subsections D, E and [~~H~~] G of  
18 this section; and

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

24           B. Alcoholic beverages shall be sold by a dispenser  
25 or a retailer in unbroken packages, for consumption off the

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1 licensed premises and not for resale, on Mondays through  
2 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day  
3 except as provided in Subsections D, E and [H] G of this  
4 section.

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

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

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1           E. Retailers, dispensers, canopy licensees that were  
2 replaced by dispenser's licensees pursuant to Section 60-6B-16  
3 NMSA 1978, restaurant licensees, club licensees and governmental  
4 licensees or [~~its~~] their lessees shall not sell, serve, deliver  
5 or allow the consumption of alcoholic beverages on the licensed  
6 premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the  
7 day after Christmas, except as permitted pursuant to Subsection  
8 [~~H~~] G of this section.

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

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1 the ballot in that local option district until:

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

3 (2) a petition is filed with the local  
4 governing body bearing the signatures of registered qualified  
5 electors of the local option district equal in number to ten  
6 percent of the number of votes cast and counted in the local  
7 option district for governor in the last preceding general  
8 election in which a governor was elected. The signatures on the  
9 petition shall be verified by the clerk of the county in which  
10 the local option district is situated.

11 ~~[G. The local governing body of a local option~~  
12 ~~district in an eligible county shall:~~

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

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

20 (3) ~~ensure that the election is called,~~  
21 ~~conducted, counted and canvassed in the manner provided by law~~  
22 ~~for elections within the county.~~

23 As used in this subsection, "eligible county" means any  
24 county that, according to motor vehicle statistics reported to  
25 the state highway and transportation department during the years

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1 ~~1985 and 1986, convicted more than twenty-five persons for each~~  
2 ~~one thousand licensed drivers of driving while intoxicated~~  
3 ~~offenses.~~

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

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

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

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

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

20 [K.] J. If a petition requesting the governing body  
21 of a local option district to call an election on the question  
22 of 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

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

23 Section 3. Section 60-7A-22 NMSA 1978 (being Laws 1981,  
24 Chapter 39, Section 108, as amended) is amended to read:

25 "60-7A-22. DRINKING IN PUBLIC ESTABLISHMENTS--SELLING OR

