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SENATE BILL 1063

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

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO LIQUOR LICENSING; PROVIDING FOR LOCAL OPTION  
REFERENDUM ON DRIVE-UP WINDOWS; CREATING COMPENSATING LICENSES;  
AMENDING SECTIONS OF THE LIQUOR CONTROL ACT.

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

Section 1. [NEW MATERIAL] COMPENSATING LICENSES. --

A. The governing body of a local option district shall prohibit the sale or delivery of alcoholic beverages through a drive-up window of a licensee beginning January 1, 1998 if the majority of the registered qualified electors in the local option district voting pursuant to Subsection G of Section 60-7A-1 NMSA 1978 on the question, "Shall a retailer or dispenser be allowed to sell or deliver alcoholic beverages at any time from a drive-up window?" votes against allowing sales or deliveries of alcoholic beverages from a drive-up window.

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1           B. A licensee whose sales or deliveries of alcoholic  
2 beverages from his licensed premises are primarily conducted  
3 through his drive-up window may apply by July 1, 1997 to the  
4 director for a compensating license.

5           C. A compensating license:

6           (1) permits the licensee to sell alcoholic  
7 beverages in unbroken packages for consumption off premises  
8 except if issued to a hotel as provided in this section;

9           (2) may be reserved in the name of a licensee  
10 qualified to receive a compensating license for no longer than  
11 thirty-six months following the date that the licensee applies  
12 for the compensating license, but the compensating license shall  
13 be voided and shall not be issued to any person if no license  
14 application has been made identifying the proposed premises for  
15 which the compensating license will be used within that thirty-  
16 six month period;

17           (3) may be sold or transferred to a second  
18 owner or transferred to a new premises only one time after an  
19 application has been made to reserve the compensating license  
20 and may be located in any local option district in the state,  
21 notwithstanding the quota provisions of the Liquor Control Act;

22           (4) is subject to all administrative processes  
23 required by the Liquor Control Act to locate a new license in a  
24 local option district; and

25           (5) if issued or sold to a hotel, may be

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1 converted to a dispenser's license without the package sale  
2 privileges, but may not be transferred from the licensed  
3 premises for which the conversion was made.

4 D. The director shall not charge a license fee for a  
5 compensating license while it is held in reserve for a licensee.  
6 A license fee shall be due and payable by the new licensee when  
7 the license is sold or transferred to a new owner or when the  
8 licensee opens a licensed premises pursuant to the compensating  
9 license.

10 E. As used in this section:

11 (1) "compensating license" means a retailer's  
12 license that is reserved for or issued to a licensee by the  
13 department to compensate that licensee for the loss he may  
14 suffer when required by the governing body of a local option  
15 district pursuant to a referendum prohibiting the sale or  
16 delivery of alcoholic beverages from a drive-up window to close  
17 the licensee's drive-up window; and

18 (2) "primarily conducted" means that greater  
19 than fifty percent of the gross receipts generated by a licensee  
20 are generated through sales or deliveries of alcoholic beverages  
21 through the licensee's drive-up window.

22 Section 2. Section 60-6A-15 NMSA 1978 (being Laws 1981,  
23 Chapter 39, Section 32, as amended) is amended to read:

24 "60-6A-15. LICENSE FEES. -- Every application for the  
25 issuance or annual renewal of the following licenses shall be

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1 accompanied by a license fee in the following specified amounts:

2 A. manufacturer's license as a distiller, except a  
3 brandy manufacturer, three thousand dollars (\$3,000);

4 B. manufacturer's license as a brewer, three  
5 thousand dollars (\$3,000);

6 C. manufacturer's license as a rectifier, one  
7 thousand fifty dollars (\$1,050);

8 D. wholesaler's license to sell all alcoholic  
9 beverages for resale only, two thousand five hundred dollars  
10 (\$2,500);

11 E. wholesaler's license to sell spirituous liquors  
12 and wine for resale only, one thousand seven hundred fifty  
13 dollars (\$1,750);

14 F. wholesaler's license to sell spirituous liquors  
15 for resale only, one thousand five hundred dollars (\$1,500);

16 G. wholesaler's license to sell beer and wine for  
17 resale only, one thousand five hundred dollars (\$1,500);

18 H. wholesaler's license to sell beer for resale  
19 only, one thousand dollars (\$1,000);

20 I. wholesaler's license to sell wine for resale  
21 only, seven hundred fifty dollars (\$750);

22 J. retailer's license, one thousand two hundred  
23 fifty dollars (\$1,250);

24 K. dispenser's license, one thousand two hundred  
25 fifty dollars (\$1,250);

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1 L. canopy license, one thousand two hundred fifty  
2 dollars (\$1,250);

3 M. restaurant license, one thousand dollars  
4 (\$1,000);

5 N. club license, one thousand two hundred fifty  
6 dollars (\$1,250);

7 O. wine bottler's license to sell to wholesalers  
8 only, five hundred dollars (\$500);

9 P. public service license, one thousand two hundred  
10 fifty dollars (\$1,250);

11 Q. nonresident licenses, for a total billing to New  
12 Mexico wholesalers in excess of:

13	\$3,000,000 annually . . . . .	\$3,500;
14	1,000,000 annually . . . . .	1,750;
15	500,000 annually . . . . .	1,250;
16	200,000 annually . . . . .	900;
17	100,000 annually . . . . .	600; and
18	50,000 or less annually . . . . .	300;

19 R. wine wholesaler's license, for persons with sales  
20 of five thousand gallons of wine per year or less, twenty-five  
21 dollars (\$25.00), and for persons with sales in excess of five  
22 thousand gallons of wine per year, one hundred dollars (\$100);

23 [and]

24 S. beer bottler's license, two hundred dollars  
25 (\$200); and

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1                    T. compensating license, one thousand two hundred  
2                    fifty dollars (\$1,250).

3                    Section 3. Section 60-7A-1 NMSA 1978 (being Laws 1981,  
4 Chapter 39, Section 47, as amended) is amended to read:

5                    "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--DRIVE-  
6                    UP WINDOW SALES--CHRISTMAS DAY SALES--SUNDAY SALES FOR  
7 CONSUMPTION OFF THE LICENSED PREMISES--ELECTIONS.--

8                    A. Alcoholic beverages shall be sold, served and  
9 consumed on licensed premises only during the following hours  
10 and days:

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

12                    (2) on other weekdays from after midnight of  
13 the previous day until 2:00 a.m., then from 7:00 a.m. until  
14 midnight, except as provided in Subsections D, E and H of this  
15 section; and

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

21                    B. Alcoholic beverages shall be sold by a dispenser  
22 or a retailer in unbroken packages, for consumption off the  
23 licensed premises and not for resale, on Mondays through  
24 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day,  
25 except as provided in Subsections D, E and H of this section.

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

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

22           E. Retailers, dispensers, canopy licensees that were  
23 replaced by dispenser's licensees pursuant to Section 60-6B-16  
24 NMSA 1978, restaurant licensees, club licensees and governmental  
25 licensees or its lessees shall not sell, serve, deliver or allow

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1 the consumption of alcoholic beverages on the licensed premises  
2 from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after  
3 Christmas, except as permitted pursuant to Subsection H of this  
4 section.

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

- 23 (1) at least one year has passed; and  
24 (2) a petition is filed with the local  
25 governing body bearing the signatures of registered qualified

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1 electors of the local option district equal in number to ten  
2 percent of the number of votes cast and counted in the local  
3 option district for governor in the last preceding general  
4 election in which a governor was elected. The signatures on the  
5 petition shall be verified by the clerk of the county in which  
6 the local option district is situated.

7 G. The local governing body of a local option  
8 district [~~in an eligible county~~] shall:

9 (1) adopt a resolution within [~~sixty~~] ninety  
10 days of [~~April 7, 1989~~] following July 1, 1997 calling for an  
11 election to place on the ballot the question "Shall a retailer  
12 or dispenser be allowed to sell or deliver alcoholic beverages  
13 at any time from a drive-up window?";

14 (2) arrange for the election to be held [~~within~~  
15 ~~sixty days after the date the resolution is adopted~~] in  
16 conjunction with the next regular election of the governing body  
17 or the next statewide general election following adoption of the  
18 resolution; and

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

22 [~~As used in this subsection, "eligible county" means any~~  
23 ~~county that, according to motor vehicle statistics reported to~~  
24 ~~the state highway and transportation department during the years~~  
25 ~~1985 and 1986, convicted more than twenty five persons for each~~

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1 ~~one thousand licensed drivers of driving while intoxicated~~  
2 ~~offenses.]~~

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

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

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

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

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

19 K. If a petition requesting the governing body of a  
20 local option district to call an election on the question of  
21 continuing to allow sales of alcoholic beverages in unbroken  
22 packages for consumption off the licensed premises on Sundays is  
23 filed with the clerk of the governing body and that petition is  
24 signed by at least ten percent of the number of registered  
25 voters of the local option district and the clerk of the

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

22 Section 4. EFFECTIVE DATE. --The effective date of the  
23 provisions of this act is July 1, 1997.

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
4

5 March 16, 1997  
6

7 Mr. President:  
8

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

11 SENATE BILL 1063  
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13 has had it under consideration and reports same WITHOUT  
14 RECOMMENDATION.  
15

16 Respectfully submitted,  
17

18 \_\_\_\_\_  
19 Shannon Robinson, Chairman  
20  
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25 Adopted \_\_\_\_\_

(Chief Clerk)

Not Adopted \_\_\_\_\_

(Chief Clerk)

Date \_\_\_\_\_

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The roll call vote was 4 For 1 Against

Yes: 4

No: Feldman

Excused: Adair, Boitano, Garcia, Vernon

Absent: None

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