



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 182, as amended

Introduced by

VETOED



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AN ACT

RELATING TO ALCOHOL; AMENDING A SECTION OF THE LIQUOR CONTROL ACT TO REDUCE THE PENALTY FOR SERVING ALCOHOLIC BEVERAGES TO MINORS; CHANGING THE KNOWLEDGE REQUIREMENT FOR PROVIDING ALCOHOL TO MINORS.

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

SECTION 1. Section 60-7B-1 NMSA 1978 (being Laws 1993, Chapter 68, Section 22, as amended) is amended to read:

"60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

A. It is a violation of the Liquor Control Act for a person, including a person licensed pursuant to the provisions of the Liquor Control Act, or an employee, agent or lessee of that person, if the person knows or has reason to know that the person is violating the provisions of this section, to:

(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises;

(2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

(3) deliver alcoholic beverages to a minor;

or

(4) aid or assist a minor to buy, procure or

1 be served with alcoholic beverages.

2 B. It is not a violation of the Liquor Control
3 Act, as provided in Subsection A or C of this section, when:

4 (1) a parent, legal guardian or adult spouse
5 of a minor serves alcoholic beverages to that minor on real
6 property, other than licensed premises, under the control of
7 the parent, legal guardian or adult spouse; or

8 (2) alcoholic beverages are used in the
9 practice of religious beliefs.

10 C. It is a violation of the Liquor Control Act for
11 a minor to buy, attempt to buy, receive, possess or permit the
12 minor's self to be served with alcoholic beverages.

13 D. When a person other than a minor procures
14 another person to sell, serve or deliver alcoholic beverages
15 to a minor by actual or constructive misrepresentation of
16 facts or concealment of facts calculated to cause the person
17 selling, serving or delivering the alcoholic beverages to the
18 minor to believe that the minor is legally entitled to be
19 sold, served or delivered alcoholic beverages, and actually
20 deceives that person by that misrepresentation or concealment,
21 then the procurer and not the person deceived shall have
22 violated the provisions of the Liquor Control Act.

23 E. As used in the Liquor Control Act, "minor"
24 means a person under twenty-one years of age.

25 F. In addition to the penalties provided in

1 Section 60-6C-1 NMSA 1978, a violation of the provisions of
2 Subsection A of this section is:

3 (1) a fourth degree felony for an offender,
4 other than a server, who shall be sentenced pursuant to
5 Section 31-18-15 NMSA 1978;

6 (2) a petty misdemeanor for a first
7 violation if the offender is a server, who shall be sentenced
8 pursuant to the provisions of Section 31-19-1 NMSA 1978;

9 (3) a misdemeanor for a second violation if
10 the offender is a server, who shall be sentenced pursuant to
11 the provisions of Section 31-19-1 NMSA 1978; and

12 (4) a fourth degree felony for a third or
13 subsequent violation if the offender is a server, who shall be
14 sentenced pursuant to the provisions of Section 31-18-15 NMSA
15 1978.

16 G. A violation of the provisions of Subsection C
17 of this section is a misdemeanor and the offender shall be
18 punished as follows:

19 (1) for a first violation, the offender
20 shall be:

21 (a) fined an amount not more than one
22 thousand dollars (\$1,000); and

23 (b) ordered by the sentencing court to
24 perform thirty hours of community service related to reducing
25 the incidence of driving while under the influence of

1 intoxicating liquor;

2 (2) for a second violation, the offender
3 shall:

4 (a) be fined an amount not more than
5 one thousand dollars (\$1,000);

6 (b) be ordered by the sentencing court
7 to perform forty hours of community service related to
8 reducing the incidence of driving while under the influence of
9 intoxicating liquor; and

10 (c) have the offender's driver's
11 license suspended for a period of ninety days. If the minor
12 is too young to possess a driver's license at the time of the
13 violation, then ninety days shall be added to the date the
14 offender would otherwise become eligible to obtain a driver's
15 license; and

16 (3) for a third or subsequent violation, the
17 offender shall:

18 (a) be fined an amount not more than
19 one thousand dollars (\$1,000);

20 (b) be ordered by the sentencing court
21 to perform sixty hours of community service related to
22 reducing the incidence of driving while under the influence of
23 intoxicating liquor; and

24 (c) have the offender's driver's
25 license suspended for a period of two years or until the

1 offender reaches twenty-one years of age, whichever period of
2 time is greater.

3 H. A violation of the provisions of Subsection D
4 of this section is a fourth degree felony and the offender
5 shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978."

HCPAC/HB 182
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MONTANA

S/ BEN LUJAN
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

S/ STEPHEN R. ARIAS
STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

S/ JOHN A. SANCHEZ
JOHN A. SANCHEZ, PRESIDENT
SENATE

S/ LENORE M. NARANJO
LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this _____ day of _____, 2011

SUSANA MARTINEZ, GOVERNOR
OF STATE OF NEW MEXICO

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State of New Mexico OFFICE OF
SECRETARY OF STATE

April 6, 2011

Susana Martinez
Governor

HOUSE EXECUTIVE MESSAGE NO. 19

The Honorable Ben Luján and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Speaker Luján and Members of the House:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR HOUSE BILL 182, as amended, enacted by the Fiftieth Legislature, First Session, 2011.

This bill amends New Mexico's Liquor Control Act as it relates to sales of alcoholic beverages to minors.

In 2004, the penalty for serving a minor alcohol was changed to a felony. While some argue that a felony conviction is excessive for these offenses, a review of the dispositions of these cases indicates that district attorneys and judges appropriately take into account the circumstances and routinely reduce these charges. Most troubling, this legislation does not simply reduce the penalty back to where it was in 2004; instead it makes the penalty more lenient than it was prior to 2004 by reducing the first offense to a petty misdemeanor.

I continue to believe that individuals who knowingly and intentionally provide alcohol to minors should face felony charges. I am open to considering legislation that draws a distinction in penalty between those who are merely negligent in serving minors and those who do so with full knowledge that the individual being served is a minor. However, this bill goes too far in reducing penalties for a serious offense.

Respectfully yours,

Susana Martinez
Governor

HOUSE EXECUTIVE MESSAGE NO. 19
The Honorable Ben Luján
April 6, 2011
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RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 11:23 (a.m.) p.m.
Date: 4/6 2011

By Larry Dominguez
for Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2011

By _____
Chief Clerk of the House