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HOUSE BILL 456

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

G. X. McSHERRY

AN ACT

RELATING TO WINEGROWERS; CONSOLIDATING LICENSES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE LIQUOR CONTROL ACT.

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

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

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

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin
and aromatic bitters bearing the federal internal revenue
strip stamps or any similar alcoholic beverage, including
blended or fermented beverages, dilutions or mixtures of one
or more of the foregoing containing more than one-half of one
percent alcohol, but excluding medicinal bitters;

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1 B. "beer" means any alcoholic beverage obtained by
2 the fermentation of any infusion or decoction of barley, malt
3 and hops or other cereals in water, and includes porter, beer,
4 ale and stout;

5 C. "brewer" means any person who owns or operates
6 a business for the manufacture of beer;

7 D. "club" means:

8 (1) any nonprofit group, including an
9 auxiliary or subsidiary group, organized and operated under
10 the laws of this state with a membership of not less than
11 fifty members who pay membership dues at the rate of not less
12 than five dollars (\$5.00) per year and who, under the
13 constitution and bylaws of the club, have all voting rights
14 and full membership privileges and which group is the owner,
15 lessee or occupant of premises used exclusively for club
16 purposes and which group the director finds:

17 (a) is operated solely for recreation,
18 social, patriotic, political, benevolent or athletic purposes;
19 and

20 (b) the proposed licensee has been
21 granted an exemption by the United States from the payment of
22 the federal income tax as a club under the provisions of
23 Section 501(a) of the Internal Revenue Code of [1954] 1986, as
24 amended or, if the applicant has not operated as a club for a
25 sufficient time to be eligible for the income tax exemption,

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1 it must execute and file with the director a sworn letter of
2 intent declaring that it will, in good faith, apply for such
3 exemption as soon as it is eligible; or

4 (2) an airline passenger membership club
5 operated by an air common carrier which maintains or operates
6 a clubroom at an international airport terminal. For the
7 purposes of this paragraph, "air common carrier" means a
8 person engaged in regularly scheduled air transportation
9 between fixed termini under a certificate of public
10 convenience and necessity issued by the civil aeronautics
11 board;

12 E. "commission" means the secretary of public
13 safety when the term is used in reference to the enforcement
14 and investigatory provisions of the Liquor Control Act and
15 means the superintendent of regulation and licensing when the
16 term is used in reference to the licensing provisions of the
17 Liquor Control Act;

18 F. "department" means the special investigations
19 division of the department of public safety [~~department~~] when
20 the term is used in reference to the enforcement and
21 investigatory provisions of the Liquor Control Act and means
22 the superintendent of regulation and licensing when the term
23 is used in reference to the licensing provisions of the Liquor
24 Control Act;

25 G. "director" means the director of the special

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1 investigations division of the department of public safety
2 [~~department~~] when the term is used in reference to the
3 enforcement and investigatory provisions of the Liquor Control
4 Act and means the superintendent of regulation and licensing
5 when the term is used in reference to the licensing provisions
6 of the Liquor Control Act;

7 H. "dispenser" means any person licensed under the
8 provisions of the Liquor Control Act selling, offering for
9 sale or having in his possession with the intent to sell
10 alcoholic beverages both by the drink for consumption on the
11 licensed premises and in unbroken packages for consumption and
12 not for resale off the licensed premises;

13 I. "distiller" means any person engaged in
14 manufacturing spirituous liquors;

15 J. "governing body" means the board of county
16 commissioners of a county or the city council or city
17 commissioners of a municipality;

18 K. "hotel" means any establishment or complex
19 having a resident of New Mexico as a proprietor or manager and
20 where, in consideration of payment, meals and lodging are
21 regularly furnished to the general public. The establishment
22 or complex must maintain for the use of its guests a minimum
23 of twenty-five sleeping rooms;

24 L. "licensed premises" means the contiguous areas
25 or areas connected by indoor passageways of a structure and

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1 the outside dining, recreation and lounge areas of the
2 structure which are under the direct control of the licensee
3 and from which the licensee is authorized to sell, serve or
4 allow the consumption of alcoholic beverages under the
5 provisions of its license; provided that in the case of a
6 restaurant, hotel or racetrack, "licensed premises" includes
7 all public and private rooms, facilities and areas in which
8 alcoholic beverages are sold or served in the customary
9 operating procedures of the restaurant, hotel or racetrack;

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

19 N. "manufacturer" means a distiller, rectifier,
20 brewer or winer;

21 O. "minor" means any person under twenty-one years
22 of age;

23 P. "package" means any immediate container of
24 alcoholic beverages which is filled or packed by a
25 manufacturer or wine bottler for sale by the manufacturer or

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1 wine bottler to wholesalers;

2 Q. "person" means an individual, corporation,
3 firm, partnership, copartnership, association or other legal
4 entity;

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

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

20 T. "retailer" means any person licensed under the
21 provisions of the Liquor Control Act selling, offering for
22 sale or having in his possession with the intent to sell any
23 alcoholic beverages in unbroken packages for consumption and
24 not for resale off the licensed premises;

25 U. "spirituous liquors" means alcoholic beverages

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1 as defined in Subsection A of this section except fermented
2 beverages such as wine, beer and ale;

3 V. "wholesaler" means any person whose place of
4 business is located in New Mexico and who sells, offers for
5 sale or possesses for the purpose of sale any alcoholic
6 beverages for resale by the purchaser;

7 W. "wine" includes the words "fruit juices" and
8 means alcoholic beverages obtained by the fermentation of the
9 natural sugar contained in fruit or other agricultural
10 products, with or without the addition of sugar or other
11 products, which do not contain less than one-half of one
12 percent nor more than twenty-one percent alcohol by volume;

13 X. "wine bottler" means any New Mexico wholesaler
14 who is licensed to sell wine at wholesale for resale only and
15 who buys wine in bulk and bottles it for wholesale resale;
16 [~~and~~]

17 Y. [~~"winer"~~] "winegrower" means any person who
18 owns or operates a business for the manufacture of wine; and

19 Z. "winer" means a winegrower. "

20 Section 2. Section 60-6A-11 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 28, as amended) is amended to read:

22 "60-6A-11. WINEGROWER'S LICENSE. --

23 A. Exempt from the procurement of any other
24 license [~~under~~] pursuant to the terms of the Liquor Control
25 Act, but not from the procurement of a winegrower's license,

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1 is any person in this state who produces wine. Except during
2 periods of shortage or reduced availability, at least fifty
3 percent of a winegrower's overall annual production of wine
4 shall be produced from grapes or other agricultural products
5 grown in this state pursuant to regulations adopted by the
6 director.

7 B. ~~[Any]~~ A person issued a winegrower's license
8 pursuant to ~~[Subsection A of]~~ this section may do any of the
9 following:

10 (1) manufacture or produce wine, including
11 blending, mixing, flavoring, coloring, bottling and labeling,
12 whether the wine is manufactured or produced by or for the
13 winegrower;

14 (2) store, transport, import or export wines;

15 (3) sell wines to a holder of a New Mexico
16 winegrower's, ~~[winer's]~~ wine wholesaler's, wholesaler's or
17 wine exporter's license or to a winegrower's agent;

18 (4) deal in warehouse receipts for wine;

19 ~~[(4)]~~ (5) sell wines in other states or
20 foreign jurisdictions to the holders of any license issued
21 under the authority of that state or foreign jurisdiction
22 authorizing ~~[such a]~~ the purchase of wine;

23 ~~[(5)]~~ (6) buy wine or distilled wine products
24 from other persons, including licensees and permittees under
25 the Liquor Control Act, for use in blending, mixing or

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1 bottling of wines;

2 [~~(6)~~] (7) conduct wine tastings and sell, by
3 the glass or by the bottle or sell in unbroken packages for
4 consumption off the premises but not for resale wine of his
5 own production on the winemaker's premises; [~~and~~

6 ~~(7)~~] (8) at no more than [~~two~~] three
7 off-premises locations, conduct wine tastings and sell in
8 unbroken packages for consumption off premises, but not for
9 resale, wine of his own production after the director has
10 determined that the off-premises locations meet the
11 requirements of the Liquor Control Act and the department
12 regulations for new liquor license locations;

13 (9) be deemed a manufacturer for purposes of
14 the Gross Receipts and Compensating Tax Act;

15 (10) at public celebrations on or off the
16 winemaker's premises, after the winemaker has paid the
17 applicable fees and been issued the appropriate permit, to
18 conduct wine tastings, sell by the glass or the bottle or sell
19 in unbroken packages, for consumption off premises but not for
20 resale, wine produced by or for the winemaker; and

21 (11) apply to the department for a permit to
22 join with other licensed winemakers to sell wine produced by
23 or for winemakers at a common facility at which there may be
24 products of two or more licensed winemakers offered for
25 tasting and sale by the glass or bottle or for sale in

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1 unbroken packages for consumption off premises but not for
2 resale.

3 C. Except as limited by Subsection D of Section
4 60-7A-1 NMSA 1978, sales of wine as provided for in
5 [~~Paragraphs (6) and (7) of Subsection B of~~] this section shall
6 be permitted between the hours of 7:00 a.m. and midnight
7 Monday through Saturday, and the holder of a winegrower's
8 license or public celebration permit may conduct wine tastings
9 and sell, by the glass or bottle or in unbroken packages for
10 consumption off premises but not for resale, wine of his own
11 production on the winegrower's premises between the hours of
12 12:00 noon and midnight on Sunday.

13 D. At public celebrations off the winegrower's
14 premises in any local option district permitting the sale of
15 alcoholic beverages, the holder of a winegrower's license
16 [~~upon the payment of~~] shall pay ten dollars (\$10.00) to the
17 department for a "winegrower's public celebration permit" to
18 be issued under rules adopted by the director [~~may conduct~~
19 ~~tastings, sell in unbroken packages for consumption at other~~
20 ~~than the public celebration, but not for resale, and sell, for~~
21 ~~consumption at a public celebration, wine of his own~~
22 ~~production~~]. Upon request, the department may issue to a
23 holder of a winegrower's license a public celebration permit
24 for a location at the public celebration that is to be shared
25 with other permittees. As used in this subsection, "public

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1 celebration" includes any state or county fair, community
2 fiesta, cultural or artistic event or sporting competition of
3 a seasonal nature or activities held on an intermittent basis.

4 E. Every application for the issuance or annual
5 renewal of a winegrower's license shall be on a form
6 prescribed by the director and accompanied by a license fee to
7 be computed as follows on the basis of total annual wine
8 produced or blended:

9 (1) less than five thousand gallons per year,
10 twenty-five dollars (\$25.00) per year;

11 (2) between five thousand and one hundred
12 thousand gallons per year, one hundred dollars (\$100) per
13 year; and

14 (3) over one hundred thousand gallons per
15 year, two hundred fifty dollars (\$250) per year. "

16 Section 3. Section 60-6A-22 NMSA 1978 (being Laws 1983,
17 Chapter 280, Section 3, as amended) is amended to read:

18 "60-6A-22. DEFINITIONS.--As used in the Domestic Winery
19 and Small Brewery Act:

20 A. "brandy" means an alcoholic liquor distilled
21 from wine or from fermented fruit juice;

22 B. "beer" means any fermented beverage containing
23 more than one-half percent alcohol obtained by the
24 fermentation of any infusion or decoction of barley, malt and
25 hops or other cereal in water, and includes porter, beer, ale

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1 and stout;

2 C. "small brewer" means any person who owns or
3 operates a business for the manufacture of beer but does not
4 manufacture more than two hundred thousand barrels of beer per
5 year;

6 D. "public celebration" means any state fair,
7 county fair, community fiesta, cultural or artistic
8 performance;

9 E. "wine" means the product obtained from normal
10 alcoholic fermentation of the juice of sound ripe grapes or
11 other agricultural products containing natural or added sugar,
12 or any such alcoholic beverage to which is added grape brandy,
13 fruit brandy or spirits of wine which is distilled from the
14 particular agricultural products of which the wine is made,
15 and other rectified wine products by whatever name which do
16 not contain more than fifteen percent added flavoring,
17 coloring and blending material and which contain not more than
18 twenty-four percent of alcohol by volume, and includes
19 vermouth;

20 F. "wine blender" means a person authorized to
21 operate a bonded wine cellar pursuant to a permit issued for
22 that purpose under the internal revenue laws of the United
23 States but who does not have facilities or equipment for the
24 conversion of grapes, berries or other fruit into wine and
25 does not engage in the production of wine in commercial

Underscored material = new
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1 quantities; provided that any person who produces or blends
2 not to exceed three hundred gallons of wine per year shall
3 not, because of such production or blending, be considered a
4 wine blender; and

5 G. "winer" means [~~any person who has facilities~~
6 ~~and equipment for the conversion in New Mexico of grapes,~~
7 ~~berries or other fruit into wine and is engaged in the~~
8 ~~commercial production of wine; provided that any person who~~
9 ~~produces not to exceed two hundred gallons of wine per year~~
10 ~~for his own consumption shall not, because of such production,~~
11 ~~be considered a winer]~~ a person licensed as a winegrower."

12 Section 4. Section 60-6A-24 NMSA 1978 (being Laws 1983,
13 Chapter 280, Section 5, as amended) is amended to read:

14 "60-6A-24. WINE BLENDER'S LICENSE. --

15 A. In any local option district, a person
16 qualified under the provisions of the Liquor Control Act,
17 except as otherwise provided in the Domestic Winery and Small
18 Brewery Act, may apply for and be issued a wine blender's
19 license.

20 B. A wine blender's license authorizes the person
21 to whom it is issued to [~~exercise all the privileges of a~~
22 ~~winer's license except~~]:

23 (1) package, rectify, blend, mix, flavor,
24 color, label and export wine, whether manufactured or produced
25 by him or any other person;

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Underscored material = new
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1 (2) sell only wine packaged by or for him to
2 a person holding a New Mexico wine wholesaler's, wholesaler's,
3 winegrower's or wine exporter's license or to a winegrower's
4 agent;

5 (3) deal in warehouse receipts for wine; and

6 (4) be deemed a manufacturer for purposes of
7 the Gross Receipts and Compensating Tax Act.

8 C. A wine blender's license does not authorize the
9 person to whom it is issued:

10 (1) to crush, ferment and produce wine from
11 grapes, berries and other fruits;

12 (2) to obtain or be issued a winer's license,
13 a retailer's license or a dispenser's license;

14 (3) to buy, sell, receive or deliver wine
15 from persons other than authorized licensees; or

16 (4) to conduct wine [~~tasting~~] tastings or
17 sell for consumption off premises, at retail, or to sponsor
18 wine tastings, either on or off the wine blender's premises."

19 Section 5. Section 60-6A-27 NMSA 1978 (being Laws 1983,
20 Chapter 280, Section 8, as amended) is amended to read:

21 "60-6A-27. LICENSE FEES. --Every application for the
22 issuance or annual renewal of the following licenses and
23 permits shall be accompanied by a license fee or permit fee in
24 the following specified amounts:

25 A. brandy manufacturer's license, seven hundred

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1 fifty dollars (\$750);

2 B. small brewer's license, seven hundred fifty
3 dollars (\$750);

4 [~~C. winer's license, seven hundred fifty dollars~~
5 ~~(\$750);~~

6 ~~D.] C. wine blender's license, seven hundred fifty~~

7 dollars (\$750);

8 [~~E.] D. wine exporter's license, five hundred~~

9 dollars (\$500);

10 [~~F. winer's off-premises permit, two hundred~~
11 ~~dollars (\$200) for each off-premises location;~~

12 ~~G. winer's public celebrations permit, ten dollars~~
13 ~~(\$10.00) for each public celebration] and~~

14 [~~H.] E. small brewer's public celebrations permit,~~
15 ten dollars (\$10.00) for each public celebration. "

16 Section 6. Section 60-6A-29 NMSA 1978 (being Laws 1988,
17 Chapter 60, Section 1) is amended to read:

18 "60-6A-29. WINE WHOLESALER'S LICENSE. --

19 A. In any local option district, a winegrower [~~or~~
20 ~~winer~~] licensed under the Liquor Control Act may apply for and
21 be issued a license as a wine wholesaler of wines produced by
22 or for New Mexico winegrowers [~~or winers~~].

23 B. No wine wholesaler shall sell, offer for sale
24 or ship wine not received at and shipped from the premises
25 specified in the wine wholesaler's license.

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1 C. No wine wholesaler shall sell or offer for sale
2 wine to any person other than the holder of a New Mexico wine
3 wholesaler's, wholesaler's, retailer's, dispenser's, canopy,
4 restaurant or club license or a governmental licensee or its
5 lessee.

6 D. Nothing contained in this section shall prevent
7 the sale, transportation or shipment of wine by a wine
8 wholesaler to any person outside the state when shipped under
9 permit from the department. "

10 Section 7. A new section of the Liquor Control Act is
11 enacted to read:

12 "[NEW MATERIAL] INTERSTATE WINE TASTINGS--COMPETITIONS--
13 PERMITS. --

14 A. Exempt from the procurement of any other
15 license or permit issued pursuant to the terms of the Liquor
16 Control Act, but not exempt from the procurement of a
17 competition permit, is a winemaker or winery licensed outside
18 of New Mexico that desires to participate in a regional wine
19 tasting or competition within New Mexico. One permit shall be
20 issued by the director to an out-of-state winemaker or winery
21 for the duration of the wine tasting or competition.

22 B. A person issued a competition permit pursuant
23 to this section may do any of the following:

24 (1) bring no more than twenty-five cases of
25 wine into New Mexico after indicating on his permit

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1 application the number of cases to be brought into the state;

2 (2) participate in the regional competition
3 and any wine tastings associated with the competition for
4 which the competition permit is issued;

5 (3) participate in the regional wine tasting
6 for which the competition permit is issued; and

7 (4) at a wine tasting for which he is issued
8 the permit, conduct tasting of wine and sell by the glass or
9 bottle or in unbroken packages for consumption off the wine
10 tasting premises but not for resale, wine brought into the
11 state by him for the wine tasting or competition.

12 C. Every application for the issuance of a
13 competition permit shall be on a form prescribed by the
14 director and accompanied by a permit fee of twenty-five
15 dollars (\$25.00).

16 D. As used in this section:

17 (1) "competition" means an event at which a
18 jury of wine tasters compares the quality of the wines entered
19 for judging and at which prizes are offered for the wines
20 judged to be of the best quality;

21 (2) "regional competition" means a
22 competition at which the wines to be judged are from more than
23 one state or country;

24 (3) "regional wine tasting" means a wine
25 tasting at which the wines offered for tasting are from more

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1 than one state or country;

2 (4) "winemaker" means a person who
3 manufactures or produces wine;

4 (5) "winery" means an establishment at which
5 wine is manufactured or produced and that is licensed for that
6 purpose by the state or country in which it is located; and

7 (6) "wine tasting" means an event at which
8 wines are offered for tasting but not necessarily for sale and
9 not for comparison for the purpose of awarding prizes to the
10 wines of the best quality. "

11 Section 8. REPEAL. -- Section 60-6A-23 NMSA 1978 (being
12 Laws 1983, Chapter 280, Section 4, as amended) is repealed.

13 Section 9. EFFECTIVE DATE. -- The effective date of the
14 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 7, 1998
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8 Mr. Speaker:
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10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
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13 HOUSE BILL 456
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Fred Luna, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HBI/HB 456

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

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10 The roll call vote was 8 For 0 Against

11 Yes: 8

12 Excused: Hobbs, Lutz, Varela

13 Absent: Getty, J. G. Taylor

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HBI/ HB 456

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 16, 1998

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Mr. President:

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Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

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HOUSE BILL 456

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

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Respectfully submitted,

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Shannon Robinson, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 5 For 0 Against

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Yes: 5

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No: 0

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Excused: Boitano, Ingle, Smith, Vernon

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Absent: None

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