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HOUSE BILL 290

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO ALCOHOLIC BEVERAGE REGULATION; PROVIDING FOR
EXCUSAL OR RECUSAL OF HEARING OFFICERS; DECLARING AN
EMERGENCY.

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

Section 1. A new section of the Liquor Control Act is
enacted to read:

" [NEW MATERIAL] ADMINISTRATIVE HEARINGS--EXCUSAL OR
RECUSAL OF DIRECTOR OR HEARING OFFICER. --

A. A party to an administrative hearing may file a
notice of excusal with the department. Upon receipt by the
department of a notice of excusal the jurisdiction of the
hearing officer or the director, in his capacity as a hearing
officer, terminates immediately. No party may excuse more
than one hearing officer. The notice of excusal shall be

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1 filed after notice is received by the party of a hearing but
2 at least three days prior to the date on which the hearing is
3 scheduled. A notice of excusal may be filed at the time of a
4 preliminary hearing.

5 B. The director or a hearing officer shall recuse
6 himself in an administrative hearing in which he is unable to
7 make a fair and impartial decision or in which there is a
8 reasonable doubt about whether he can make a fair and
9 impartial decision, including:

10 (1) when the director or hearing officer has
11 a personal bias or prejudice concerning a party or its
12 representative or has prejudged a disputed evidentiary fact
13 involved in a proceeding prior to hearing. For the purposes
14 of this section, "personal bias or prejudice" means a
15 predisposition toward a person based on a previous or ongoing
16 relationship, including a professional, personal, familial or
17 other intimate relationship, that may sway judgment and render
18 the hearing officer unable to exercise his functions
19 impartially;

20 (2) when he has a pecuniary interest in the
21 outcome of the proceeding other than as a customer of a party;
22 or

23 (3) when in previous employment he served as
24 an attorney, adviser, consultant or witness in the matter in
25 controversy.

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C. If the director or a hearing officer fails to
recuse himself and it appears that grounds exist, a party
shall promptly notify the director or hearing officer of the
apparent grounds for recusal. If the director or hearing
officer declines to recuse himself upon request of a party, he
shall provide full disclosure on the record of all facts in
support of his refusal to recuse himself. The party may
appeal the decision of the director or the hearing officer to
the attorney general who shall review the apparent grounds for
recusal and attendant evidence submitted by the party and the
facts in support of the director's or hearing officer's
refusal to recuse himself and render a decision in writing
regarding the recusal of the director or hearing officer. "

Section 2. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect
immediately.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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5
6 February 17, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 290

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

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17 1. On page 1, line 22, after "excusal" strike the
18 remainder of the line, strike line 23 in its entirety,
19 strike line 24 through "terminates" and insert in lieu
20 thereof ", neither the hearing officer assigned to the case
21 nor the director shall hear the case. An alternate hearing
22 officer shall be appointed".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJ/HB 290

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Godbey, Luna, Sanchez

Absent: None

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