CHAPTER 60
Business Licenses

ARTICLE 1
Horse Racing

60-1-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-1 NMSA 1978, as enacted by Laws 1933, ch. 55, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-2 NMSA 1978, as enacted by Laws 1977, ch. 245, § 123, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-3 NMSA 1978, as enacted by Laws 1933, ch. 55, § 2, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-4 NMSA 1978, as enacted by Laws 1955, ch. 87, § 2, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-5 NMSA 1978, as enacted by Laws 1973, ch. 323, § 3, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-6 NMSA 1978, as enacted by Laws 1973, ch. 323, § 4, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-6.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-6.1 NMSA 1978, as enacted by Laws 1991, ch. 7, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-7 NMSA 1978, as enacted by Laws 1933, ch. 55, §3, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-8 NMSA 1978, as enacted by Laws 1933, ch. 55, § 4, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-9. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-9 NMSA 1978, as enacted by Laws 1933, ch. 55, § 5, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-10 NMSA 1978, as enacted by Laws 1933, ch. 55, § 6, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-11 NMSA 1978, as enacted by Laws 1933, ch. 55, § 7, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-12. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-12 NMSA 1978, as enacted by Laws 1973, ch. 323, § 7, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-13. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-13 NMSA 1978, as enacted by Laws 1975, ch. 189, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-14 NMSA 1978, as enacted by Laws 1933, ch. 55, § 8, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-15. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15 NMSA 1978, as enacted by Laws 1933, ch. 55, § 9, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-15.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 195, § 8 repealed 60-1-15.1 NMSA 1978, as enacted by Laws 1985, ch. 137, § 3, relating to determination of amount of compensation for municipal services, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMONESOURCE.COM*.

Compiler's notes. — This section was also amended by Laws 1991, ch. 146, § 1, approved April 3, 1991. This amendment was not given effect due to the repeal of this section by Laws 1991, ch. 115, § 8, approved April 4, 1991. *See* 12-1-8 NMSA 1978.

Laws 1992, ch. 110, § 2 enacted a section designated as 60-1-15.1 NMSA 1978, but, due to the prior existence of 60-1-15.1, that section was compiled as 60-1-15.2 NMSA 1978.

60-1-15.2. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15.2 NMSA 1978, as enacted by Laws 1992, ch. 110, § 2, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-15.3. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15.3 NMSA 1978, as enacted by Laws 1993, ch. 300, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-16 NMSA 1978, as enacted by Laws 1933, ch. 55, § 10, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-17. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-17 NMSA 1978, as enacted by Laws 1977, ch. 161, § 2, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-18. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-18 NMSA 1978, as enacted by Laws 1965, ch. 270, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-19. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-19 NMSA 1978, as enacted by Laws 1933, ch. 55, § 11, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-20. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-20 NMSA 1978, as enacted by Laws 1947, ch. 94, § 1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-21. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-21 NMSA 1978, as enacted by Laws 1947, ch. 94, § 2, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-22. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-22 NMSA 1978, as enacted by Laws 1975, ch. 190, §1, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-23. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-23 NMSA 1978, as enacted by Laws 1973, ch. 323, § 10, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-24. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-24 NMSA 1978, as enacted by Laws 1973, ch. 323, § 11, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-25. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-25 NMSA 1978, as enacted by Laws 1991, ch. 195, § 6, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-25.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-25.1 NMSA 1978, as enacted by Laws 1991, ch. 195, § 4, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-1-26. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-26 NMSA 1978, as enacted by Laws 1987, ch. 333, § 3, relating to the Horse Racing Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

ARTICLE 1A
Horse Racing Act

60-1A-1. Short title. (Repealed effective July 1, 2018.)

Chapter 60, Article 1A NMSA 1978 may be cited as the "Horse Racing Act".

History: Laws 2007, ch. 39, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2007, ch. 39, § 34, repealed the former Horse Racing Act, § 60-1-23 NMSA 1978, and enacted a new Horse Racing Act, effective July 1, 2007. For provisions of prior law, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-2. Definitions. (Repealed effective July 1, 2018.)

As used in the Horse Racing Act:

A. "board" means the gaming control board;

B. "breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten;

C. "commission" means the state racing commission;

D. "exotic wagering" means all wagering other than on win, place or show, through pari-mutuel wagering;

E. "export" means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location;

F. "guest state" means a jurisdiction, other than the jurisdiction in which a horse race is run, in which a horse racetrack, off-track wagering facility or other facility that is a member of and subject to an interstate common pool is located;

G. "guest track" means a horse racetrack, off-track wagering facility or other licensed facility in a location other than the state in which a horse race is run that is a member of and subject to an interstate common pool;

H. "handle" means the total of all pari-mutuel wagering sales, excluding refunds and cancellations;

I. "horse race" means a competition among racehorses on a predetermined course in which the horse completing the course in the least amount of time generally wins;

J. "host state" means the jurisdiction within which a sending track is located, also known as a "sending state";

K. "host track" means the horse racetrack from which a horse race subject to an interstate common pool is transmitted to members of that interstate common pool, also known as a "sending track";

L. "import" means to receive a live audiovisual broadcast of a horse race;

M. "interstate common pool" means a pari-mutuel pool that combines comparable pari-mutuel pools from one or more locations that accept wagers on a horse race run at a sending track for purposes of establishing payoff prices at the pool members' locations, including pools in which pool members from more than one state simultaneously combine pari-mutuel pools to form an interstate common pool;

N. "jockey club" means an organization that administers thoroughbred registration records and registers thoroughbreds;

O. "licensed premises" means land, together with all buildings, other improvements and personal property located on the land, that is under the direct control of a racetrack licensee, including the restricted areas, grandstand and public parking areas;

P. "licensee" means a person licensed by the commission and includes a holder of an occupational, secondary or racetrack license;

Q. "occupational license" means a license issued by the commission to a vendor or to a person having access to a restricted area on the licensed premises, including a horse owner, trainer, jockey, agent, apprentice, groom, exercise person, veterinarian, valet, farrier, starter, clocker, racing secretary, pari-mutuel clerk and other personnel designated by the commission whose work, in whole or in part, is conducted around racehorses or pari-mutuel betting windows;

R. "pari-mutuel wagering" means a system of wagering in which bets on a live or simulcast horse race are pooled and held by the racetrack licensee for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets; "pari-mutuel wagering" does not include bookmaking or pool selling;

S. "pari-mutuel wagering pool" means the money wagered on a specific horse race through pari-mutuel wagering;

T. "practical breeder" means a person who has practical experience in breeding horses, although the person may not be actively involved in breeding horses;

U. "primary residence" means the domicile where a person resides for most of the year, and, if the person is temporarily out of state, the address where a person will return when the person returns to New Mexico or the address that a person uses for purposes of a driver's license, passport or voting;

V. "quarter horse" means a racehorse that is registered with the American quarter horse association or any successor association;

W. "race meet" means a period of time within dates specified by the commission in which a racetrack licensee is authorized to conduct live racing on the racing grounds;

X. "racehorse" means a quarter horse or thoroughbred that is bred and trained to compete in horse races;

Y. "racetrack license" means a license to conduct horse races issued by the commission;

Z. "racetrack licensee" means a person who has been issued a racetrack license;

AA. "racing grounds" means the area of the restricted area of licensed premises used for the purpose of conducting horse races and all activities ancillary to the conduct of horse races, including the track, stable area, jockey's quarters and horse training areas;

BB. "retainage" means money that is retained from wagers on win, place and show and on exotic wagers by a racetrack licensee pursuant to the Horse Racing Act;

CC. "restricted areas" means the stable area, the area behind the pari-mutuel betting windows and anywhere on the racing grounds;

DD. "secondary licensee" means all officers, directors, shareholders, lenders or holders of evidence of indebtedness of a corporation or legal entity owning a horse racetrack, and all persons holding a direct or indirect interest of any nature whatsoever in the horse racetrack, including interests or positions that deal with the funds of the racetrack or that are administrative, policymaking or supervisory;

EE. "simulcast" means a transmission of a live audiovisual broadcast of a horse race being run at a horse racetrack other than the horse racetrack or other licensed facility at which the broadcast is being received for viewing pursuant to a simulcasting contract;

FF."stakes race" means a horse race in which nominations or entry or starting fees contribute to the purse; an overnight race is not a stakes race;

GG. "steward" means an employee of the commission who supervises horse races and oversees a race meet while in progress, including holding hearings regarding licensees and enforcing the rules of the commission and the horse racetrack;

HH. "takeout" means amounts authorized by statute to be deducted from the pari-mutuel wagers;

II. "thoroughbred" means a racehorse that is registered with the jockey club;

JJ. "track" means the surfaced oval area on which horse races are conducted; and

KK. "vendor" means a person who provides goods or services to or in the racing grounds or restricted area of the licensed premises of a horse racetrack.

History: Laws 2007, ch. 39, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. Grandi v. LeSage, 74 N.M. 799, 399 P.2d 285 (1965). (Decided under former law.)

60-1A-3. Commission created; appointment of members; terms of office. (Repealed effective July 1, 2018.)

A. The "state racing commission" is created and is administratively attached to the tourism department.

B. The commission shall consist of five members, no more than three of whom shall be members of the same political party. The commission members shall be appointed by the governor and be confirmed by the senate. All members of the commission shall hold at-large positions on the commission.

C. At least three of the members of the commission shall be practical breeders of racehorses within New Mexico.

D. A commission member shall have primary residence in New Mexico and shall be of high character and reputation so that public confidence in the administration of horse racing is maintained.

E. The term of each member of the commission shall be six years from the date of the member's appointment. The member shall serve until a successor is appointed. In the case of a vacancy in the membership of the commission, the governor shall fill the vacancy by appointment for the unexpired term.

F. A person shall not be eligible for appointment as a member of the commission who is an officer, official or director in a corporation conducting horse racing within the state.

G. Members of the commission shall receive no salary, but each member of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

H. The commission may appoint an executive director and establish the executive director's duties and compensation.

History: Laws 2007, ch. 39, § 3.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, *see* 60-1A-30 NMSA 1978.

60-1A-4. Commission; powers; duties. (Repealed effective July 1, 2018.)

A. The commission may:

(1) grant, deny, suspend or revoke occupational licenses, secondary licenses and racetrack licenses, establish the terms for each classification of a racetrack license and set fees for submitting an application for a license;

(2) exclude or compel the exclusion of a person from all horse racetracks who the commission deems detrimental to the best interests of horse racing or who willfully violates the Horse Racing Act, a rule or order of the commission or a law of the United States or New Mexico;

(3) compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a racetrack licensee;

(4) investigate the operations of a licensee and place a designated representative on the licensed premises of a racetrack licensee for the purpose of observing compliance with the Horse Racing Act and rules or orders of the commission;

(5) employ staff as required to administer the Horse Racing Act and employ staff with basic law enforcement training to be stationed at racetracks to maintain peace and order, enforce the law, conduct investigations and enforce the Horse Racing Act or rules or orders of the commission; provided that staff employed with law enforcement training may not carry firearms or other deadly weapons while on duty for the commission;

(6) summon witnesses;

(7) administer oaths for the effective discharge of the commission's authority; and

(8) appoint a hearing officer to conduct hearings required by the Horse Racing Act or a rule adopted pursuant to that act.

B. The commission shall:

(1) make rules to hold, conduct and operate all race meets and horse races held in the state and to identify and assign racing dates;

(2) require the following information for each applicant on an application for a license:

(a) the full name, address and contact information of the applicant, and if the applicant is a corporation, the name of the state of incorporation and the names, addresses and contact information of officers, members of the board of directors and managers of the corporation;

(b) the exact location at which the applicant desires to conduct a horse race or race meet;

(c) whether the horse racetrack is owned or leased, and, if leased, the name and residence of the fee owner of the land or, if the owner is a corporation, the names of the directors and stockholders;

(d) a statement of the assets and liabilities of the person or corporation making the application;

(e) the kind of racing to be conducted;

(f) the beginning and ending dates desired for the race meet and the days during that time period when horse races are to be scheduled; and

(g) other information determined by the commission to be necessary to assess the potential for success of the applicant;

(3) require a statement under oath by the applicant that the information on the application is true;

(4) supervise and oversee the making of pari-mutuel pools and the distribution from those pools;

(5) make on-site inspections of horse racetracks in New Mexico at reasonable intervals;

(6) approve all improvements proposed to be completed on the licensed premises of a horse racetrack, including extensions, additions or improvements of buildings, stables or tracks;

(7) monitor and oversee the pari-mutuel machines and equipment at all horse races or race meets held in the state;

(8) approve contracts for simulcasting, pari-mutuel wagering and capital improvements funded pursuant to Section 60-1A-20 NMSA 1978 entered into by horse racetracks;

(9) regulate the size of the purses to be offered at horse races run in the state;

(10) require background investigations of employees of a racetrack licensee as set forth in the rules of the commission; and

(11) provide an annual report to the governor regarding the commission's administration of horse racing in the state.

History: Laws 2007, ch. 39, § 4.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, *see* 60-1A-30 NMSA 1978.

For rule-making authority of racing commission, *see* 60-1A-4 NMSA 1978.

For Uniform Parentage Act, *see* 40-11-1 NMSA 1978 et seq.

Commission's determinations deemed final, not ministerial. — The legislature would not have taken such great pains to provide for the selection of qualified persons to constitute the commission's membership were the commission to perform solely ministerial acts. The legislature not only provided for the selection of persons eminent in their field and gave them authority to grant and/or refuse and revoke licenses, but further provided in Section 60-1-9 NMSA 1978 (now Section 60-1A-11 NMSA 1978) that the commission's determinations should be final and conclusive and not subject to any appeal. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958) (decided under former law).

Racing commission has broad and sweeping powers. — The legislature in its wisdom intended to confer broad discretionary powers of licensing upon the commission

as an expert body. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958) (decided under former law).

Commission deemed to have acted arbitrarily. — Having requested no financial information and the statutory provisions requiring none, the commission acted arbitrarily in making the finding that there was no sufficient showing that the enterprise would be a financial success, upon which it based the denial of petitioners' license. The petitioners should have been afforded the opportunity to submit financial or other necessary information so that the commission could properly exercise its discretion in granting or refusing a license. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958) (decided under former law).

Strict liability may be imposed by the state as a right to participate in horse races or to hold a license to do so. Sanderson v. N.M. State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969) (decided under former law).

Authority of commission to prevent drug use. — Since the risk is so great that a race might be conducted unfairly when a horse has drugs in its body, the commission in its discretion can provide that the urine or other sample be totally free of drugs under the authority of this section. Sanderson v. N.M. State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969) (decided under former law).

License deemed privilege and not vested property right subject to due process. — The state may prescribe strict liability under which it will grant a licensee to participate therein, the terms of compliance by rules and regulations promulgated by the commission and likewise the terms under which the license may be suspended or revoked. A license is a privilege and not a right within the meaning of the due process clause of the state and federal constitutions and in it licensees have no vested property rights. Sanderson v. N.M. State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969) (decided under former law).

State racing commission has no common-law or inherent powers and can act only as to those matters which are within the scope of its delegated authority. 1979 Op. Att'y Gen. No. 79-15 (rendered under former law).

Commission not authorized to issue free passes. — The commission might require that licensed tracks charge no admission fee, or that they charge no admission fee for certain groups or at certain times or that they offer some other kind of promotional program, but it cannot be fairly inferred that the commission itself is authorized to issue free passes. 1979 Op. Att'y Gen. No. 79-15 (rendered under former law).

Commission may allow race meet to occur at two different locations. — The commission is not prohibited from allowing a race meet to occur at two different locations, and may approve a licensee's application for a race meet that begins at one of the licensee's facilities and concludes at another of the licensee's facilities. 1987 Op. Att'y Gen. No. 87-78 (rendered under former law).

Commission may hire husband and wife to carry on the duties of the commission so long as no such employee is related to the commission within the degree of consanguinity prohibited by Section 10-1-10 NMSA 1978. 1951-52 Op. Att'y Gen. No. 51-5424 (rendered under former law).

Commission has no implied authority to acquire real estate and erect buildings for its own use, nor may it use surplus funds for maintenance of a state fair race track. 1953-54 Op. Att'y Gen. No. 54-5914 (rendered under former law).

Withholding taxes for "seasonal" employees. — The state racing commission is responsible for withholding tax and social security tax on fees paid to "seasonal" employees. 1957-58 Op. Att'y Gen. No. 57-230 (rendered under former law).

State racing commission has broad and sweeping powers to regulate horse racing and wagering thereon. 1963-64 Op. Att'y Gen. No. 63-115 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27A Am. Jur. 2d Entertainment and Sports Law § 10.

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 A.L.R.4th 1169.

30A C.J.S. Entertainment and Amusement § 26 et seq.

60-1A-5. Commission rules; all licenses; suspension, revocation or denial of licenses; penalties. (Repealed effective July 1, 2018.)

A. The commission shall adopt rules to implement the Horse Racing Act and to ensure that horse racing in New Mexico is conducted with fairness and that the participants and patrons are protected against illegal practices.

B. Every license issued by the commission shall require the licensee to comply with the rules adopted by the commission. A racetrack licensee shall post printed copies of the rules in conspicuous places on the racing grounds and shall maintain them during the period when live horse races are being conducted.

C. The commission may suspend, revoke or deny renewal of a license of a person who violates the provisions of the Horse Racing Act or rules adopted pursuant to that act. The commission shall provide a licensee facing suspension, revocation or denial of renewal of a license reasonable notice and an opportunity for a hearing. The suspension, revocation or denial of renewal of a license shall not relieve the licensee from prosecution for the violations or from the payment of fines and penalties assessed the licensee by the commission.

D. The commission may impose civil penalty fines upon a licensee for a violation of the provisions of the Horse Racing Act or rules adopted by the commission. The fines

shall not exceed one hundred thousand dollars ($100,000) or one hundred percent of a purse related to the violation, whichever is greater, for each violation.

E. Fines shall be paid into the current school fund.

F. When a penalty is imposed pursuant to this section for administering a performance-altering substance as provided in Subsection A of Section 60-1A-28 NMSA 1978, the commission shall direct its executive director to report the violation to the district attorney for the county in which the violation occurred and to the horse racing licensing authority in any other jurisdiction in which the licensee being penalized is also licensed.

History: Laws 2007, ch. 39, § 5; 2013, ch. 103, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, *see* 60-1A-30 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the civil penalties for violations of the act; provided for the report of violations to the district attorney; in Subsection A, after "against illegal practices", deleted "on the racing grounds"; in Subsection D, in the first sentence, after "impose civil", deleted "penalties" and added "penalty fines" and in the second sentence, after "shall not exceed", deleted "ten thousand dollars ($10,000)" and added "one hundred thousand dollars ($100,000) or one hundred percent of a purse related to the violation, whichever is greater"; in Subsection E, at the beginning of the sentence, added "Fines"; and added Subsection F.

Section legalizes pari-mutuel betting under fixed conditions and declares that it shall not be construed as gambling. Patton v. Fortuna Corp., 68 N.M. 40, 357 P.2d 1090 (1960) (decided under former law).

Unjust enrichment rule overridden by public policy against gambling. — The public policy of New Mexico is to restrain and discourage gambling and must override the rule which prevents unjust enrichment, particularly where there is a choice between that which is considered to be for the benefit of the public at large as distinguished from any benefit to an individual litigant. Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968). (decided under former law).

One not physically present at track not considered patron. — It was the intention of the legislature to exempt pari-mutuel betting from the general provisions of the gambling laws only when done by patrons who are physically present at the track and one who is not personally present at the track is not a patron thereof and does not come within the

pari-mutuel exemption. Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968) (decided under former law).

Authority to suspend trainer, regardless of guilty intent or knowledge. — State racing commission has authority under this section to make rules imposing strict accountability upon the trainer for the condition of a horse he enters in a race and requiring suspension if he enters a horse which is then shown by competent analysis to have any prohibited substances in its urine, saliva, blood or body, regardless of proof of guilty intent or knowledge on the part of the trainer. Jamison v. State Racing Comm'n, 84 N.M. 679, 507 P.2d 426 (1973) (decided under former law).

Authority to rule horse off track. — All who enter horses in state races are aware of the track rules and that they exist so as to allow a track veterinarian to rule a horse off the track without recourse on the part of the owner to secure the entry fee which he has paid. 1957-58 Op. Att'y Gen. No. 57-177 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gambling § 58.

Pari-mutuel and similar betting methods on race as game of change or gambling, 52 A.L.R. 74.

Constitutionality of statute which affirmatively permits pari-mutuel method of wagering at race tracks, 85 A.L.R. 622.

Statutes permitting specified forms of betting, construction and application of, 117 A.L.R. 828.

Winner's rights and remedies in respect of pari-mutuel and similar legalized betting systems, 165 A.L.R. 838.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

38 C.J.S. Gaming § 28.

60-1A-6. Classification of racetrack licenses. (Repealed effective July 1, 2018.)

A. A license to conduct a race meet in New Mexico shall be classified as either a class A or class B license, determined by the commission as follows:

(1) a class A racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount wagered through the pari-mutuel system of ten million dollars ($10,000,000) or more; and

(2) a class B racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount wagered through the pari-mutuel system of less than ten million dollars ($10,000,000).

B. A new racetrack license to conduct a race meet in New Mexico shall be given a classification by the commission based on an estimate of the anticipated gross amounts projected to be received by the new racetrack licensee from all pari-mutuel wagering in the racetrack licensee's first full calendar year of racing. After the racetrack licensee's first full calendar year of racing, the commission shall review the classification and change it if necessary.

C. Each class of license is subject to all provisions of the Horse Racing Act, except as otherwise provided in that act. The commission shall adopt and promulgate rules necessary to provide for license classification.

History: Laws 2007, ch. 39, § 6.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-7. All license applications; background investigations; rules. (Repealed effective July 1, 2018.)

A. A person applying for a license pursuant to the Horse Racing Act shall submit to a background investigation to be conducted by the board. The commission and the board shall adopt rules to coordinate the manner in which the background investigations are conducted. The rules shall at minimum require that:

(1) an applicant for a license or license renewal shall submit two fingerprint cards to the commission, with one card to be submitted to the board for a statewide check and the other card to be submitted to the federal bureau of investigation for a nationwide check;

(2) arrest record information from a law enforcement agency or the federal bureau of investigation and information obtained as a result of the background investigation conducted by the board is privileged and shall not be disclosed to persons not directly involved in the decision affecting the specific applicant;

(3) an applicant shall provide all of the information required by the commission; and

(4) the cost of the background investigation shall be paid by the applicant.

B. An applicant for a license who is denied the license by the commission shall have an opportunity to inspect and challenge the validity of the record on which the denial of the license was based.

History: Laws 2007, ch. 39, § 7.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-8. Racetrack licenses; applications; specific requirements. (Repealed effective July 1, 2018.)

A. It is a violation of the Horse Racing Act for a person to hold a public horse race or a race meet for profit or gain in any manner unless the person has been issued a racetrack license by the commission and has been authorized by the commission to hold the horse race or race meet on specific dates.

B. An application for a racetrack license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

C. A racetrack license shall be valid for a period not to exceed one year. The commission may renew a racetrack license upon expiration of the term of the license.

D. Renewal applications for racetrack licenses shall be filed no later than June 1 of each year. The race dates for the upcoming year shall be set by the commission after the commission receives all renewal applications.

E. An application shall specify the dates and days of the week of the race meet that the applicant is requesting the commission to approve.

F. An application shall be filed not less than sixty days prior to the first day the proposed horse race or race meet is to be held.

G. The fee for a new racetrack license issued pursuant to this section shall not exceed five thousand dollars ($5,000).

H. The commission may schedule a date for a hearing on the application for a new racetrack license to determine the eligibility of the applicant pursuant to the Horse Racing Act or as needed for determining the eligibility for the renewal of a racetrack license. The applicant shall be notified of the hearing at least five days prior to the date of the hearing. The applicant has the right to present testimony in support of the application. Notice shall be mailed to the address of the applicant appearing upon the application for the racetrack license. Notice of the hearing date, time and location shall

be postmarked by United States mail five days prior to the date of the hearing. Deposit of the hearing notice in United States mail constitutes notice.

I. If, after a hearing on the application, the commission finds the applicant ineligible pursuant to the provisions of the Horse Racing Act or rules adopted by the board, the racetrack license shall be denied.

J. If there is more than one application for a racetrack license pending at the same time, the commission shall determine the racing days that will be allotted to each successful applicant. Upon renewal, the commission shall determine the racing days that will be allotted to each applicant upon terms and conditions established by the commission.

K. A person shall not have a direct, indirect or beneficial interest of any nature, whether or not financial, administrative, policymaking or supervisory, in more than two horse racetracks in New Mexico. For purposes of this subsection, a person shall not be considered to have a direct, indirect or beneficial interest in a horse racetrack if the person owns or holds less than ten percent of the total authorized, issued and outstanding shares of a corporation that is licensed to conduct a race meet in New Mexico, unless the person has some other direct, indirect or beneficial interest of any nature, whether or not financial, administrative, policymaking or supervisory, in more than two licensed horse racetracks.

L. To determine interest held in a racetrack, to the extent that the interest is based on stock ownership:

(1) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries;

(2) an individual shall be considered as owning the stock, directly or indirectly, if it is held by an immediate family member. For purposes of this paragraph, an "immediate family member" includes only the individual's siblings, spouse or children; and

(3) stock constructively owned by a person by reason of the application of Paragraph (1) of this subsection shall be considered to be actually owned by the person; and stock shall be constructively owned by an individual by reason of the application of Paragraph (2) of this subsection if the purpose of the constructive ownership is to make a person other than the individual applicant appear as the owner of the stock.

M. A corporation holding a racetrack license shall not issue to a person shares of its stock amounting to ten percent or more of the total authorized, issued and outstanding shares, and a corporation holding a racetrack license shall not issue shares of its stock that would, when combined with that stock transferee's existing shares owned, total

more than ten percent of the total authorized, issued and outstanding shares of the corporation, unless:

(1) the corporation gives written notice to the commission at least sixty days before the contemplated stock transfer that the person to whom the stock is being transferred will become an owner of ten percent or more of the total authorized, issued and outstanding shares of the corporation; and

(2) the corporation receives written approval from the commission of the proposed transfer.

N. A determination made by the commission of a matter pursuant to this section shall be final and not subject to appeal.

History: Laws 2007, ch. 39, § 8.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For rule-making authority of racing commission, *see* 60-1A-4 NMSA 1978.

For Uniform Parentage Act, *see* 40-11-1 NMSA 1978 et seq.

Licensee contracts to be submitted to commission for approval. — This section does not require a licensee to obtain the approval of the racing commission before the licensee enters a contract. The statutory language refers to approval of contracts and thus presupposes an existing contract. Once the contract is entered, submission of the contract to the state racing commission for its approval is to be required, and if there is no submission for approval, the possible penalty is cancellation or revocation of the racing license. Sierra Blanca Sales Co. v. Newco Indus., Inc., 84 N.M. 524, 505 P.2d 867 (Ct. App.), cert. denied, 84 N.M. 512, 505 P.2d 855 (1972) (decided under former law).

60-1A-9. Secondary licenses; applications; specific requirements. (Repealed effective July 1, 2018.)

A. A person who is actively and directly engaged in the administration of a horse racetrack, whether in a financial, administrative, policymaking or supervisory capacity, shall hold a secondary license issued by the commission.

B. An application for a secondary license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

C. If an applicant for a racetrack license is a corporation, all officers, directors, lenders or holders of evidence of indebtedness of the corporation and all persons who participate in any manner in a financial, administrative, policymaking or supervisory capacity are required to hold a secondary license issued by the commission.

D. A person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation that is a racetrack licensee is required to hold a secondary license issued by the commission. If the commission finds that a person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation that is a racetrack licensee is unqualified to be issued a secondary license, the commission shall give notice of its finding to the corporation and to the person owning or holding the interest. The ineligible person shall without delay offer the shares to the corporation for purchase. If the corporation does not elect to purchase the shares, the person owning or holding the interest may offer the interest to other purchasers, subject to prior approval of the purchasers by the commission.

E. A secondary license shall be valid for a period not to exceed three years. The commission may renew a secondary license upon expiration of the term of the license.

F. The fee for a secondary license issued pursuant to this section shall not exceed five hundred dollars ($500).

History: Laws 2007, ch. 39, § 9.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-10. Occupational licenses; application; specific requirements. (Repealed effective July 1, 2018.)

A. A person required by the Horse Racing Act to have an occupational license shall apply for and may be issued an occupational license by the commission.

B. An application for an occupational license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent.

C. An occupational license shall be valid for a period not to exceed five years. The commission may renew an occupational license upon expiration of the term of the license.

D. The fee for an occupational license issued pursuant to this section shall not exceed one hundred dollars ($100).

History: Laws 2007, ch. 39, § 10.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Authority to suspend trainer, regardless of guilty intent or knowledge. — State racing commission had authority under this section to make rules imposing strict accountability upon trainer for the condition of a horse he enters in a race and requiring suspension if he enters a horse which is then shown by competent analysis to have any prohibited substances in its urine, saliva, blood or body, regardless of proof of guilty intent or knowledge on the part of the trainer. Jamison v. State Racing Comm'n, 84 N.M. 679, 507 P.2d 426 (1973) (decided under former law).

60-1A-11. Granting a license; standards. (Repealed effective July 1, 2018.)

A. A license shall not be issued or renewed unless the applicant has satisfied the commission that the applicant:

(1) is of good moral character, honesty and integrity;

(2) does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;

(3) does not have prior activities, criminal record, reputation, habits or associations that:

(a) pose a threat to the public interest;

(b) pose a threat to the effective regulation and control of horse racing; or

(c) create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing, the business of operating a horse racetrack licensed pursuant to the Horse Racing Act or the financial activities incidental to operating a horse racetrack;

(4) is qualified to be licensed consistent with the Horse Racing Act;

(5) has sufficient business probity, competence and experience in horse racing as determined by the commission;

(6) has proposed financing that is sufficient for the nature of the license and from a suitable source that meets the criteria set forth in this subsection; and

(7) is sufficiently capitalized pursuant to standards set by the commission to conduct the business covered by the license.

B. The commission shall establish by rule additional qualifications for a licensee as it deems in the public interest.

C. A person issued or applying for an occupational license who has positive test results for a controlled substance or who has been convicted of a violation of a federal or state controlled substance law shall be denied a license or shall be subject to revocation of an existing license unless sufficient evidence of rehabilitation is presented to the commission.

D. If the commission finds that an applicant for an occupational license or an occupational licensee has been convicted of any of the provisions of Subsection E of this section, the applicant shall be denied the occupational license or the occupational licensee shall have the occupational license revoked. An occupational license shall not be issued by the commission to an applicant or occupational licensee for a period of five years from the date of denial or revocation pursuant to this subsection.

E. An occupational license may be denied or revoked if the applicant or occupational licensee, for the purpose of stimulating or depressing a racehorse or affecting its speed or stamina during a race or workout, is found to have:

(1) administered, attempted to administer or conspired to administer to a racehorse, internally, externally or by injection, a drug, chemical, stimulant or depressant, or other performance-altering substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission, unless the applicant or occupational licensee has been specifically permitted to do so by the commission or a steward; or

(2) attempted to use, used or conspired with others to use an electrical or mechanical device, implement or instrument, except a commission-approved riding crop, unless the applicant or occupational licensee has been specifically permitted by the commission or a steward to use the device, implement or instrument.

F. The burden of proving the qualifications of an applicant or licensee to be issued or have a license renewed shall be on the applicant or licensee.

History: Laws 2007, ch. 39, § 11; 2013, ch. 103, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For duty of the gaming control board to conduct background investigations pursuant to the Horse Racing Act, *see* 60-2E-7 NMSA 1978.

The 2013 amendment, effective June 14, 2013, added the condition that the applicant does not have a license suspended in another jurisdiction; provided a nationally recognized classification of prohibited substances; added Paragraph (2) of Subsection A; in Subparagraph (c) of Paragraph (3) of Subsection A, after "operating a horse racetrack", added "licensed pursuant to the Horse Racing Act"; in Paragraph (1) of Subsection E, after "stimulant or depressant, or", deleted "foreign substance not naturally occurring in a racehorse" and added "performance-altering substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission"; in Paragraph (2) of Subsection E, after "implement or instrument, except", deleted "an ordinary whip" and added "a commission-approved riding crop"; and deleted former Subsection G, which provided that the commission's determination of a matter was final and not subject to appeal.

District judge has no jurisdiction to restrain state racing commission from enforcing the suspension of a jockey's license because of the failure of the jockey to first exhaust his administrative remedies. State Racing Comm'n v. McManus, 82 N.M. 108, 476 P.2d 767 (1970) (decided under former law).

Mandamus available remedy when commission exceeds authority. — While suspension of petitioner's license and forfeiture of the purse ordinarily are matters within the discretion of the commission and not reviewable on appeal, mandamus is available to a petitioner to make certain that the commission does not exceed its authority under this section. Sanderson v. N.M. State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969) (decided under former law).

60-1A-12. Stewards; powers; duties. (Repealed effective July 1, 2018.)

There shall be three stewards, licensed and employed by the commission, to supervise each horse race meet. One of the stewards shall be designated the presiding official steward of the race meet. Stewards, other than the presiding official steward, shall be employed subject to the approval of the racetrack licensee. All stewards shall be licensed or certified by a nationally recognized horse racing organization. Stewards shall exercise those powers and duties prescribed by commission rules. A decision or action of a steward may be reviewed or reconsidered by the commission.

History: Laws 2007, ch. 39, § 12.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-13. Official chemist; qualifications; duties. (Repealed effective July 1, 2018.)

The commission shall designate at least one official chemist. An official chemist shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the blood, urine and saliva of horses for drugs, chemicals, stimulants, depressants or other foreign substances not naturally occurring in a horse. The official chemist may be an employee of a private laboratory located in New Mexico or an employee of an agency of New Mexico. The official chemist shall exercise the duties prescribed by rules of the commission.

History: Laws 2007, ch. 39, § 13.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-14. Testing specimens. (Repealed effective July 1, 2018.)

A. The commission shall adopt rules applying to the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples identified by the commission to be taken from racehorses, following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

B. Each specimen taken from a racehorse shall be divided into two or more equal samples, and:

(1) one sample shall be tested by the commission or its designated laboratory in order to detect the presence of unauthorized drugs, chemicals, stimulants, depressants or other performance-altering substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission; and

(2) the second sample shall be forwarded by the commission to the scientific laboratory division of the department of health.

C. After a positive test result on the sample tested by the commission or its designated laboratory and upon a written request from the president, executive director or manager of the New Mexico horsemen's association on forms designated by the

commission, the scientific laboratory division shall transmit the corresponding second sample to the New Mexico horsemen's association.

D. The scientific laboratory division shall keep all samples in a controlled environment for a period of at least three months.

E. The commission shall contract with an independent laboratory to maintain a quality assurance program. The laboratory shall meet or exceed the current national laboratory standards for the testing of drugs or other foreign substances in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry.

History: Laws 2007, ch. 39, § 14; 2013, ch. 102, § 2; 2013, ch. 103, § 3; 2015, ch. 140, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Repeals. — Laws 2015, ch. 140, § 3 repealed Laws 2013, ch. 102, § 2, effective June 19, 2015.

The 2015 amendment, effective June 19, 2015, required the racing commission to adopt drug testing rules that meet or exceed standards in internationally recognized model rules; in Subsection A, after "handling", deleted "and" and added "of pre- and post-race, out-of-competition and necropsy", after "taken from racehorses", added the remainder of the sentence.

The 2013 amendment, effective June 14, 2013, provided a nationally recognized classification of prohibited substances; in Subsection A, after "handling and testing or", deleted "urine and other specimens" and added "blood serum plasma, urine or other appropriate test samples"; in Subsection B, in the introductory sentence, after "two or more", added "equal"; in Paragraph (1) of Subsection B, after "depressants or other", deleted "foreign substances not naturally occurring in a horse" and added the remainder of the sentence; in Subsection C, at the beginning of the sentence, after "After", deleted "an inclusive or" and added "a"; and in Subsection E, added the second sentence.

Retesting of specimens. — This section does not prohibit retesting of specimens after a clear official test has been had and the purse for the race released. Claridge v. N.M. State Racing Comm'n, 107 N.M. 632, 763 P.2d 66 (Ct. App. 1988) (decided under former law).

60-1A-14.1. Racehorse testing fund; created; purpose. (Repealed effective July 1, 2018.)

The "racehorse testing fund" is created in the state treasury. The purpose of the fund is to ensure the testing of racehorses at a laboratory that meets or exceeds the current national laboratory standards for the testing of drugs or other foreign substances not naturally occurring in a horse, as established by the association of racing commissioners international, incorporated. The fund consists of one-half of the daily capital outlay tax appropriated and transferred pursuant to Paragraph (4) of Subsection A of Section 60-1A-20 NMSA 1978 and appropriations, gifts, grants and donations made to the fund. Income from investment of the fund shall be credited to the fund. The commission shall administer the racehorse testing fund, and money in the fund is appropriated to the commission for the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples taken from racehorses pursuant to Section 60-1A-14 NMSA 1978, following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission. Any unexpended or unencumbered balance remaining in the racehorse testing fund at the end of a fiscal year in excess of six hundred thousand dollars ($600,000) shall revert to the general fund. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission.

History: Laws 2013, ch. 102, § 1; 2015, ch. 140, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided that money from the racehorse testing fund shall be administered by the racing commission for conducting drug testing of racehorses following guidelines that meet or exceed standards in internationally recognized model rules; after "appropriated to the commission for the handling", deleted "and" and added "of pre- and post-race, out-of-competition and necropsy", after "pursuant to Section 60-1A-14 NMSA 1978," added the remainder of the sentence.

60-1A-15. Pari-mutuel wagering authorized; gambling statutes do not apply. (Repealed effective July 1, 2018.)

A. A racetrack licensee may conduct pari-mutuel wagering on live horse races or on simulcasted horse races.

B. Pari-mutuel wagering may be conducted only on the licensed premises where a live horse race is conducted or where a simulcast horse race is televised or projected on the racing grounds of the licensed premises of a racetrack licensee.

C. The sale to patrons present on the licensed premises of a racetrack licensee of pari-mutuel tickets or certificates is not gambling as defined in Section 30-19-2 or 30-19-3 NMSA 1978.

D. Placing a wager while on the licensed premises of a racetrack licensee is not placing a bet pursuant to Section 30-19-1 NMSA 1978.

E. The licensed premises of a horse racetrack is not a gambling place as defined in Section 30-19-1 NMSA 1978.

History: Laws 2007, ch. 39, § 15.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Section legalizes pari-mutuel betting under fixed conditions and declares that it shall not be construed as gambling. Patton v. Fortuna Corp., 68 N.M. 40, 357 P.2d 1090 (1960) (decided under former law).

Unjust enrichment rule overridden by public policy against gambling. — The public policy of New Mexico is to restrain and discourage gambling and must override the rule which prevents unjust enrichment, particularly where there is a choice between that which is considered to be for the benefit of the public at large as distinguished from any benefit to an individual litigant. Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968) (decided under former law).

One not physically present at track not considered patron. — It was the intention of the legislature to exempt pari-mutuel betting from the general provisions of the gambling laws only when done by patrons who are physically present at the track and one who is not personally present at the track is not a patron thereof and does not come within the pari-mutuel exemption. Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968) (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gambling § 58.

Pari-mutuel and similar betting methods on race as game of change or gambling, 52 A.L.R. 74.

Constitutionality of statute which affirmatively permits pari-mutuel method of wagering at race tracks, 85 A.L.R. 622.

Statutes permitting specified forms of betting, construction and application of, 117 A.L.R. 828.

Winner's rights and remedies in respect of pari-mutuel and similar legalized betting systems, 165 A.L.R. 838.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

38 C.J.S. Gaming § 28.

60-1A-16. Simulcasting. (Repealed effective July 1, 2018.)

A. All simulcasting of horse races shall have prior approval of the commission, and the commission shall adopt rules concerning the simulcasting of horse races as provided in this section.

B. A racetrack licensee shall not be allowed to simulcast horse races unless that racetrack licensee offers at least seventeen days per year of pari-mutuel wagering on live horse races run on the premises of the racetrack licensee.

C. The commission may permit exporting of a horse race being run by a racetrack licensee to another racetrack licensee within New Mexico or exporting of a horse race from a racetrack licensee to another location holding a pari-mutuel or gaming license that allows simulcasting of a horse race from outside of the state or jurisdiction that licenses that out-of-state facility.

D. The commission may permit importing by a racetrack licensee of horse races that are being run at racetracks outside of the state licensed by a host state.

E. Pari-mutuel wagering on simulcast horse races shall be prohibited except on the licensed premises of a racetrack licensee during the licensee's race meet at the horse racetrack or when the racetrack licensee is importing a race meet from another New Mexico-licensed horse racetrack.

F. A New Mexico-licensed horse racetrack that is within a radius of eighty miles of any other New Mexico-licensed horse racetrack with a race meet in progress may only conduct pari-mutuel wagering on imported horse races if there is a written agreement between the two racetrack licensees allowing pari-mutuel wagering on imported horse races during the period of time that the live horse races are taking place.

History: Laws 2007, ch. 39, § 16.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-17. Interstate common pool wagering; authorized. (Repealed effective July 1, 2018.)

A. Subject to the federal Interstate Horseracing Act of 1978, the commission may permit a racetrack licensee to participate in interstate common pools. All provisions of the Horse Racing Act that govern pari-mutuel wagering apply to pari-mutuel wagering in interstate common pools except as otherwise provided in this section.

B. Daily pari-mutuel tax and daily capital outlay tax shall not be imposed upon amounts wagered in an interstate common pool other than upon amounts wagered within New Mexico.

C. Subject to prior approval of the commission, the following provisions apply when a racetrack licensee participates in interstate common pools on a horse race that originates outside of New Mexico:

(1) a racetrack licensee may combine its pari-mutuel pools at the host track and other locations. The types of wagering, takeout, distribution of winnings and rules of racing in effect for pari-mutuel pools at the host track shall govern wagers placed in New Mexico and merged into the interstate common pool. Breakage for interstate common pools shall be calculated in accordance with the rules governing the host track and shall be distributed in a manner agreed upon by the racetrack licensee in New Mexico and the host track;

(2) with the concurrence of the host track, an interstate common pool that excludes the host track may be formed with the racetrack licensee in New Mexico and other locations outside of the host state. When an interstate common pool is formed pursuant to this paragraph, the commission may approve types of wagering, takeout, distribution of winnings, rules of racing and calculation of breakage that are different from those that are in effect in New Mexico; provided that the rules are applied consistently to all persons in the interstate common pool;

(3) the racetrack licensee may deduct from retainage resulting from an interstate common pool a reasonable fee to be paid to the person conducting the horse race at the host track for the privilege of conducting pari-mutuel wagering on the race and participating in the interstate common pool and for payment of costs incurred to transmit the simulcast horse race; and

(4) provisions of New Mexico law or contracts governing the distribution of daily pari-mutuel tax and daily capital outlay tax and breeders' or other awards and purses from the takeout from wagers placed in New Mexico shall remain in effect for wagers placed in an interstate common pool; provided that if the commission approves an adjustment in the takeout rate, the distribution of the takeout within New Mexico shall be adjusted proportionately to reflect the adjustment in the takeout rate; and provided further that with the concurrence of the racetrack licensee and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution and subject to approval of the commission, the respective shares to breeders' or other awards or purses may be modified.

D. Subject to prior approval of the commission, the following provisions apply when a racetrack licensee in New Mexico participates in interstate common pools as a host track:

(1) a racetrack licensee may permit one or more of its horse races to be used for pari-mutuel wagering at, and may export a horse race to, one or more licensed sites outside of New Mexico. The racetrack licensee may also permit pari-mutuel pools in other locations to be combined with the racetrack licensee's comparable pari-mutuel wagering pools or with wagering pools established in other jurisdictions. The commission may modify its rules and adopt separate rules for the interstate common pools and their calculation of breakage; and

(2) except as otherwise provided in this section, New Mexico law or contracts governing the distribution of shares of the takeout for daily pari-mutuel tax or daily capital outlay tax and breeders' or other awards and purses shall remain in effect for amounts wagered within New Mexico in interstate common pools; provided that with the concurrence of the racetrack licensee of the host track and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution, and subject to approval of the commission, the respective shares to breeders' or other awards or purses may be modified.

E. When the laws and rules of the host state and guest states permit, an interstate common pool may be established on a regional or other basis between two or more guest states and not include a merger into the host state's pari-mutuel wagering pool, in which case, one of the guest state's tracks shall serve as if it were the host track for the purposes of calculating the pari-mutuel wagering pool. An interstate common pool may include members located outside of the United States. Except as otherwise set forth in commission rules, participation by a person in an interstate common pool with wagering facilities in one or more states or jurisdictions shall not cause the participating person to be deemed to be doing business in a jurisdiction other than the jurisdiction in which that person is physically located.

F. The commission may adopt rules necessary to implement this section.

History: Laws 2007, ch. 39, § 17.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For the federal Interstate Horseracing Act of 1978, *see* 15 U.S.C. 3001.

60-1A-18. Daily pari-mutuel tax; imposed; rate. (Repealed effective July 1, 2018.)

A. The "daily pari-mutuel tax" is imposed on a racetrack licensee that offers pari-mutuel wagering at the racetrack licensee's licensed premises and shall be remitted to the taxation and revenue department for deposit in the general fund.

B. The daily pari-mutuel tax imposed on class A racetrack licensees pursuant to this section shall be:

(1) for each racing day a class A racetrack licensee offers pari-mutuel wagering on live on-track horse races, six hundred fifty dollars ($650); provided, however, that a class A racetrack licensee shall deduct from the six hundred fifty dollars ($650) and remit to the municipality in which the racetrack licensee is located one hundred fifty dollars ($150) if the racetrack licensee is located in a municipality having a population according to the 2000 federal decennial census of:

(a) less than six thousand located in a county with a population of more than ten thousand but less than fifteen thousand; or

(b) more than eight thousand but less than ten thousand located in a county with a population of more than one hundred thousand but less than one hundred fifty thousand; and

(2) for each day a class A racetrack licensee offers no pari-mutuel wagering on live on-track horse races and offers solely pari-mutuel wagering on simulcast races pursuant to the Horse Racing Act, one-eighth percent of the racetrack licensee's gross daily handle, not to exceed three hundred dollars ($300) per racing day.

C. The daily pari-mutuel tax imposed on a class B racetrack licensee pursuant to this section shall be:

(1) for each racing day a class B racetrack licensee offers pari-mutuel wagering on live on-track horse races, one-eighth percent of the racetrack licensee's gross daily handle, not to exceed three hundred dollars ($300) per racing day; and

(2) for each day a class B racetrack licensee offers no pari-mutuel wagering on live on-track horse races and offers solely pari-mutuel wagering on simulcast races pursuant to the Horse Racing Act, one-eighth percent of the class B racetrack licensee's gross daily handle, not to exceed three hundred dollars ($300) per racing day.

History: Laws 2007, ch. 39, § 18.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For the general fund, *see* 6-4-2 NMSA 1978.

60-1A-19. Retainage; New Mexico horse breeders' association and New Mexico horsemen's association; breakage; distribution of retained amounts. (Repealed effective July 1, 2018.)

A. Each racetrack licensee shall notify the commission at least thirty days prior to each race meet of the amount of exotic wager retainage that the racetrack licensee will retain pursuant to Paragraph (1) or (2) of this subsection. There shall be an amount retained by the racetrack licensee equal to:

(1) for a class A racetrack licensee:

(a) nineteen percent of the gross amount wagered on win, place and show, of which: 1) eighteen and three-fourths percent shall be retained by the racetrack licensee; and 2) one-fourth percent shall be remitted to the taxation and revenue department for deposit in the general fund; and

(b) not less than twenty-one percent and not greater than twenty-five percent of the gross amount wagered in exotic wagers; and

(2) for a class B racetrack licensee:

(a) not less than eighteen and three-fourths percent and not greater than twenty-five percent of the gross amount wagered daily on win, place and show; and

(b) not less than twenty-one percent and not greater than thirty percent of the gross amount wagered in exotic wagers.

B. There shall be retained by a racetrack licensee for allocation to the New Mexico horse breeders' association amounts equal to:

(1) five-eighths percent of the gross amount wagered on win, place and show to be allocated weekly to the New Mexico horse breeders' association for further distribution pursuant to the provisions of Subsection D of Section 60-1A-24 NMSA 1978; and

(2) one and three-eighths percent of the gross amount wagered in exotic wagers to be allocated weekly to the New Mexico horse breeders' association for further distribution pursuant to the provisions of Subsection D of Section 60-1A-24 NMSA 1978.

C. The breakage from the gross amount wagered through pari-mutuel wagering shall be retained by the licensee and allocated as follows:

(1) fifty percent of the total breakage shall be retained by the racetrack licensee; and

(2) fifty percent of the total breakage shall be allocated by the racetrack licensee to enhance the race purses of established stakes races that include only New Mexico-bred horses that are registered with the New Mexico horse breeders' association. The New Mexico horse breeders' association shall distribute the percentage designated to purses pursuant to Subsection D of Section 60-1-24 [60-1A-24] NMSA 1978, subject to the approval of the commission.

D. All money resulting from the failure of patrons who purchased winning pari-mutuel tickets during a race meet to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the race meet or from all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to a refund but were not refunded by the end of the sixty-day period immediately following the race meet shall be apportioned as follows:

(1) thirty-three and thirty-three hundredths percent shall be retained by the racetrack licensee;

(2) thirty-three and thirty-four hundredths percent shall be distributed to the New Mexico horse breeders' association to enhance each racetrack licensee's established overnight purses for races that include only horses registered as New Mexico bred pursuant to Paragraph (3) of Subsection D of Section 60-1A-24 NMSA 1978, subject to the approval of the commission; and

(3) thirty-three and thirty-three hundredths percent shall be allocated to the New Mexico horsemen's association for purses.

E. One-half percent of the gross amount wagered on simulcast horse races broadcast to a horse racetrack in New Mexico shall be distributed by the racetrack licensee to the New Mexico horsemen's association for medical benefits for the members of the New Mexico horsemen's association. The commission shall by rule provide for the timing and manner of the distribution required pursuant to this subsection and shall audit or arrange for an independent audit of the distributions required.

F. Amounts to be deducted from the retainage by the racetrack licensee from any form of wager made on the licensed premises of the racetrack licensee are:

(1) the daily pari-mutuel tax imposed by Section 60-1A-18 NMSA 1978;

(2) money allocated in this section to the New Mexico horse breeders' association;

(3) money allocated by this section to the New Mexico horsemen's association;

(4) expenses incurred to engage in intrastate simulcasting pursuant to the Horse Racing Act; provided that the deduction for a racetrack licensee shall be a portion

of five percent of the gross amount wagered at all the sites receiving the same simulcast horse races and:

(a) the deduction for a racetrack licensee shall be an amount allocated to the racetrack licensee by agreement voluntarily reached between all the racetracks sending or receiving the same simulcast horse races; or

(b) the deduction for a racetrack licensee shall be an amount identified by the commission if all the racetracks sending or receiving the same simulcast horse races fail to reach a voluntary agreement on the level at which to set the rate of the deduction for expenses incurred for engaging in intrastate simulcasting; and

(5) fees incurred to receive interstate simulcasts pursuant to the Horse Racing Act.

G. A racetrack licensee shall allocate to the New Mexico horse breeders' association five percent of the daily retainage on interstate common pools received from a guest state by a racetrack licensee. Of the net retainage from all wagers, after deductions:

(1) fifty percent shall be allocated to purses; and

(2) fifty percent shall be retained by the racetrack licensee.

History: Laws 2007, ch. 39, § 19.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-20. Daily capital outlay tax; capital outlay offset; state fair commission distribution; daily license fees. (Repealed effective July 1, 2018.)

A. A "daily capital outlay tax" of two and three-sixteenths percent is imposed on the gross amount wagered each day at a racetrack where horse racing is conducted on the premises of a racetrack licensee and also on the gross amount wagered each day when a racetrack licensee is engaged in simulcasting pursuant to the Horse Racing Act. After deducting the amount of offset allowed pursuant to this section, any remaining daily capital outlay tax shall be paid by the commission to the taxation and revenue department from the retainage of a racetrack licensee from on-site wagers made on the licensed premises of the racetrack licensee for deposit in the general fund. Of the daily capital outlay tax imposed pursuant to this subsection:

(1) for a class A racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars ($250,000) of the daily

handle may be offset by the amount that the class A racetrack licensee expends for capital improvements or for long-term financing of capital improvements at the racetrack licensee's existing facility;

(2) for a class B racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars ($250,000) of the daily handle may be offset:

(a) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for capital improvements; and

(b) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for advertising, marketing and promoting horse racing in the state;

(3) through December 31, 2014, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the state fair commission for expenditure on capital improvements at the state fairgrounds and for expenditure on debt service on negotiable bonds issued for the state fairgrounds' capital improvements; and

(4) on and after January 1, 2015, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the racehorse testing fund.

B. An additional daily license fee of five hundred dollars ($500) shall be paid to the commission by the racetrack licensee for each day of live racing on the premises of the racetrack licensee.

C. Accurate records shall be kept by the racetrack licensee to show gross amounts wagered, retainage, breakage and amounts received from interstate common pools and distributions from gross amounts wagered, retainage, breakage and amounts received from interstate common pools, as well as other information the commission may require. Records shall be open to inspection and shall be audited by the commission, its authorized representatives or an independent auditor selected by the commission. The commission may prescribe the method in which records shall be maintained. A racetrack licensee shall keep records that are accurate, legible and easy to understand.

D. Notwithstanding any other provision of law, a political subdivision of the state shall not impose an occupational tax on a horse racetrack owned or operated by a racetrack licensee. A political subdivision of the state shall not impose an excise tax on a horse racetrack owned or operated by a racetrack licensee. Local option gross receipts taxes authorized by the state may be imposed to the extent authorized and imposed by a subdivision of the state on a horse racetrack owned or operated by a racetrack licensee.

History: Laws 2007, ch. 39, § 20; 2011, ch. 75, § 1; 2013, ch. 102, § 3.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

The 2013 amendment, effective June 14, 2013, dedicated a portion of the daily capital outlay tax to test racehorses; and in Paragraph (4) of Subsection A, after "appropriated and transferred to the", deleted "general" and added "racehorse testing".

The 2011 amendment, effective July 1, 2011, after December 31, 2014, transferred one-half of the daily capital outlay tax to the general fund.

60-1A-21. Inability to receive or administer distributions; New Mexico horse breeders' association; New Mexico horsemen's association; commission authority; New Mexico-bred horse registry. (Repealed effective July 1, 2018.)

A. In the event that money allocated to the New Mexico horse breeders' association pursuant to Section 60-1A-19 NMSA 1978 cannot be received or administered by the New Mexico horse breeders' association, the commission or another organization designated by the commission and under the absolute control of the commission shall receive and administer the money that is allocated to be distributed by the New Mexico horse breeders' association pursuant to Section 60-1A-24 NMSA 1978. If the commission or its designee organization is required to receive, administer and distribute money on behalf of the New Mexico horse breeders' association, the maximum percentage of retainage from Paragraph (3) of Subsection D of Section 60-1A-24 NMSA 1978 shall be distributed by the commission to the New Mexico horse breeders' association as a fee to certify the dam and stud of New Mexico-bred horses from the registry maintained by the New Mexico horse breeders' association.

B. In the event that money allocated to the New Mexico horsemen's association pursuant to the Horse Racing Act cannot be received or administered by the New Mexico horsemen's association, the commission or another organization designated by the commission and under the absolute control of the commission shall receive and administer the money that is allocated by Section 60-1A-19 NMSA 1978 to the New Mexico horsemen's association and distribute the money as required by Section 60-1A-19 NMSA 1978.

History: Laws 2007, ch. 39, § 21.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-22. Payment of taxes; payment of license fees. (Repealed effective July 1, 2018.)

A. Taxes imposed pursuant to the Horse Racing Act shall be remitted to the commission, and a notice of the remittance shall accompany the taxes paid by a racetrack licensee by the close of the business day on Thursday of every week. Failure to make weekly remittances by the racetrack licensee shall result in an assessment by the commission against the racetrack licensee in an amount equal to one percent of the amount that was due to be submitted.

B. Fees for licenses issued by the commission shall be paid to the commission. Daily license fees imposed by Section 60-1A-20 NMSA 1978 shall be submitted to the commission by the racetrack licensee by the close of the business day on Thursday of each week of on-track or simulcast racing.

C. Except for three thousand dollars ($3,000) to be retained by the commission in the horse racing suspense fund, daily license fees and taxes shall be submitted by the commission to the taxation and revenue department on a date to be set by the taxation and revenue department that is no later than the twenty-fifth day of the month following the month in which the fees and taxes are received from a racetrack licensee.

History: Laws 2007, ch. 39, § 22.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-23. Horse racing suspense account. (Repealed effective July 1, 2018.)

A. The "horse racing suspense account" is created in the state treasury to hold funds remitted to the commission for payment of all legal claims for refunds.

B. Money in the horse racing suspense account exceeding three thousand dollars ($3,000) shall be transferred to the taxation and revenue department for deposit in the general fund.

C. The money in the horse racing suspense account shall be used to pay claims for refunds that have been determined by the commission to be legally due to the remitter.

History: Laws 2007, ch. 39, § 23.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Cross references. — For the general fund, *see* 6-4-2 NMSA 1978.

60-1A-24. Breeders' awards. (Repealed effective July 1, 2018.)

A. The New Mexico horse breeders' association shall create a fund to pay horse breeders of New Mexico-bred horses merit and incentive awards.

B. A racetrack licensee shall pay into a fund created by the New Mexico horse breeders' association an amount equal to ten percent of the first money of a purse won, except for stakes-race purses, at a horse race in New Mexico by a horse registered with the New Mexico horse breeders' association as a New Mexico-bred horse. From stakes-race purses, a racetrack licensee shall pay into the fund created by the New Mexico horse breeders' association an amount equal to ten percent of the added money.

C. The money deposited with the New Mexico horse breeders' association by a racetrack licensee pursuant to Subsection B of this section shall be paid weekly to the owner of the dam of the horse at the time that the animal was foaled upon certification of the commission and the New Mexico horse breeders' association.

D. In addition to the money distributed pursuant to Subsection B of this section, the New Mexico horse breeders' association shall distribute the money allocated to the New Mexico horse breeders' association pursuant to Subsections B, C and D of Section 60-1A-19 NMSA 1978 in the following manner and pursuant to rules adopted by the commission:

(1) forty-five percent of the money to the owners at the time the winners were foaled of the dams of the first-place winners;

(2) seven percent of the money to the owners at the time the winners were foaled of the studs that sired the first-place winners;

(3) no more than eight percent of the money to be retained by the New Mexico horse breeders' association for the purpose of administering the distribution program set forth in this section; and

(4) the remaining money to be divided among the first-, second- and third-place finishers during each race meet, provided that the first-, second- and third-place finishers are registered as New Mexico-bred horses with the New Mexico horse breeders' association.

E. The New Mexico horse breeders' association shall file a fiduciary bond with the commission in a face amount equal to the total money distributed during the previous calendar year pursuant to Subsection C of this section. The bond shall be executed by a surety company authorized to do business in New Mexico; provided that the fiduciary bond shall be in an amount not less than two million dollars ($2,000,000).

History: Laws 2007, ch. 39, § 24.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-25. Violations of horse racing act; fourth degree felony. (Repealed effective July 1, 2018.)

A person who willfully violates, attempts to violate or conspires to violate a requirement of the Horse Racing Act or a prohibition specifically set forth in the Horse Racing Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 25.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-26. Illegal use of pari-mutuel wagering. (Repealed effective July 1, 2018.)

A. A person shall not use pari-mutuel wagering except as permitted by the commission pursuant to the Horse Racing Act or pursuant to other state law providing licensing of persons to use pari-mutuel wagering.

B. A person who, directly or indirectly, uses pari-mutuel wagering in a manner that is not authorized by the commission or other state law is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 26.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. Grandi v. LeSage, 74 N.M. 799, 399 P.2d 285 (1965) (decided under former law).

60-1A-27. Predetermining horse races; influencing or attempting to influence; fourth degree felony. (Repealed effective July 1, 2018.)

A. A person shall not influence or attempt to influence the outcome of a horse race by offering money, a thing of value, a future benefit, a favor, preferred treatment or a form of pressure or threat.

B. A person shall not enter into an agreement with an owner, jockey, groom or any other person associated with or having an interest in a racehorse to predetermine the outcome of a horse race.

C. A person who influences or attempts to influence the outcome of a horse race or a person who enters into an agreement to predetermine the outcome of a horse race is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 27.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. Grandi v. LeSage, 74 N.M. 799, 399 P.2d 285 (1965) (decided under former law).

60-1A-28. Affecting speed or stamina of a race horse; penalties. (Repealed effective July 1, 2018.)

A. A person administering, attempting to administer or conspiring with others to administer to a racehorse a drug, chemical, stimulant or depressant or other performance-altering substance defined as a class 1 or class 2 penalty class A drug by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission whether internally, externally or by injection for the purpose of stimulating or depressing the racehorse or affecting the speed or stamina of the racehorse during a horse race or workout is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. A person who uses, attempts to use or conspires with others to use during a horse race or workout an electrically or mechanically prohibited device, implement or instrument, other than a commission-approved riding crop, is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

C. A person who sponges the nostrils or trachea of a racehorse or who uses anything to injure a racehorse for the purpose of stimulating or depressing the racehorse or affecting the speed or stamina of the racehorse during a horse race or workout is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

D. It is prima facie evidence of intent to commit any of the crimes set forth:

(1) in Subsection A of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person a drug, chemical, stimulant or depressant or other performance-altering substance defined as a class 1 or class 2 penalty class A drug by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission, to stimulate or depress a racehorse or to affect the speed or stamina of a racehorse;

(2) in Subsection B of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person an electrically or mechanically prohibited device, implement or instrument, other than a commission-approved riding crop; and

(3) in Subsection C of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person paraphernalia or substances used to sponge the nostrils or trachea of a racehorse or that may be used to injure a racehorse for the purpose of stimulating or depressing the racehorse or affecting its speed or stamina during a horse race or workout.

History: Laws 2007, ch. 39, § 28; 2013, ch. 103, § 4.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

The 2013 amendment, effective June 14, 2013, provided a nationally recognized classification of prohibited substances; in Subsection A, added the language between "depressant or other" and "whether internally, externally or by injection"; in Subsection B, after "implement or instrument, other than", deleted "an ordinary whip" and added "a commission-approved riding crop"; in Paragraph (1) of Subsection D, after "depressant or other", deleted "foreign substance not naturally occurring in a racehorse" added between "depressant or other" and "to stimulate or depress a racehorse"; and in

Paragraph (2) of Subsection D, after "instrument, other than", deleted "an ordinary whip" and added "a commission-approved riding crop".

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. Grandi v. LeSage, 74 N.M. 799, 399 P.2d 285 (1965) (decided under former law).

60-1A-28.1. Racetrack licensees; power to eject or exclude. (Repealed effective July 1, 2018.)

A. A racetrack licensee may eject or exclude from the association grounds any person whose occupational license has been suspended or revoked by the commission for administering a performance-altering substance as provided in Subsection A of Section 60-1A-28 NMSA 1978.

B. Nothing in this section shall be construed to limit a racetrack licensee's power to eject or exclude a person from the association grounds for any other lawful reason.

C. For the purposes of this section, "association grounds" means all real property used during a race meeting by a person holding a license from the commission to conduct racing with pari-mutuel wagering, including the racetrack, grandstand, casino, concession stands, offices, barns, stable area, employee housing facilities and parking lots.

History: Laws 2014, ch. 6, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2014, ch. 6, § 2 contained an emergency clause and was approved March 3, 2014.

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

60-1A-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2018.)

The state racing commission is terminated on July 1, 2017 pursuant to the Sunset Act [12-9-11 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 60, Article 1A NMSA 1978 until July 1, 2018. Effective July 1, 2018, Chapter 60, Article 1A NMSA 1978 is repealed.

History: Laws 2007, ch. 39, § 29; 2011, ch. 114, § 2.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, extended the sunset date from July 1, 2012 to July 1, 2018.

60-1A-30. Temporary provisions [Terms continued]. (Repealed effective July 1, 2018.)

A. Members of the state racing commission who are on the commission on June 30, 2007 shall remain on the state racing commission and complete the terms to which they were appointed, or if the member's term expires on June 30, 2007, until a replacement is appointed.

B. All personnel, records, equipment, supplies and other property of the state racing commission on June 30, 2007 shall remain the personnel, records, equipment, supplies and property of the state racing commission created in this 2007 act.

C. Appropriations to and money held by or for the state racing commission that does not revert to the general fund or another fund on June 30, 2007 shall continue on July 1, 2007 to be held by or for the state racing commission created in this 2007 act.

History: Laws 2007, ch. 39, § 33.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-1A-29 NMSA 1978.

ARTICLE 2
Boxing and Wrestling Matches

(Repealed by Laws 1980, ch. 90, § 32.)

60-2-1 to 60-2-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1980, ch. 90, § 32, repealed 60-2-1 to 60-2-5 NMSA 1978, relating to boxing and wrestling matches, effective July 1, 1980. For present provisions relating to professional athletic competition, *see* Chapter 60, Article 2A NMSA 1978.

ARTICLE 2A
Athletic Competition

60-2A-1. Short title. (Repealed effective July 1, 2018.)

Chapter 60, Article 2A NMSA 1978 may be cited as the "Professional Athletic Competition Act".

History: Laws 1980, ch. 90, § 1; 2000, ch. 4, § 6.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2000 amendment, effective February 15, 2000, substituted "Chapter 60, Article 2A NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27A Am. Jur. 2d Entertainment and Sports Law § 39 et seq.

30A C.J.S. Entertainment and Amusement §§ 8, 9.

60-2A-2. Definitions. (Repealed effective July 1, 2018.)

As used in the Professional Athletic Competition Act:

A. "board" means the medical advisory board;

B. "commission" means the New Mexico athletic commission;

C. "contestant" means a person who engages in unarmed combat for remuneration;

D. "department" means the regulation and licensing department;

E. "foreign co-promoter" means a promoter who has no place of business in this state;

F. "manager":

(1) means a person who:

(a) undertakes to represent the interests of another person by contract, agreement or other arrangement in procuring, arranging or conducting a professional contest or exhibition in which the represented person will participate as a contestant;

(b) directs or controls the activities of an unarmed combatant relating to the participation of the unarmed combatant in professional contests or exhibitions;

(c) receives or is entitled to receive at least ten percent of the gross purse or gross income of any professional unarmed combatant for services relating to the participation of the unarmed combatant in a professional contest or exhibition; or

(d) receives compensation for services as an agent or representative of an unarmed combatant; and

(2) does not include an attorney who is licensed to practice law in this state if the attorney's participation in any of the activities described in Paragraph (1) of this subsection is limited solely to the legal representation of a client who is an unarmed combatant;

G. "professional boxer" or "professional wrestler" means an individual who competes for money, prizes or purses or who teaches, pursues or assists in the practice of boxing, wrestling or martial arts as a means of obtaining a livelihood or pecuniary gain;

H. "professional contest" means any professional boxing, wrestling or martial arts contest or exhibition, whether or not an admission fee is charged for admission of the public;

I. "promoter" means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any professional boxing, wrestling or martial arts contest, exhibition or closed circuit television show;

J. "purse" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or professional wrestlers are participating in a contest or exhibition and includes the participant's share of any payment received for radio broadcasting, television or motion picture rights;

K. "ring official" means any person who performs an official function during the progress of a contest or exhibition;

L. "unarmed combat" means boxing, wrestling, martial arts or any form of competition in which a blow is usually struck that may reasonably be expected to inflict injury; and

M. "unarmed combatant" means:

(1) a person who engages in unarmed combat in a contest or exhibition, whether or not the person receives remuneration, including a wrestler, boxer, mixed martial artist or other contestant; or

(2) an amateur boxer who is registered with United States amateur boxing, incorporated, or any other amateur organization recognized by the commission and participates in an amateur boxing contest or exhibition in the state that is registered and sanctioned by United States amateur boxing, incorporated or golden gloves of America.

History: Laws 1980, ch. 90, § 2; 1981, ch. 326, § 1; 1991, ch. 218, § 1; 2007, ch. 109, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978

The 2007 amendment, effective March 30, 2007, defined "contestant", "manager", "unarmed combat" and "unarmed combatant".

The 1991 amendment, effective June 14, 1991, added Subsection I and made related changes and minor stylistic changes in Subsections F and G.

"Closed circuit television show". — Cable television is a type of closed circuit television show within the meaning of Subsection F (now I) and this article. 1988 Op. Att'y Gen. No. 88-51.

60-2A-3. Commission created; terms; restrictions. (Repealed effective July 1, 2018.)

A. There is created the "New Mexico athletic commission". The commission shall be administratively attached to the department.

B. The commission shall consist of five members who are New Mexico residents and who are appointed by the governor. Three of the members shall have experience in the professional sports, and the other two members shall represent the public. The public members shall not have been licensed or have any financial interest, direct or indirect, in the profession regulated. The members shall be appointed for staggered terms of four years each. Each member shall hold office until the expiration of the term for which appointed or until a successor has been appointed. Not more than three members of the commission shall be appointed from the same political party. No commission member shall serve more than two full terms consecutively.

C. No member shall at any time during his membership on the commission promote or sponsor any professional contest or have any financial interest in the promotion or sponsorship of any professional contest.

History: Laws 1980, ch. 90, § 3; 1991, ch. 218, § 2.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote Subsection A to delete provisions relating to initial appointments of members, terms and vacancies and to add the present second sentence; rewrote Subsection B, which read "Not more than two

members of the commission shall be appointed from the same political party"; deleted former Subsection C, which read "Two members of the commission shall constitute a quorum for the exercise of the powers and duties of the commission"; and redesignated former Subsection D as present Subsection C.

60-2A-4. Chairman; rules. (Repealed effective July 1, 2018.)

A. The commission shall elect annually in December a chairman and such other officers as it deems necessary. The commission shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of three or more members of the commission. Three members, at least one of whom is a public member, shall constitute a quorum.

B. The commission may adopt, purchase and use a seal.

C. The commission may adopt rules, subject to the provisions of the State Rules Act [14-4-1 NMSA 1978], for the administration of the Professional Athletic Competition Act not inconsistent with the provisions of the Professional Athletic Competition Act. The rules shall include but not be limited to the:

(1) number and qualifications of ring officials required in a professional contest;

(2) powers, duties and compensation of ring officials; and

(3) qualifications of licensees.

D. The commission shall prepare all forms of contracts between sponsors, licensees, promoters and contestants.

History: Laws 1980, ch. 90, § 4; 1991, ch. 218, § 3.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote Subsection A, which read "The members of the commission shall elect one of their number as chairman", and made a minor stylistic change in Subsection C.

60-2A-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 408, § 35 repealed 60-2A-5, as enacted by Laws 1980, ch. 90, § 5, relating to the executive secretary, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMONESOURCE.COM*.

60-2A-6. Per diem and mileage. (Repealed effective July 1, 2018.)

The commission members shall be entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

History: Laws 1980, ch. 90, § 6.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-7. Medical advisory board. (Repealed effective July 1, 2018.)

A. There is created the "medical advisory board" to assist the commission.

B. The board shall consist of three members to be appointed by the commission. Each member of the board shall be licensed to practice medicine in this state and shall have had at the time of his appointment at least five years' experience in the practice of his profession. Members of the board shall serve without compensation. The board shall:

(1) prepare and submit to the commission for its approval standards for the physical and mental examination of professional boxers and professional wrestlers which shall safeguard their health; provided, no standard shall become effective until approved by the commission;

(2) recommend to the commission for licensing purposes physicians who are qualified to make examinations of professional boxers and wrestlers; and

(3) upon request of the commission, advise the commission as to the physical and mental fitness of any individual professional boxer or wrestler.

History: Laws 1980, ch. 90, § 7.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-8. Jurisdiction of commission over professional contests. (Repealed effective July 1, 2018.)

The commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within New Mexico, and no professional contest shall be conducted, held or given in this state except in accordance with the provisions of the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 8.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-8.1. Cooperative agreements with tribal governments. (Repealed effective July 1, 2018.)

A. The commission may enter into a cooperative agreement with an Indian nation, tribe or pueblo whose tribal lands lie wholly or partly in New Mexico for the exchange of information and for the reciprocal, joint or common direction, management or control of professional contests conducted, held or given in New Mexico. To be effective, an agreement must be signed by the governor.

B. Money collected by the commission on behalf of an Indian nation, tribe or pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or by the Indian nation, tribe or pueblo that the fees of one have precedence over the fees of the other when the person, event or transaction is subject to the jurisdiction of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

History: Laws 2005, ch. 346, § 7.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

Effective dates. — Laws 2005, ch. 346 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

60-2A-8.2. Jurisdiction of commission over unarmed combat contests. (Repealed effective July 1, 2018.)

A. The commission shall have sole direction, management, control and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held or given within New Mexico, and no contest or exhibition may be conducted, held or given within the state except in accordance with the provisions of the Professional Athletic Competition Act.

B. Any contest involving a form of Oriental unarmed self-defense must be conducted pursuant to rules for that form that are approved by the commission before the contest is conducted, held or given in the state except in accordance with the provisions of the Professional Athletic Competition Act.

History: Laws 2007, ch. 109, § 2.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978

Emergency clause. — Laws 2007, ch. 109, § 3 contained an emergency clause and was approved March 30, 2007.

60-2A-9. Licenses to conduct professional contests. (Repealed effective July 1, 2018.)

A. The commission may issue licenses to conduct, hold or give a professional contest to any promoter under such terms and in accordance with such rules as the commission may adopt.

B. Any application for such a license shall be in writing and shall correctly show the promoter. The application shall be accompanied by the annual fee prescribed by law.

C. Before any license is granted to a promoter, the promoter must file a bond in an amount fixed by the commission but not less than two thousand dollars ($2,000) with good and sufficient surety and conditioned for the faithful performance by the promoter of the provisions of the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 9.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

60-2A-10. Licenses for promoters, boxers, wrestlers, trainers, ring officials and others. (Repealed effective July 1, 2018.)

A. All promoters, foreign co-promoters, matchmakers, professional boxers, professional wrestlers, managers, seconds, announcers, referees, trainers, booking agents and timekeepers shall be licensed by the commission.

B. No person shall be permitted to participate, either directly or indirectly, in any professional contest unless such person shall have first procured a license from the commission.

C. Any person violating the provisions of this section is guilty of a petty misdemeanor.

History: Laws 1980, ch. 90, § 10.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-11. Licenses for physicians. (Repealed effective July 1, 2018.)

The commission may issue licenses without fees to physicians authorizing them to officiate at professional contests.

History: Laws 1980, ch. 90, § 11.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-12. License fees. (Repealed effective July 1, 2018.)

The annual license fee shall not exceed the following amounts:

A.	promoters	$300.00
B.	foreign co-promoters	500.00
C.	referees	40.00
D.	timekeepers and announcers	25.00
E.	seconds and trainers	25.00
F.	managers	50.00

G.	professional boxers	25.00
H.	professional wrestlers	25.00
I.	booking agents	50.00
J.	matchmakers	50.00
K.	judges	25.00.

Every license shall expire at midnight on December 31 of the year in which the license is issued.

History: Laws 1980, ch. 90, § 12; 1991, ch. 218, § 4.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "shall not exceed the following amounts" for "shall be" in the introductory phrase; inserted "professional" in Subsections G and H; inserted Subsection K; and increased the fees as follows: in Subsection A, from $200.00 to $300.00, in Subsection B, from $400.00 to $500.00, in Subsection C, from $10.00 to $40.00, in Subsection D, from $1.00 to $25.00, in Subsection E, from $5.00 to $25.00, in Subsection F, from $25.00 to $50.00, in Subsection G, from $5.00 to $25.00 and, in Subsection J, from $25.00 to $50.00.

60-2A-13. Real party in interest. (Repealed effective July 1, 2018.)

The commission shall not issue any license for a professional contest unless it is satisfied that the promoter is the real party in interest and intends to conduct, hold or give such contests himself, or unless the promoter receives at least twenty-five percent of the net receipts. A license may be revoked at any time if the commission finds that the promoter is not the real party in interest.

History: Laws 1980, ch. 90, § 13.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-14. Suspension; revocation of licenses. (Repealed effective July 1, 2018.)

A. The commission may suspend or revoke any license when in its judgment the licensee:

(1) participated in any sham or fake professional contest;

(2) is guilty of a failure to give his best efforts in a professional contest;

(3) is guilty of any foul or unsportsmanlike conduct in connection with a professional contest; or

(4) is guilty of participating in an event while under the influence of illegal drugs.

B. Before revocation of a license, the commission shall afford the licensee opportunity for a hearing, and upon request of the licensee and after reasonable notice, the commission shall conduct a hearing on the revocation, permitting the licensee to appear personally and by counsel, introduce evidence and examine and cross-examine witnesses.

C. A majority vote of the members of the commission is required to revoke a license. The commission shall file a written report of its findings, determinations and order with the record of the proceedings and shall send a copy thereof to the licensee.

History: Laws 1980, ch. 90, § 14; 1983, ch. 37, § 1; 1991, ch. 218, § 5.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, added Paragraph (4) in Subsection A and made a related stylistic change.

60-2A-15. Subpoena power. (Repealed effective July 1, 2018.)

The commission, on a vote of the majority of the members thereof, may issue subpoenas in connection with any investigation or hearing, requiring the attendance and testimony of any person or the production of books and papers of any licensee or other person whom the commission believes to have information, books or papers of importance to the investigation or hearing.

History: Laws 1980, ch. 90, § 15.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-16. Contracts. (Repealed effective July 1, 2018.)

A. Every professional boxer or professional wrestler competing in a professional contest shall be entitled to receive a copy of a written contract or agreement approved

as to form by the commission binding a licensee to pay the professional boxer or professional wrestler a certain fixed fee or percentage of the gate receipts.

B. One copy of such contract or agreement shall be filed with the executive secretary of the commission and one copy shall be retained by the licensee or promoter of the professional contest.

History: Laws 1980, ch. 90, § 16.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-17. Insurance. (Repealed effective July 1, 2018.)

A. The commission may by rule require insurance coverage for each licensed professional boxer or professional wrestler to provide for medical, surgical and hospital care for injuries sustained while preparing for or engaged in a professional contest in an amount of one thousand dollars ($1,000) payable to such boxer or wrestler as beneficiary.

B. In lieu of, or in addition to, the insurance provided for in Subsection A of this section, the commission may establish a voluntary injury fund in the state treasury to provide for the medical care of a professional boxer or professional wrestler injured in the course of a professional contest. The fund shall consist solely of voluntary contributions by promoters equal to two percent of the gross receipts of the professional contest. The funds may be expended upon vouchers signed by the chairman of the commission and warrants drawn by the secretary of finance and administration.

History: Laws 1980, ch. 90, § 17.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-18. Advances against contestant's purse. (Repealed effective July 1, 2018.)

No promoter or foreign co-promoter shall pay or give any money to a licensee before any professional contest as an advance against a contestant's purse or for a similar purpose. except that a promoter may, with the prior written consent of the commission, pay or advance to a contestant necessary expenses for transportation and maintenance in preparation for a professional contest.

History: Laws 1980, ch. 90, § 18.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-19. Withholding of purse. (Repealed effective July 1, 2018.)

A. The commission or its executive secretary may order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second if, in the judgment of the commission or the executive secretary, the contestant is not competing honestly or to the best of his skill and ability or if the manager or second has violated any of the provisions of the Professional Athletic Competition Act or any rule promulgated thereunder.

B. This section does not apply to any professional wrestler who appears not to be competing honestly or to the best of his skill and ability.

C. Upon the withholding of any part of a purse pursuant to this section, the commission shall immediately schedule a hearing on the matter as promptly as possible. If it is determined that such contestant, manager or second is not entitled to any part of his share of the purse or other funds, the promoter shall turn such money over to the commission and it shall become forfeit to the state and be disposed of as are fees.

History: Laws 1980, ch. 90, § 19.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-20. Attendance at weigh-ins; medical examinations; professional contests. (Repealed effective July 1, 2018.)

A. The executive secretary or a member of the commission shall be present at all weigh-ins, medical examinations and professional contests and shall see that the provisions of the Professional Athletic Competition Act and the rules made pursuant thereto are strictly enforced.

B. Every participant in a professional boxing contest shall be present and weighed in no later than twelve o'clock noon on the day of the professional contest.

History: Laws 1980, ch. 90, § 20.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-21. Length of professional contests; rounds. (Repealed effective July 1, 2018.)

No professional boxing contest shall be more than fifteen rounds in length, and each round shall not exceed three minutes in length. There shall be a one-minute rest between rounds. The commission shall adopt rules governing the length of professional wrestling contests, duration of rounds and the period of rest between rounds.

History: Laws 1980, ch. 90, § 21.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-22. Minors; participants. (Repealed effective July 1, 2018.)

No person under the age of majority shall participate in or be licensed for any professional contest.

History: Laws 1980, ch. 90, § 22.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-23. Regulatory fees on promotions. (Repealed effective July 1, 2018.)

A. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting a professional contest a regulatory fee in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of regulating the contest; provided that the fee shall not exceed four percent of the total gross receipts of any professional contest conducted live in New Mexico.

B. The commission shall adopt rules for the administration, collection and enforcement of the fee imposed pursuant to this section.

C. As used in this section, "total gross receipts of any professional contest" includes:

(1) the gross price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

(2) the face value of all tickets sold and complimentary tickets issued; and

(3) any sums received as consideration for holding a professional contest at a particular location.

History: Laws 1980, ch. 90, § 23; 1981, ch. 326, § 2; 2005, ch. 346, § 1.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection A, provided for the imposition of a regulatory fee in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of regulating the contest provided that the fee shall not exceed four percent.

60-2A-24. Athletic commission fund. (Repealed effective July 1, 2018.)

The proceeds of the regulatory fee on promotions and of the supervisory fee on closed-circuit television or motion pictures, together with any license fees or other fees authorized pursuant to the Professional Athletic Competition Act, shall be deposited with the state treasurer to the credit of the "athletic commission fund" which is hereby created. Money in the fund is subject to appropriation by the legislature. Expenditures from the athletic commission fund shall only be made on vouchers issued and signed by the person designated by the commission upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1980, ch. 90, § 24; 2005, ch. 346, § 2.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "privilege tax" to "regulatory fee" and provided that money in the fund is subject to appropriation by the legislature.

60-2A-25. Time of payment of regulatory fee. (Repealed effective July 1, 2018.)

A. Any person upon whom the regulatory fee is imposed pursuant to Section 60-2A-23 NMSA 1978 shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charged and received or a contribution is

requested and received, furnish to the commission a written report on forms prescribed by the commission showing:

(1) the number of tickets sold and issued or sold or issued for the professional contest;

(2) the amount of the gross receipts or value thereof;

(3) the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and

(4) such other matters as the commission may prescribe.

B. The commission or any of its authorized employees may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the regulatory fee and supervisory fee imposed pursuant to the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 25; 2005, ch. 346, § 3.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "privilege tax" to "regulatory fee" in Subsection A; and changed "privilege tax" to "regulatory fee and supervisory fee" in Subsection B.

60-2A-26. Supervisory fee on closed-circuit telecasts or motion pictures; report to commission. (Repealed effective July 1, 2018.)

A. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two hours after the event, furnish to the commission a verified written report on a form prescribed by the commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.

B. There is imposed a supervisory fee upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture. A supervisory fee is imposed in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of supervising the exhibition; provided that the fee shall not exceed five percent of the gross receipts derived from the exhibition.

C. The fee imposed pursuant to this section shall be administered, collected, enforced and the proceeds deposited as provided in Section 60-2A-24 NMSA 1978.

History: Laws 1980, ch. 90, § 26; 1981, ch. 326, § 3; 1997, ch. 174, § 1; 2005, ch. 346, § 4.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection B, changed "tax" to "supervisory fee" ; deleted the former provision which provided that a fee was imposed on a live professional contest except a live professional boxing contest held between the effective date of the 1977 act and July 1, 1999; and provided that a supervisory fee is imposed in an amount determined by rule of the commission to be sufficient to cover the costs of supervising the exhibition, provided the fees shall not exceed five percent; and in Subsection C, changed "privilege tax" to "fee".

The 1997 amendment, effective April 9, 1997, inserted the exception in the first sentence in Subsection B, and made stylistic changes.

"Closed-circuit telecast". — Cable television is a type of closed-circuit telecast within the meaning of this section. 1988 Op. Att'y Gen. No. 88-51.

60-2A-27. Penalty; nonpayment of fee. (Repealed effective July 1, 2018.)

Any person who willfully attempts to evade or defeat any regulatory fee or supervisory fee or the payment thereof imposed pursuant to the Professional Athletic Competition Act is guilty of a fourth degree felony.

History: Laws 1980, ch. 90, § 27; 2005, ch. 346, § 5.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "tax" to "regulatory fee and supervisory fee".

60-2A-28. Civil penalty. (Repealed effective July 1, 2018.)

In the case of failure due to negligence or disregard of rules and regulations of the commission, but without intent to defraud, to pay when due any amount of regulatory fee or supervisory fee required to be paid pursuant to the Professional Athletic Competition Act, there shall be added to the amount two percent per month or a fraction

of a month from the date the fee was due or from the date the report was required to be filed, not to exceed ten percent of the fee due.

History: Laws 1980, ch. 90, § 28; 2005, ch. 346, § 6.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "tax" to "regulatory fee and supervisory fee".

60-2A-29. Penalty. (Repealed effective July 1, 2018.)

Any person violating the provisions of the Professional Athletic Competition Act is guilty of a misdemeanor and upon conviction therefor shall be punished, in the discretion of the court, by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment.

History: Laws 1980, ch. 90, § 29.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2018.)

The New Mexico athletic commission is terminated on July 1, 2017 pursuant to the Sunset Act [12-9-11 NMSA 1978]. The commission shall continue to operate according to the provisions of the Professional Athletic Competition Act until July 1, 2018. Effective July 1, 2018, Chapter 60, Article 2A NMSA 1978 is repealed.

History: Laws 1980, ch. 90, § 30; 1981, ch. 241, § 14; 1983, ch. 37, § 2; 1987, ch. 333, § 4; 1993, ch. 83, § 3; 2000, ch. 4, § 7; 2005, ch. 208, § 4; 2011, ch. 30, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "2005" for "1999" in the first sentence; "the Professional Athletic Competition Act" for "Chapter 60, Article 2A NMSA 1978" in the second sentence and "2006" for "2000" in the last two sentences.

The 1993 amendment, effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence, and "July 1, 2000" for "July 1, 1994" in the second and third sentences.

60-2A-31. Boxing headgear required when under fifteen years of age; penalty. (Repealed effective July 1, 2018.)

A. It is unlawful for any person to permit, promote or sponsor any person under the age of fifteen years to train as a boxer, engage in boxing matches or compete in school boxing exhibitions or events without wearing protective headgear.

B. Any person violating the provisions of Subsection A of this section is guilty of a petty misdemeanor.

History: Laws 1981, ch. 327, § 1.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-32. Protective headgear required in all amateur boxing. (Repealed effective July 1, 2018.)

A. It is unlawful for any person to permit, sponsor or promote any amateur to train as a boxer, engage in boxing matches or compete in boxing events without wearing protective headgear meeting the standards approved under the official rules of the USA Amateur Boxing Federation.

B. Any person violating the provisions of Subsection A of this section is guilty of a misdemeanor.

History: Laws 1983, ch. 146, § 1.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

60-2A-33. Criminal offender character evaluation. (Repealed effective July 1, 2018.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Professional Athletic Competition Act.

History: 1978 Comp., § 60-2A-33, enacted by Laws 1991, ch. 218, § 6.

ANNOTATIONS

Delayed repeal. — For delayed repeal of this section, *see* 60-2A-30 NMSA 1978.

ARTICLE 2B
Bingo and Raffle

60-2B-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-1 NMSA 1978, as enacted by Laws 1981, ch. 259, § 1, relating to the short title of the Bingo and Raffle Act, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-2 NMSA 1978, as enacted by Laws 1981, ch. 259, § 2, relating to purpose of the act, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-3 NMSA 1978, as enacted by Laws 1981, ch. 259, § 3, relating to definitions, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-4 NMSA 1978, as enacted by Laws 1981, ch. 259, § 4, relating to the licensing authority, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-5 NMSA 1978, as enacted by Laws 1981, ch. 259, § 5, relating to organizations entitled to licenses, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-6 NMSA 1978, as enacted by Laws 1981, ch. 259, § 6, relating to license applications, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-7 NMSA 1978, as enacted by Laws 1981, ch. 259, § 7, relating to form and display of licenses, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-8 NMSA 1978, as enacted by Laws 1981, ch. 259, § 8, relating to persons permitted to conduct games of chance, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-9. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-9 NMSA 1978, as enacted by Laws 1981, ch. 259, § 9, relating to reports, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-9.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-9.1 NMSA 1978, as enacted by Laws 2005, ch. 349, § 4, relating to bingo and raffle tax, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-10 NMSA 1978, as enacted by Laws 1981, ch. 259, § 10, relating to examination of books and records, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-11 NMSA 1978, as enacted by Laws 1981, ch. 259, § 11, relating to forfeiture of license, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-12. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-12 NMSA 1978, as enacted by Laws 1981, ch. 259, § 12, relating to enforcement, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-13. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-13 NMSA 1978, as enacted by Laws 1981, ch. 259, § 13, relating to exemptions, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2B-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-14 NMSA 1978, as enacted by Laws 1981, ch. 259, § 14, relating to penalties, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

ARTICLE 2C
Fireworks Licensing and Safety

60-2C-1. Short title.

Chapter 60, Article 2C NMSA 1978 may be cited as the "Fireworks Licensing and Safety Act".

History: Laws 1989, ch. 346, § 1; 1997, ch. 17, § 1.

ANNOTATIONS

The 1997 amendment, effective March 18, 1997, substituted "Chapter 60, Article 2C NMSA 1978" for "Sections 1 through 11 of this act".

Municipal or county regulation. — This article expressly removed from municipalities their general authority to regulate fireworks and replaced it with limited authority to regulate the use of aerial and ground audible devices. To the extent that municipalities have regulatory authority over specified devices, those devices are subject to double regulation as long as municipal regulations do not conflict with the requirements of this article. 1990 Op. Att'y Gen. No. 90-11.

This article denies all municipalities, including those with home rule charters, from regulating fireworks other than as provided by the statute. 1990 Op. Att'y Gen. No. 90-11.

A municipal ordinance that purports to prohibit all fireworks is contrary to the limited authority granted to municipalities under this article and, therefore, is void and without effect. 1990 Op. Att'y Gen. No. 90-11.

Counties have the same authority as municipalities to enact ordinances permitted by this article. 1990 Op. Att'y Gen. No. 90-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 31A Am. Jur. 2d Explosives §§ 2, 20, 48 to 56, 68, 70, 105, 111, 122, 125, 126; 56 Am. Jur. 2d Municipal Corporations § 204.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks, 48 A.L.R.5th 659.

15 C.J.S. Commerce §§ 85, 94; 16B C.J.S. Constitutional Law § 861; 62 C.J.S. Municipal Corporations §§ 676, 687, 695, 711, 712, 735, 754.

60-2C-2. Definitions.

As used in the Fireworks Licensing and Safety Act:

A. "aerial shell" means a cylindrical or spherical cartridge containing a lift charge, burst charge and effect composition. Upon firing from a reloadable tube, the lift charge is consumed and the cartridge is expelled into the air;

B. "aerial shell kit-reloadable tube" means a package or kit containing a cardboard, high-density polyethylene or equivalent launching tube and not more than twelve small aerial shells. Each aerial shell is limited to a maximum of sixty grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches;

C. "bosque" means a cottonwood corridor adjacent to a river;

D. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;

E. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

F. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

G. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers;

H. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke. The device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

I. "display distributor" means a person, firm or corporation selling display fireworks;

J. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or

detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

K. "distributor" means a person, firm or corporation selling fireworks to wholesalers and retailers for resale;

L. "explosive composition" means a chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

M. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;

N. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks", but does not include novelties or theatrical pyrotechnics articles;

O. "flitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;

P. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color. "Ground spinner" is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited;

Q. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;

R. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

S. "manufacturer" means a person, firm or corporation engaged in the manufacture of fireworks;

T. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than sixty grams of total chemical composition, including lift charges, per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse, must be a dense-packed collection of mine or shell tubes and the total chemical composition, including lift charges, shall not exceed two hundred grams;

U. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;

V. "multiple tube devices" means a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in sequence. The tubes are individually attached to a wood or plastic base or are dense-packed and are held together by glue, wire, string or other means that securely hold the tubes together during operation. A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted; provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least one-half inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once;

W. "novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, toy smoke devices, snakes, glowworms, sparklers or toy caps, and devices intended to produce unique visual or audible effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers;

X. "permissible fireworks" or "consumer fireworks" means fireworks legal for sale to and use in New Mexico by the general public that comply with the latest construction, performance, composition and labeling requirements established by the United States consumer product safety commission and the United States department of transportation;

Y. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

Z. "retailer" means a person, firm or corporation purchasing fireworks for resale to consumers;

AA. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;

BB. "specialty retailer" means a person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

CC. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;

DD. "theatrical pyrotechnics articles" means a pyrotechnic device for professional use in the entertainment industry similar to permissible fireworks or consumer fireworks in chemical composition and construction but not intended and labeled for consumer use;

EE. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;

FF."wheel" means a pyrotechnic device that is made to attach to a post or other surface and that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition;

GG. "wholesaler" means a person, firm or corporation purchasing fireworks for resale to retailers; and

HH. "wildlands" means lands owned by the governing body of a county or municipality that are designated for public recreational purposes and that are covered wholly or in part by timber, brush or native grass.

History: Laws 1989, ch. 346, § 2; 1991, ch. 133, § 1; 1997, ch. 17, § 2; 1999, ch. 58, § 1; 2007, ch. 268, § 1.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, added Subsections A through C, V through X and DD; excluded novelties and theatrical pyrotechnics articles from the definition of "fireworks"; increased the chemical composition of a mine or shell to sixty grams; required "permissible fireworks" or "consumer fireworks" to comply with the requirements of the United States consumer product safety commission and the United

States department of transportation; and defined "wildlands" to be lands owned by a county or municipality for public recreational purposes.

The 1999 amendment, effective March 17, 1999, added Subsection BB and made minor stylistic changes.

The 1997 amendment, effective March 18, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

60-2C-2.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 268, § 6 repealed 60-2C-2.1 NMSA 1978, as enacted by Laws 1997, ch. 17, § 8, relating to novelties, effective April 2, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

60-2C-3. License or permit required for sale of fireworks; administration; permits and licenses.

A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in this state unless such person has first obtained the appropriate license or permit.

B. The state fire marshal shall enforce the Fireworks Licensing and Safety Act. All license applications shall be submitted to the office of the state fire marshal. All retailers shall be required to purchase a retail fireworks permit for each retail location. The retail permit may be purchased from any licensed manufacturer, distributor or wholesaler or from the state fire marshal's office. Retail permits may be purchased at any time by the licensed manufacturer, distributor or wholesaler in books of twenty permits per book from the state fire marshal. Permits shall be numbered, and it shall be the responsibility of the licensed manufacturer, distributor or wholesaler to keep records of the purchases of these permits and to submit these records to the state fire marshal semi-annually on January 31 and July 31 of each year. Each semi-annual report is to cover the preceding six-month period. Retail permits that are unsold may be exchanged for new permits.

C. The state fire marshal shall appoint the deputies and employees required to carry out the provisions of the Fireworks Licensing and Safety Act. The state fire marshal may also appoint any commissioned law enforcement officer or duly appointed fire chief or his designee with approval from the local governing body required to carry out the provisions of that act.

D. The state fire board shall formulate, adopt, promulgate and amend or revise rules and regulations for the safe handling of fireworks.

History: Laws 1989, ch. 346, § 3; 1991, ch. 133, § 2; 1997, ch. 17, § 3.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* Chapter 40, Article 5A NMSA 1978.

The 1997 amendment, effective March 18, 1997, in Subsection B, substituted "Retail permits" for "These permits" at the beginning of the fifth sentence and "ten permits" for "twenty permits" near the end of that sentence; and in Subsection C, substituted "fire chief or his designee" for "fire chief or his designate" in the second sentence.

The 1991 amendment, effective June 14, 1991, in Subsections A and B, deleted "importer" following "wholesaler" and made related stylistic changes; in the second sentence in Subsection C, substituted "commissioned" for "certified" and inserted "or his designate"; and added Subsection D.

60-2C-4. License and permit fees.

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act shall pay to the state fire marshal's office the following fees, which shall not be refundable:

(1) manufacturer license	$1,500;	
(2) distributor license	2,000;	
(3) wholesaler license	1,000;	
(4) display distributor license	1,000;	
(5) specialty retailer license	750;	
(6) retailer permit	100;	or
(7) replacement permit	20.	

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed during any holiday selling period in which permissible fireworks may be sold.

C. Licenses issued pursuant to provisions of the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed twenty-five dollars ($25.00), for the sale of fireworks.

D. Permit and license fees paid to the state fire marshal's office shall be deposited in the fire protection fund to be used by the state fire marshal to enforce and carry out the provisions and purposes of the Fireworks Licensing and Safety Act.

History: Laws 1989, ch. 346, § 4; 1991, ch. 133, § 3; 1997, ch. 17, § 4; 1999, ch. 58, § 2; 2007, ch. 268, § 2.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, imposed a fee of $20.00 for a license replacement.

The 1999 amendment, effective March 17, 1999, inserted "license" in Subsection A(4), substituted "twenty-five dollars ($25.00)" for "fifty dollars ($50.00)" in the second sentence of Subsection C, and made minor stylistic changes.

The 1997 amendment, effective March 18, 1997, substituted "processed during each holiday selling period in which permissible fireworks may be sold" for "processed from May 10 through July 10 of each year" at the end of the second sentence in Subsection B.

The 1991 amendment, effective June 14, 1991, in Subsection A, rewrote Paragraph (4), which provided a fee of $250 for an importer license, substituted "750" for "100" in Paragraph (5) and "100" for "50.00" in Paragraph (6) and added the exception at the end of Subsection B.

60-2C-5. Possession, sale or use of unauthorized fireworks unlawful.

No individual, firm, partnership, corporation or association shall possess for retail sale in this state, sell or offer for sale at retail or possess or use any fireworks other than permissible fireworks.

History: Laws 1989, ch. 346, § 5; 1991, ch. 133, § 4.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, inserted "or possess" near the end of the section.

60-2C-6. Exportation of fireworks from the state.

Nothing in the Fireworks Licensing and Safety Act shall prohibit licensed wholesalers, distributors, importers or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States department of transportation to any person or entity outside the state of New Mexico.

History: Laws 1989, ch. 346, § 6.

60-2C-7. Permissible fireworks.

A. Permissible fireworks are:

(1) ground and hand-held sparkling devices:

(a) cone fountains;

(b) crackling devices;

(c) cylindrical fountains;

(d) flitter sparklers;

(e) ground spinners;

(f) illuminating torches; and

(g) wheels;

(2) aerial devices:

(a) aerial shell kit-reloadable tubes;

(b) aerial spinners;

(c) helicopters;

(d) mines;

(e) missile-type rockets;

(f) multiple tube devices;

(g) roman candles;

(h) shells; and

(i) stick-type rockets, except as provided in Subsection B of this section; and

(3) ground audible devices:

(a) chasers; and

(b) firecrackers.

B. The following types of fireworks are not permissible fireworks:

(1) stick-type rockets having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length; and

(2) fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

C. A municipality or county shall not by ordinance regulate and prohibit the sale or use of any permissible firework except aerial devices and ground audible devices.

History: Laws 1989, ch. 346, § 7; 1991, ch. 133, § 5; 1997, ch. 17, § 5; 2007, ch. 268, § 3.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, added aerial shell kit-reloadable tubes and multiple tube devices as permissible aerial devises and classifies as non-permissible fireworks stick-type rockets having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length and fireworks that produce an audible effect by a charge of more than one hundred thirty milligrams of explosive composition per report.

The 1997 amendment, effective March 18, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

60-2C-8. Retail sales or storage of fireworks; regulated activities.

A. Fireworks may not be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. All places where fireworks are stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnics articles.

C. It is unlawful to offer for sale or to sell fireworks to children under the age of sixteen years or to an intoxicated person.

D. At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four inches in height. Smoking, open flames and any ignition source are prohibited within twenty-five feet of fireworks stock.

E. Fireworks shall not be stored, kept, sold or discharged within fifty feet of a gasoline pump or gasoline bulk station or a building in which gasoline or volatile liquids

are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

F. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

G. Sales clerks and ancillary personnel employed or volunteering at temporary retail locations where fireworks are sold shall be at least sixteen years of age. A sales clerk shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at state-permitted or state-licensed retail locations.

H. Fireworks shall not be discharged within one hundred fifty feet of a fireworks retail sales location.

I. Fireworks shall not be sold or used on state forest land, wildlands or a bosque.

J. A person shall not ignite fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall a person place or throw ignited fireworks into or at a motor vehicle or at or near a person or group of people.

K. Fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse that has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, the entire fuse shall be covered.

L. Permissible fireworks may be sold at retail between June 20 and July 6 of each year, six days preceding and including new year's day, three days preceding and including Chinese new year, the sixteenth of September and cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.

History: Laws 1989, ch. 346, § 8; 1991, ch. 133, § 6; 1997, ch. 17, § 6; 2007, ch. 268, § 4.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, added Subsection B and required persons who sell fireworks to be at least sixteen years of age.

The 1997 amendment, effective March 18, 1997, substituted "age of sixteen" for "age of twelve" in Subsection B, rewrote the last sentence of Subsection F, added

Subsection H and redesignated the following subsections accordingly, and rewrote Subsection K.

The 1991 amendment, effective June 14, 1991, substituted "shall" for "must" throughout the section, "Smoking, open flames and any ignition source are prohibited" for "Smoking is prohibited" at the beginning of the second sentence in Subsection C and "5 lb. ABC per five hundred square feet of space used for fireworks sales or storage" for "4-ABC" at the end of Subsection E and made a minor stylistic change in Subsection F.

60-2C-8.1. Extreme or severe drought conditions; restricted sale and use.

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

B. Pursuant to any hearing under Subsection A of this section, the governing body of a municipality shall issue a proclamation declaring extreme or severe drought conditions within the boundaries of the incorporated municipality if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

C. The municipal governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

D. A municipal governing body's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day

period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the county if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

History: Laws 1997, ch. 17, § 9; 1999, ch. 58, § 3.

ANNOTATIONS

The 1999 amendment, effective March 17, 1999, in Subsection A, in the first sentence substituted "governing body of a municipality" for "state fire board", substituted "within

the boundaries of the incorporated municipality" for "in all or a portion of the state", and inserted "or severe"; in the second sentence substituted "governing body" for "state fire board" and deleted "and the U.S. department of agriculture" at the end of the sentence; in Subsection B, rewrote the introductory language, substituted "the governing body" for "local governments" in Paragraph (2), added Subparagraph (2)(b), redesignated former Subparagraph (2)(b) as Subparagraph (2)(c), and deleted Paragraph (3), which read "may ban or restrict the use of any type of fireworks on state lands within the affected drought area"; in Subsection C, rewrote the first sentence and added the second sentence; in Subsection D, in the first sentence, substituted "A municipal governing body's" for "Except as otherwise provided in this subsection" and inserted "or severe", in the first and second sentences, substituted "governing body" for "state fire board" and substituted "have improved" for "improve sufficiently to alleviate fire dangers" at the end of the second sentence; added Subsections E through H; and made minor stylistic changes.

60-2C-9. Display fireworks.

Except as provided in Section 9 [60-26-8.1 NMSA 1978] of this act, nothing in the Fireworks Licensing and Safety Act shall prohibit the display of display fireworks, except that any individual, association, partnership, corporation, organization, county or municipality shall secure a written permit from the governing body of the county or municipality where the display is to be fired and the display fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco and firearms at the United States department of the treasury.

History: Laws 1989, ch. 346, § 9; 1991, ch. 133, § 7; 1997, ch. 17, § 7.

ANNOTATIONS

The 1997 amendment, effective March 18, 1997, substituted "Display fireworks" for "Public display of fireworks" in the section heading, added the exception at the beginning of the section, substituted "the display of display fireworks" for "the public display of fireworks" following "shall prohibit" and substituted "the display is to be fired and the display fireworks shall" for "the public display is to be fired and the fireworks shall".

The 1991 amendment, effective June 14, 1991, inserted "or display distributor" near the end of the section.

60-2C-9.1. Theatrical pyrotechnics articles; compliance with national fire protection association standards required.

All places where theatrical pyrotechnics articles are manufactured, stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the use of pyrotechnics before a proximate audience.

History: Laws 2007, ch. 268, § 5.

ANNOTATIONS

Cross references. — For the Child Labor Act, *see* 50-6-1.1 NMSA 1978.

Emergency clause. — Laws 2007, ch. 268, § 7 contained an emergency clause and was approved April 2, 2007.

60-2C-10. Penalty; criminal.

A. Any individual, firm, partnership or corporation that violates any provision of the Fireworks Licensing and Safety Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year, or both.

B. Nothing in the Fireworks Licensing and Safety Act shall apply to or prohibit any employees of the department of game and fish or the United States fish and wildlife service from possessing fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any municipality or civic organization therein from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

History: Laws 1989, ch. 346, § 10.

60-2C-11. Penalty; civil.

A. If a person is found guilty of violating any of the provisions of the Fireworks Licensing and Safety Act, that person's license or permit may be revoked or suspended by the state fire marshal, his deputies or designees.

B. No individual, firm, corporation or partnership shall possess any fireworks for sale within New Mexico, other than those authorized in the Fireworks Licensing and Safety Act. The state fire marshal, his deputies or designees may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with the Fireworks Licensing and Safety Act. If any retailer has in his possession any fireworks in violation of that act, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in the Fireworks Licensing and Safety Act applies to the transportation of fireworks by regulated carriers.

History: Laws 1989, ch. 346, § 11.

ANNOTATIONS

Severability. — Laws 1989, ch. 346, § 14 provided for the severability of the Fireworks Licensing and Safety Act if any part or application thereof is held invalid.

ARTICLE 2D
Bicycle Racing

60-2D-1. Short title.

This act [60-2D-1 to 60-2D-18 NMSA 1978] may be known as the "Bicycle Racing Act".

History: Laws 1991, ch. 233, § 1.

60-2D-2. Definitions.

As used in the Bicycle Racing Act:

A. "commission" means the bicycle racing commission;

B. "bicycle racing" means racing at Keiren velodrome bicycle-racing tracks approved by the commission;

C. "license" means a license for a racing meet issued under the provisions of the Bicycle Racing Act; and

D. "secretary" means the executive secretary of the commission.

History: Laws 1991, ch. 233, § 2.

60-2D-3. Commission created; appointments; qualifications.

The "bicycle racing commission" is created. The commission shall consist of three commissioners appointed by the governor. The first commission members shall be appointed for staggered terms, one ending on July 1, 1993 and one ending on July 1 of each of the following two odd-numbered years. Thereafter, appointments shall be for terms of six years. Vacancies for any unexpired term shall be filled by the governor. To be eligible for appointment, all persons shall be citizens, residents of the state and qualified electors.

History: Laws 1991, ch. 233, § 3.

60-2D-4. Organization and officers; per diem.

A. Within thirty days after appointment, the first commission shall organize for the transaction of business by selecting one of its members as chairman. The commission shall meet annually in September and may meet as often as it deems necessary on the call of the chairman or any two members of the commission. Members of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. The commission shall maintain an office within the state and keep detailed records of all its meetings and all business transacted by it. Complete records shall be kept of all collections and disbursements. The commission shall report annually on June 30 to the governor on its activities for the preceding year.

C. The expenses of the commission shall be paid out of the state's allocation of the proceeds from the bicycle-racing pari-mutuel tax as provided in Section 16 [60-2D-16 NMSA 1978] of the Bicycle Racing Act. Payment of expenses by the commission shall be on vouchers issued and signed by the person designated by the commission, upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1991, ch. 233, § 4.

60-2D-5. Powers and duties.

The commission shall, in its discretion and subject to its rules and regulations:

A. license all persons desiring to participate, except as spectators, in bicycle racing at Keiren velodrome bicycle-racing tracks within this state approved by the commission;

B. supervise all licensees and all races, race meets and racetracks operating under its jurisdiction;

C. set the time, place and duration of all race meets under its jurisdiction;

D. suspend or revoke licenses for violation of the law or rules and regulations of the commission;

E. do all other things necessary and proper to fulfill its obligations under the Bicycle Racing Act;

F. have all places where bicycle-racing meets are held visited and inspected at least once a year by its members or employees;

G. require all pari-mutuel bicycle-racing meets to be held at Keiren velodrome bicycle-racing tracks in this state and in accordance with the rules and regulations of the commission;

H. supervise the operations of pari-mutuel machines and equipment and the operation of all money rooms, accounting rooms and seller's and cashier's windows;

I. supervise the weighing and inspection of bicycles; and

J. make saliva and urine tests on bicycle racers selected by the commission or its employees at every race.

History: Laws 1991, ch. 233, § 5.

60-2D-6. Employees.

The commission shall hire an executive secretary and such other employees as are necessary to its duties, at salaries to be set by the commission.

History: Laws 1991, ch. 233, § 6.

60-2D-7. Rules and regulations.

The commission shall promulgate reasonable rules and regulations governing bicycle racing in this state. These rules and regulations shall:

A. govern the application procedures for all licenses issued by the commission;

B. provide for the supervision, direction and discipline of licensees of the commission;

C. govern, subject to the Uniform Licensing Act [61-1-1 NMSA 1978], the issuance, suspension and revocation of licenses issued by the commission;

D. provide for the barring from bicycle racing and bicycle-racing tracks of any persons, including those required to be licensed by the commission;

E. determine the distribution of the gross receipts of all pari-mutuel bicycle-racing wagers that shall be payable as pari-mutuel winnings, as race purses to the winning bicycle racers and as commissions to the licensee;

F. set standards for the holding, conducting and operating of all bicycle races, race meets and racetracks under the supervision of the commission; and

G. become effective only after they have been filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

History: Laws 1991, ch. 233, § 7.

60-2D-8. Enforcement; investigation; subpoena.

The commission shall enforce or secure the enforcement, through the proper officials, of all the laws, rules, regulations and orders of the commission. The commission shall investigate on its own motion, or upon receipt of any information or complaint concerning any violation of the Bicycle Racing Act or any rule, regulation or order issued pursuant to that act or upon receipt of any application, any information contained or which should be contained in the application. In enforcement of the Bicycle Racing Act or in any investigation, the commission may exercise the power of subpoena. Any member of the commission may administer oaths or affirmations. If any person refuses to obey a subpoena, the commission may present its petition to the district court in Santa Fe county setting forth the facts, and the district court shall issue its subpoena to the person.

History: Laws 1991, ch. 233, § 8.

60-2D-9. Licenses; limitations; fees.

A. The commission shall require licenses of all bicycle racers, trainers, starters, assistant starters, pari-mutuel employees, authorized racer's or owner's agents and any other person, whether operating under his own name or a trade or assumed name, who wishes to participate, except as a spectator, in a bicycle-racing meet in this state. This license shall be known as a "general bicycle-racing license" and shall state on its face the capacity in which the licensee will participate in bicycle racing in this state. The fee for a general bicycle-racing license shall be set by the commission in an amount not to exceed fifty dollars ($50.00) per year. The fee shall not be prorated for part of a year.

B. The commission shall require a license for any person to hold bicycle-racing meets with pari-mutuel wagering. This license shall be known as a "pari-mutuel bicycle-racing license" and shall state on its face the time, place and duration of all bicycle-racing meets authorized by that license and the number of races allowed per day. The fee for such a license shall be set by the commission and shall not exceed one thousand dollars ($1,000) for any one calendar year, regardless of the number of days of bicycle-racing meets covered by the license.

C. The commission may issue a pari-mutuel bicycle-racing license for:

(1) a bicycle-racing season; and

(2) one day, to be known as a charity day, on which day the licensee shall remit the taxes owed to the state, deduct an amount equal to the purses and the cost of conducting the racing on that day and donate the balance to nonprofit organizations engaged in charitable, benevolent or eleemosynary activities selected by the licensee and approved by the commission.

History: Laws 1991, ch. 233, § 9.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

60-2D-10. Applications for pari-mutuel bicycle-racing licenses.

A. Each initial application for a pari-mutuel bicycle-racing license shall:

(1) be made under oath on a form supplied by the commission and shall be filed on a date set by the commission by regulation;

(2) set forth the time, place and number of days of the proposed bicycle-racing meet;

(3) state the full name and address of the applicant and, if a corporation, the names and addresses of all its officers and directors and of all the holders of each class of its stock and the amount of stock of each class owned by each stockholder;

(4) present a current financial statement of the applicant;

(5) identify the bicycle-racing track where the proposed bicycle-racing meet will be held and the names and addresses of the owners of all property to be used;

(6) give a description of the land uses within a radius of two miles of the proposed meet; and

(7) state any other information deemed necessary by the commission or required by its regulations.

B. Upon receipt of the initial application, the commission shall set a date for a hearing on the application and require the applicant to give public notice of the hearing, in a form set by the commission, giving the time, place and purpose of the hearing by publication in a newspaper in general circulation in the area of the proposed meet, once a week for three consecutive weeks, and by posting a notice on the site of the proposed bicycle-racing meet, in a form and size set by the commission.

C. The commission shall conduct the public hearing, and any interested person may be heard. Among other things, the commission may hear evidence concerning:

(1) the number of licenses already granted;

(2) the location of tracks previously licensed; and

(3) the desires of the residents of the county.

History: Laws 1991, ch. 233, § 10.

60-2D-11. Renewal licenses.

Pari-mutuel bicycle-racing licenses may be renewed upon application of the licensee annually for the same dates or for other dates the licensee requests, but for not less than the total number of days allotted during the preceding year. The application for a renewal shall be in the same form as the original application, shall contain the same information, brought up to date, and shall contain the same attachments, but shall not require a public hearing.

History: Laws 1991, ch. 233, § 11.

60-2D-12. Liability insurance; bond; pari-mutuel bicycle-racing licensee.

Every pari-mutuel bicycle-racing licensee shall, as a condition to receiving a license to conduct bicycle-racing meets:

A. carry public liability insurance in a form, in an amount and with a company approved by the commission, for the protection of the public, exhibitors, contestants, visitors, other licensees and spectators; and

B. provide and deliver to the commission a bond in a form required by the commission, in favor of the state, in a penal sum of not less than fifty thousand dollars ($50,000) and any further amount required by the commission, conditioned upon:

(1) the payment by the licensee to the state all money due it under the provisions of the Bicycle Racing Act;

(2) the licensee's discharging all obligations to his employees, exhibitors, contestants and persons furnishing labor and material in connection with any race meet or in connection with the construction, maintenance, repair or operation of the racetrack or buildings or grounds connected therewith; and

(3) generally, that the licensee will conduct the bicycle-racing meet strictly in accordance with the provisions of the Bicycle Racing Act and the rules and regulations of the commission and will not violate any other law of this state while operating under a license issued by the commission.

History: Laws 1991, ch. 233, § 12.

60-2D-13. License; refusal to issue.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]:

A. when dealing with a general bicycle-racing license, shall refuse to issue a license if the applicant:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) fails to pay the required fees or any other payment required by the Bicycle Racing Act;

B. when dealing with a pari-mutuel bicycle-racing license, shall refuse to issue the license for the reasons given in Subsection A of this section or, in addition, if the applicant:

(1) is not a bona-fide resident of New Mexico;

(2) is a foreign corporation;

(3) is a corporation and does not have a provision in its charter that none of the voting stock of the corporation shall be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation any of the voting stock of which is held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(5) refuses to agree that he will not thereafter sell, mortgage or otherwise pledge or dispose of any of the assets listed and described on the application for license without giving the commission ten days' written notice;

C. when dealing with a general bicycle-racing license, may refuse to issue the license if the applicant makes any false or fraudulent statement of a material nature in the application; or

D. when dealing with a pari-mutuel bicycle-racing license, may refuse to issue the license for the reason given in Subsection C of this section or if:

(1) the financial standing of the applicant and his ability or, if a partnership, joint venture or corporation, the financial standing of the partnership, joint venture or corporation or the ability of the partners, joint venturers, officers or directors of the

corporation are such that in the opinion of the commission it is not in the best interest of the state to grant the license;

(2) the sentiments of the residents of the area and the county in which it is proposed to conduct the bicycle-racing meet are against the license; or

(3) for any other reason it is not in the best interest of the state, the racing industry and the area and county in which it is proposed to conduct the bicycle-racing meets to grant the license.

History: Laws 1991, ch. 233, § 13.

60-2D-14. Revocation and suspension.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]:

A. when dealing with a general bicycle-racing license, may revoke or suspend the license if the licensee:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) has made any false or fraudulent statement of a material nature in his application; or

B. when dealing with a pari-mutuel bicycle-racing license, may revoke or suspend the license for any reason given in Subsection A of this section or if the licensee:

(1) incorporates as a foreign corporation;

(2) loses his residence in New Mexico;

(3) is a corporation and amends its charter to allow its voting stock to be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation and sells, mortgages or otherwise pledges or transfers any of the voting stock of the corporation without ten days' prior written notice to the commission;

(5) is a corporation and allows any of its voting stock to be held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(6) sells, mortgages or otherwise pledges or disposes of any of the assets listed and described on the application for license without approval of the commission.

History: Laws 1991, ch. 233, § 14.

60-2D-15. Pari-mutuel wagering; breakage; uncashed tickets.

A. A pari-mutuel bicycle-racing licensee may conduct pari-mutuel wagering. In the conduct of such wagering, all breakage shall be split equally between the state and the licensee. Breakage shall be those odd cents remaining after paying winning ticket holders a minimum of ten cents ($.10) for each one dollar ($1.00) wagered. If during any bicycle-racing meet conducted under the Bicycle Racing Act there are underpayments of the amount actually due to the wagerers, the amount of the excess of such underpayments, over and above overpayments to wagerers on the expiration of thirty days after the end of the meet, shall be paid to the state treasurer. Uncashed tickets may be presented to the licensee for payment at any time.

B. If a governmental agency imposes a levy on the licensee of a tax on the money wagered and upon its receipts, the licensee may collect, in addition to the percentage and breakage allowed in this section, the amount of the tax so levied. The tax and breakage and license fees provided in the Bicycle Racing Act shall be in lieu of all other license and excise taxes levied by the state or any of its political subdivisions for the privilege of conducting bicycle-racing meets licensed under the Bicycle Racing Act.

History: Laws 1991, ch. 233, § 15.

ANNOTATIONS

Pari-mutuel gambling on bicycle racing prohibited by federal law. — The federal Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 et seq., prohibits the state from authorizing the commencement of pari-mutuel gambling on Keirin style velodrome bicycle racing pursuant to the Bicycle Racing Act, as the federal act only allows such gambling if gambling actually occurred between September 1, 1989 and October 2, 1991, and no such gambling occurred in the state during such time period. 2001 Op. Att'y Gen. No. 01-01.

60-2D-16. Pari-mutuel wagering; taxes.

Each licensee holding a pari-mutuel bicycle-racing license shall withhold fifteen percent from the pari-mutuel bicycle-racing wagers made and pay daily:

A. thirteen percent of the gross receipts of all pari-mutuel bicycle-racing wagers at a meet to the state treasurer, which shall be deposited in the general fund; and

B. two percent of the gross receipts of all pari-mutuel bicycle-racing wagers made at a meet to the county treasurer of the county in which the meet is held.

These amounts shall constitute the "bicycle-racing pari-mutuel tax".

History: Laws 1991, ch. 233, § 16.

60-2D-17. Violations.

It is unlawful:

A. for any licensee or any trainer of any person licensed to enter any racing contest supervised by the commission to fail to comply with all rules, regulations and orders issued by the commission;

B. for any person to participate except as a spectator in any racing contest supervised by the commission without first obtaining the required license;

C. for any person to hold a bicycle-racing meet with pari-mutuel wagering without obtaining the required license;

D. for any person holding or participating in any racing contest supervised by the commission to fail to inform the commission or its employees of any violation of any law, rule, regulation or order of the commission;

E. for any licensee to permit any person who has not reached his twenty-first birthday to wager at a bicycle-racing meet;

F. to conduct pool-selling bookmaking or to conduct handbooks or to bet or wager on any bicycle-racing meet licensed by the commission, other than by the pari-mutuel method; or

G. for any pari-mutuel bicycle-racing licensee to compute breaks in the pari-mutuel system other than at ten cents ($.10).

History: Laws 1991, ch. 233, § 17.

60-2D-18. Penalty.

Any person who violates any of the provisions of the Bicycle Racing Act is guilty of a petty misdemeanor.

History: Laws 1991, ch. 233, § 18.

ANNOTATIONS

Severability. — Laws 1991, ch. 233, § 19 provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 2E
Gaming Control

60-2E-1. Short title.

Chapter 60, Article 2E NMSA 1978 may be cited as the "Gaming Control Act".

History: Laws 1997, ch. 190, § 3; 2002, ch. 102, § 2.

ANNOTATIONS

Cross references. — For the Indian Gaming Compact, *see* 11-13-1 NMSA 1978 et seq.

For criminal offenses relating to gambling, *see* 30-19-1 NMSA 1978 et seq.

The 2002 amendment, effective March 5, 2002, substituted "Chapter 60, Article 2E NMSA 1978" for "Sections 3 through 63 of this act".

Indian Gaming Compacts approved. — The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the August 29, 1997, Federal Register (62 FR 45867) notice of Indian Gaming Compacts, executed on July 9, 1997, between the State of New Mexico and the following tribes and pueblos: the Mescalero Apache Tribe, Pueblo of San Felipe, Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Sandia, Pueblo of Taos, Pueblo of Acoma and Pueblo of Isleta. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the October 15, 1997, Federal Register (62 FR 53650) notice of an Indian Gaming Compact between the State of New Mexico and the Pueblo of San Juan, executed on July 11, 1997. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective October 15, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the November 5, 1997, Federal Register (62 FR 53650) notice of Indian Gaming Compacts, executed on August 20, 1997, between the State of New Mexico and the following tribes and pueblos: Pueblo of Picuris, Pueblo of Santa Ana, and the

Jicarilla Apache Tribe, and an Indian Gaming Compact between the State of New Mexico and the Pueblo of Nambe, executed on September 5, 1997. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

Prospective application of amendments. — Because the amendments to the Gaming Control Act are silent as to whether they apply retroactively, the amendments only had prospective application. State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P,3d 1058.

60-2E-2. Policy.

It is the state's policy on gaming that:

A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences; and

B. the holder of any license issued by the state in connection with the regulation of gaming activities has a revocable privilege only and has no property right or vested interest in the license.

History: Laws 1997, ch. 190, § 4.

60-2E-3. Definitions.

As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;

D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;

E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming activity;

F. "board" means the gaming control board;

G. "certification" means a notice of approval by the board of a person required to be certified by the board;

H. "cheat" or "cheating" means to alter the element of chance, the method of selection or other criteria in a manner that determines:

(1) the result of the game;

(2) the amount or frequency of payment in a game, including taking advantage of a malfunctioning machine;

(3) the value of a wagering instrument; or

(4) the value of a wagering credit;

I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person; "company" does not mean a nonprofit organization;

J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

(4) a security having a direct or indirect participation in the profits of the issuer;

L. "executive director" means the chief administrative officer appointed by the board pursuant to Section 60-2E-7 NMSA 1978;

M. "finding of suitability" means a certification of approval issued by the board permitting a person to be involved directly or indirectly with a licensee, relating only to the specified involvement for which it is made;

N. "foreign institutional investor" means:

(1) a government-related pension plan of a foreign government; or

(2) a person that meets the requirement of a qualified institutional buyer as defined by the governing financial regulatory agency of the foreign country in which the company's primary operations are located and is registered or licensed in that country as a bank, an insurance company, an investment company, an investment advisor, a collective trust fund, an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board or a group composed entirely of entities specified in this subsection;

O. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

P. "gaming" means offering a game for play;

Q. "gaming activity" means an endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

R. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game;

S. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:

(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

(2) secretarial or janitorial personnel;

(3) stage, sound and light technicians; or

(4) other nongaming personnel;

T. "gaming establishment" means the premises on or in which gaming is conducted;

U. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

V. "gaming operator" means a person who conducts gaming;

W. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;

X. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;

Y. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Z. "institutional investor" means:

(1) a foreign institutional investor;

(2) a state or federal government pension plan; or

(3) a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

(a) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;

(b) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;

(c) an investment company registered under Section 8 of the federal Investment Company Act of 1940;

(d) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940;

(e) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;

(f) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or

(g) a group comprised entirely of persons specified in Subparagraphs (a) through (f) of this paragraph;

AA. "intermediary company" means a company that:

(1) is a holding company with respect to a company that is an applicant or licensee; and

(2) is a subsidiary with respect to any holding company;

BB. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a rule;

CC. "license" means an authorization required by the board for engaging in gaming activities;

DD. "licensee" means a person to whom a valid license has been issued;

EE. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;

FF."net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:

(1) cash received from patrons for playing a game;

(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and

(3) compensation received for conducting a game in which the licensee is not a party to a wager;

GG. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is

described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;

HH. "person" means a legal entity;

II. "premises" means land, together with all buildings, improvements and personal property located on the land;

JJ. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

KK. "public post-secondary educational institution" means an institution designated in Article 12, Section 11 of the constitution of New Mexico or an institution designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

LL. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

MM. "publicly traded corporation" means a corporation that:

(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;

(2) is an issuer subject to the securities laws of the United States or New Mexico; or

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that, the board finds, provide protection for institutional investors that is comparable to or greater than the stricter of the securities laws of the United States or New Mexico;

NN. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

OO. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company;

PP. "technician" means a person approved by the board to repair and service gaming devices or associated equipment but who is prohibited from programming gaming devices; and

QQ. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee.

History: Laws 1997, ch. 190, § 5; 1999, ch. 251, § 1; 2002, ch. 102, § 3; 2007, ch. 217, § 1; 2009, ch. 199, § 1.

ANNOTATIONS

Cross references. — For the federal Securities Act of 1933, *see* 15 U.S.C.S. § 77a et seq.

For Section 3(a)(6) of the federal Securities Exchange Act of 1934, *see* 15 U.S.C.S. § 78c(a)(6).

For Section 2(a)(17) of the federal Investment Company Act of 1940, *see* 15 U.S.C.S. § 80a-2(a)(17). For Section 3(c)(11) of the Investment Company Act, *see* 15 U.S.C.S. § 80a-3(c)(11). For Section 8 of the Investment Company Act, *see* 15 U.S.C.S. § 80a-8.

For Section 203 of the federal Investment Advisers Act of 1940, *see* 15 U.S.C.S. § 80b-3.

For the federal Employee Retirement Income Security Act of 1974 (ERISA), *see* 29 U.S.C.S. § 1001 et seq.

For Section 501 of the federal Internal Revenue Code, *see* 26 U.S.C.S. § 501.

The 2009 amendment, effective June 19, 2009, added Subsections H and N; added Paragraph (1) of Subsection Z; and in Paragraph (g) of Subsection Z, after "person specified in", deleted "Paragraphs (1) through (6) of this subsection" and added "Subparagraphs (a) through (f) of this paragraph".

The 2007 amendment, effective April 2, 2007, eliminated the definition of "certified technician" as a person certified by a manufacturer to repair and service gaming devices and added the definition of "technician" in Subsection NN.

The 2002 amendment, effective March 5, 2002, deleted "'gaming device' does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined" at the end of Subsection Q; added Subsection JJ, and redesignated former Subsections JJ to NN as present Subsections KK to OO.

The 1999 amendment, effective June 18, 1999, inserted "company does not mean a nonprofit organization" in Subsection I, substituted "Section 60-2E-7 NMSA 1978" for "Section 9 of the Gaming Control Act" in Subsection L, and substituted "rule" for "regulation" in Subsection AA.

Slot machines in private home not to be considered as a "gaming machine" to make them subject to the act. State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

60-2E-4. Limited gaming activity permitted.

Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to:

A. the Gaming Control Act; or

B. a state or federal law other than the Gaming Control Act that expressly permits the activity or exempts it from the application of the state criminal law, or both.

History: Laws 1997, ch. 190, § 6.

60-2E-5. Gaming control board created.

A. The "gaming control board" is created and consists of five members. Four members are appointed by the governor with the advice and consent of the senate, and one ex-officio member is the chairman of the state racing commission. All members of the board shall be residents of New Mexico and citizens of the United States. One appointed member of the board shall have a minimum of five years of previous employment in a supervisory and administrative position in a law enforcement agency; one appointed member of the board shall be a certified public accountant in New Mexico who has had at least five years of experience in public accountancy; one appointed member of the board shall be an attorney who has been admitted to practice before the supreme court of New Mexico; and one appointed member of the board shall be a public member who has knowledge and experience in business management and financing.

B. The appointed members of the board shall be appointed for terms of five years, except, of the members who are first appointed, the member with law enforcement experience shall be appointed for a term of five years; the member who is a certified public accountant shall be appointed for a term of four years; the member who is an attorney shall be appointed for a term of three years; and the public member shall be appointed for a term of two years. Thereafter, all members shall be appointed for terms of five years. No person shall serve as a board member for more than two consecutive terms or ten years total.

C. No full-time board member who receives a salary pursuant to Subsection G of this section may be employed in any other capacity or shall in any manner receive compensation for services rendered to any person or entity other than the board while a member of the board.

D. A vacancy on the board of an appointed member shall be filled within thirty days by the governor with the advice and consent of the senate for the unexpired portion of the term in which the vacancy occurs. A person appointed to fill a vacancy shall meet all qualification requirements of the office established in this section.

E. The governor shall choose a chairman annually from the board's appointed full-time, salaried members.

F. No more than three members of the board shall be from the same political party.

G. The law enforcement, certified public accountant and attorney members of the board shall be full-time state officials and shall receive a salary set by the governor. The public member and ex-officio member of the board shall not receive salaries for their work for the board. All appointed members of the board shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978].

H. The department of public safety shall conduct background investigations of all members of the board prior to confirmation by the senate. To assist the department in the background investigation, a prospective board member shall furnish a disclosure statement to the department on a form provided by the department containing that information deemed by the department as necessary for completion of a detailed and thorough background investigation. The required information shall include at least:

(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the department;

(2) complete information and details with respect to the prospective board member's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs and business associates covering at least a ten-year period immediately preceding the date of submitting the disclosure statement;

(3) complete disclosure of any equity interest held by the prospective board member or a member of his immediate family in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee; and

(4) the names and addresses of members of the immediate family of the prospective board member.

I. No person may be appointed or confirmed as a member of the board if that person or member of his immediate family holds an equity interest in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee.

J. A prospective board member shall provide assistance and information requested by the department of public safety or the governor and shall cooperate in any inquiry or investigation of the prospective board member's fitness or qualifications to hold the office to which he is appointed. The senate shall not confirm a prospective board member if it has reasonable cause to believe that the prospective board member has:

(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;

(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to the provisions of Subsection H of this section;

(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or

(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

K. At the time of taking office, each board member shall file with the secretary of state a sworn statement that he is not disqualified under the provisions of Subsection I of this section.

History: Laws 1997, ch. 190, § 7; 2002, ch. 103, § 1.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, in Subsection A, substituted "Four" for "Three" and "one ex-officio member is" for "two members are ex-officio" and deleted "and the chairman of the board of the New Mexico lottery authority" following "commission" in the second sentence, and added the clause regarding the public member in the last sentence; added the clause regarding the public member at the end of Subsection B; added the second and third sentences in Subsection G; and inserted language distinguishing the full-time, salaried members from the unsalaried public and ex-officio members in Subsections C, E, and G.

60-2E-6. Board; meetings; quorum; records.

A. A majority of the qualified membership of the board then in office constitutes a quorum. No action may be taken by the board unless at least three members concur.

B. Written notice of the time and place of each board meeting shall be given to each member of the board at least ten days prior to the meeting.

C. Meetings of the board shall be open and public in accordance with the Open Meetings Act [10-15-1.1 NMSA 1978], except that the board may close a meeting to hear confidential security and investigative information and other information made confidential by the provisions of the Gaming Control Act.

D. All proceedings of the board shall be recorded by audiotape or other equivalent verbatim audio recording device.

E. The chairman of the board, the executive director or a majority of the members of the board then in office may call a special meeting of the board upon at least five days' prior written notice to all members of the board and the executive director.

History: Laws 1997, ch. 190, § 8.

60-2E-7. Board's powers and duties.

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It has the duty to fulfill all responsibilities assigned to it pursuant to those acts, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.

B. The board shall:

(1) employ the executive director;

(2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;

(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;

(4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;

(5) meet at least once each month; and

(6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently

completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

(1) impose civil fines not to exceed twenty-five thousand dollars ($25,000) for the first violation of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act and fifty thousand dollars ($50,000) for subsequent violations;

(2) conduct investigations;

(3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of a licensee;

(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;

(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;

(6) sue and be sued subject to the limitations of the Tort Claims Act [41-4-1 NMSA 1978];

(7) contract for the provision of goods and services necessary to carry out its responsibilities;

(8) conduct audits, relevant to their gaming activities, of applicants, licensees and persons affiliated with licensees;

(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to the applicant's or licensee's gaming activities in the presence of the applicant or licensee or the applicant's or licensee's agent;

(10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;

(11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;

(12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;

(13) inspect, examine, photocopy and audit documents and records, relevant to the affiliate's gaming activities, of an affiliate of an applicant or licensee that the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable;

(14) conduct background investigations pursuant to the Horse Racing Act [60-1A-1 NMSA 1978]; and

(15) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

D. The board shall monitor all activity authorized in an Indian gaming compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact.

History: Laws 1997, ch. 190, § 9; 2001, ch. 262, § 1; 2002, ch. 102, § 4; 2005, ch. 349, § 6; 2007, ch. 39, § 30; 2009, ch. 81, § 28.

ANNOTATIONS

The 2009 amendment, effective July 1, 2009, in Subsections A and Paragraphs (2) and (3) of Subsection B, changed "Bingo and Raffle Act" to "New Mexico Bingo and Raffle Act"; and in Paragraph (1) of Subsection C, after "first violation", added "of any prohibitory provision of the Gaming Control Act of any prohibitory provision of a regulation adopted pursuant to that act" and at the end of the sentence, deleted "or any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act".

The 2007 amendment, effective July 1, 2007, added Paragraph (14) of Subsection C requiring the gaming control board to conduct background investigations pursuant to the Horse Racing Act.

The 2005 amendment, effective June 17, 2005, added the reference to the Bingo and Raffle Act in Subsections A and B(2) and (3).

The 2002 amendment, effective March 5, 2002, purported to amend this section but, following a committee amendment to the introduced bill, made no change.

The 2001 amendment, effective June 15, 2001, inserted "relevant to their gaming activities" in Paragraph C(8); and substituted "audit documents and records, relevant to his gaming activities" for "audit all documents and records" in Paragraph C(13).

60-2E-8. Board regulations; discretionary regulations; procedure; required provisions.

A. The board may adopt any regulation:

(1) consistent with the provisions of the Gaming Control Act; and

(2) it decides is necessary to implement the provisions of the Gaming Control Act.

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

C. The board shall adopt regulations:

(1) prescribing the method and form of application to be followed by an applicant;

(2) prescribing the information to be furnished by an applicant or licensee concerning the applicant's or licensee's antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;

(3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;

(4) prescribing the manner and method of collection and payment of fees;

(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;

(6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;

(7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;

(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;

(9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;

(10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;

(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;

(12) prescribing financial reporting and internal control requirements for licensees;

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports relevant to the gaming operator licensee's gaming activities from a gaming operator licensee consistent with standards prescribed by the board;

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;

(16) establishing criteria and conditions for the operation of progressive systems;

(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars ($20,000), including background investigation requirements for a person submitting a bid or proposal;

(18) establishing an applicant fee schedule for processing applications that is based on costs of the application review incurred by the board whether directly or through payment by the board for costs charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars ($100,000); and

(19) establishing criteria and conditions for allowing temporary possession of gaming devices:

(a) by post-secondary educational institutions;

(b) for trade shows;

(c) for film or theater productions; or

(d) for other non-gaming purposes.

History: Laws 1997, ch. 190, § 10; 2001, ch. 262, § 2; 2002, ch. 102, § 5; 2009, ch. 199, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subparagraphs (c) and (d) of Paragraph (19) of Subsection C.

The 2002 amendment, effective March 5, 2002, deleted the former second sentence of Subsection B, which read "The public hearing shall be held in Santa Fe"; and added Subsection C(19).

The 2001 amendment, effective June 15, 2001, inserted "relevant to his gaming activities" in Paragraph C(14).

60-2E-9. Executive director; employment; qualifications.

A. The executive director shall be employed by, report directly to and serve at the pleasure of the board.

B. The executive director shall have had at least five years of responsible supervisory administrative experience in a governmental gaming regulatory agency.

C. The executive director shall receive an annual salary to be set by the board but not to exceed the governor of New Mexico's salary.

History: Laws 1997, ch. 190, § 11; 2007, ch. 271, § 1.

ANNOTATIONS

Cross references. — For the salary of the governor, *see* 8-1-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provided that the salary of the executive director shall not exceed the governor’s salary.

60-2E-10. Executive director; powers; duties.

A. The executive director shall implement the policies of the board.

B. The executive director shall employ all personnel who work for the board. The employees shall be covered employees pursuant to the provisions of the Personnel Act [10-9-1 NMSA 1978]. Among those personnel, he shall employ and designate an appropriate number of individuals as law enforcement officers subject to proper certification pursuant to the Law Enforcement Training Act [29-7-1 NMSA 1978].

C. The executive director shall establish organizational units he determines are appropriate to administer the provisions of the Gaming Control Act.

D. The executive director:

(1) may delegate authority to subordinates as he deems necessary and appropriate, clearly delineating the delegated authority and the limitations on it, if any;

(2) shall take administrative action by issuing orders and instructions consistent with the Gaming Control Act and regulations of the board to assure implementation of and compliance with the provisions of that act and those regulations;

(3) may issue administrative citations to any licensee upon a reasonable belief that the licensee has violated or is violating any provision of the Gaming Control Act or regulations of the board;

(4) may conduct research and studies that will improve the operations of the board and the provision of services to the citizens of the state;

(5) may provide courses of instruction and practical training for employees of the board and other persons involved in the activities regulated by the board with the objectives of improving operations of the board and achieving compliance with the law and regulations;

(6) shall prepare an annual budget for the board and submit it to the board for approval; and

(7) shall make recommendations to the board of proposed regulations and any legislative changes needed to provide better administration of the Gaming Control Act and fair and efficient regulation of gaming activities in the state.

History: Laws 1997, ch. 190, § 12; 2002, ch. 102, § 6.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, in Subsection D, added present Paragraph (3) and redesignated the remaining paragraphs accordingly.

60-2E-11. Investigation of executive director candidates and employees.

A. A person who is under consideration in the final selection process for appointment as the executive director shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as executive director until a background investigation is completed by the department of public safety and a report is made to the board.

B. A person who has reached the final selection process for employment by the executive director shall file a disclosure statement pursuant to the requirements of this section if the executive director or the board has directed the person do so. The person shall not be further considered for employment until a background investigation is completed by the board's law enforcement officers and a report is made to the executive director.

C. Forms for the disclosure statements required by this section shall be developed by the board in cooperation with the department of public safety. At least the following information shall be required of a person submitting a statement:

(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the board;

(2) complete information and details with respect to the person's antecedents, habits, immediate family, character, criminal record, business activities and business associates, covering at least a ten-year period immediately preceding the date of submitting the disclosure statement; and

(3) a complete description of any equity interest held in a business connected with the gaming industry.

D. In preparing an investigative report, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department, except that the board's law enforcement officers may provide criminal history information and reports to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal gaming casino.

E. A person required to file a disclosure statement shall provide any assistance or information requested by the department of public safety or the board and shall cooperate in any inquiry or investigation.

F. If information required to be included in a disclosure statement changes or if information is added after the statement is filed, the person required to file it shall provide that information in writing to the person requesting the investigation. The supplemental information shall be provided within thirty days after the change or addition.

G. The board shall not appoint a person as executive director, and the executive director shall not employ a person, if the board or the executive director has reasonable cause to believe that the person has:

(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;

(2) been convicted of a felony, a gaming-related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to this section;

(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or

(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

H. Both the board and the executive director may exercise absolute discretion in exercising their respective appointing and employing powers.

History: Laws 1997, ch. 190, § 13; 2002, ch. 102, § 7.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, substituted "the board's law enforcement officers" for "the department of public safety" in Subsections B and D; and added the exception at the end of Subsection D.

60-2E-12. Conflicts of interest; board; executive director; employees.

A. In addition to all other provisions of New Mexico law regarding conflicts of interest of state officials and employees, a member of the board, the executive director, an employee of the board or a person in the immediate family of or residing in the household of any of the foregoing persons, shall not:

(1) directly or indirectly, as a proprietor or as a member, stockholder, director or officer of a company, have an interest in a business engaged in gaming activities in this or another jurisdiction; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from a licensee or applicant.

B. If a member of the board, the executive director or a person in the immediate family of or residing in the household of a member of the board or the executive director violates a provision of this section, the member of the board or executive director shall be removed from office. A board member shall be removed by the governor, and the executive director shall be removed from the executive director's position by the board.

History: Laws 1997, ch. 190, § 14; 2009, ch. 199, § 3.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "the executive director", added "an employee of the board".

60-2E-13. Activities requiring licensing.

A. A person shall not conduct gaming unless the person is licensed as a gaming operator.

B. A person shall not sell, supply or distribute a gaming device or associated equipment for use or play in this state or for use or play outside of this state from a location within this state unless the person is licensed as a distributor or manufacturer, but a gaming operator licensee may sell or trade in a gaming device or associated equipment to a gaming operator licensee, distributor licensee or manufacturer licensee.

C. Except as provided in Subsection D of this section, a person shall not manufacture, fabricate, assemble, program or make modifications to a gaming device or associated equipment for use or play in this state or for use or play outside of this state from any location within this state unless the person is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that the manufacturer licensee manufactures, fabricates, assembles, programs or modifies.

D. Upon receiving a written request from a person who manufactures associated equipment, the board may waive the requirement for a manufacturer's license on the terms and conditions the board deems necessary as long as the waiver is consistent with the purpose of the Gaming Control Act.

E. Except as provided in Section 60-2E-13.1 NMSA 1978, a gaming operator licensee or a person other than a manufacturer licensee or distributor licensee shall not possess an unlicensed or illegal gaming device or possess or control a place where there is an unlicensed or illegal gaming device. Any unlicensed or illegal gaming device, except a gaming machine in the possession of a licensee while awaiting transfer to a

gaming operator licensee for licensure of the machine, or as provided in Section 60-2E-13.1 NMSA 1978, is subject to seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

F. A person shall not service or repair a gaming device or associated equipment unless the person is licensed as a manufacturer, is employed by a manufacturer licensee or is a technician approved by the board and employed by a distributor licensee or a gaming operator licensee.

G. A person shall not engage in an activity for which the board requires a license or permit without obtaining the license or permit.

H. Except as provided in Subsections B and D of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a distributor licensee or manufacturer licensee.

I. A distributor licensee may receive a percentage of the amount wagered, the net take or other measure related to the operation of a gaming machine as a payment pursuant to a lease or other arrangement for furnishing a gaming machine, but the board shall adopt a regulation setting the maximum allowable percentage.

History: Laws 1997, ch. 190, § 15; 2002, ch. 102, § 8; 2007, ch. 217, § 2.

ANNOTATIONS

The 2007 amendment, effective April 2, 2007, required a person who services or repairs a gaming device or associated equipment to be approved by the board.

The 2002 amendment, effective March 5, 2002, inserted the exception clause at the beginning of Subsection C; added present Subsection D and redesignated the remaining subsections accordingly; and rewrote present Subsection E, inserting the references to Sections 60-2E-13.1 and 30-19-10 and to illegal gaming devices, and inserting "possess an unlicensed or illegal gaming device or" in the first sentence.

Slot machines in private home not to be considered as a "gaming machine" to make them subject to the act. State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

Forfeiture of machine in private residence. — When the exclusion in Section 60-2E-3 N NMSA 1978 is asserted, the activity in the private residence at the time the slot machine is seized determines whether the machine is subject to forfeiture. State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

60-2E-13.1. Temporary possession of gaming device for limited purpose.

A. A public post-secondary educational institution may temporarily possess gaming devices for the limited purpose of providing instruction on the technical aspects of gaming devices to persons seeking certification as technicians qualified to repair and maintain gaming devices. A gaming device allowed for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

B. Trade shows and similar events for the purpose of demonstrating and marketing gaming devices may be conducted in the state at the discretion of the board. A gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

C. A person may possess an unlicensed gaming device used by the person for the purposes of testing or demonstration if that person is a manufacturer licensee or has obtained a waiver pursuant to the Gaming Control Act.

D. A person may possess a gaming device for the purpose of film or theater productions or other non-gaming purposes permitted by regulation of the board. Any gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

History: Laws 2002, ch. 102, § 9; 2009, ch. 199, § 4.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection D.

60-2E-14. Licensure; application.

A. The board shall establish and issue the following categories of licenses:

(1) manufacturer;

(2) distributor;

(3) gaming operator; and

(4) gaming machine.

B. The board shall issue certifications of findings of suitability for key executives and other persons for whom certification is required.

C. The board shall issue work permits for gaming employees.

D. A licensee shall not be issued more than one type of license, but this provision does not prohibit a licensee from owning, leasing, acquiring or having in the licensee's possession licensed gaming machines if that activity is otherwise allowed by the provisions of the Gaming Control Act. A licensee shall not own a majority interest in, manage or otherwise control a holder of another type of license issued pursuant to the provisions of that act.

E. An applicant for a license, a certification of finding of suitability or a work permit shall apply on forms provided by the board and shall furnish to the board two sets of fingerprint cards and all other information requested by the board. Submission of an application constitutes consent to a national criminal background check of the applicant, a credit check of the applicant and all persons having a substantial interest in the applicant and any other background investigations required pursuant to the Gaming Control Act or deemed necessary by the board. The board may obtain from the taxation and revenue department copies of tax returns filed by or on behalf of the applicant or its affiliates and information concerning liens imposed on the applicant or its affiliates by the taxation and revenue department.

F. All licenses issued by the board pursuant to the provisions of this section shall be reviewed for renewal annually unless revoked, suspended, canceled or terminated.

G. A license shall not be transferred or assigned.

H. The application for a license shall include:

(1) the name of the applicant;

(2) the location of the proposed operation;

(3) the gaming devices to be operated, manufactured, distributed or serviced;

(4) the names of all persons having a direct or indirect interest in the business of the applicant and the nature of such interest; and

(5) such other information and details as the board may require.

I. The board shall furnish to the applicant supplemental forms that the applicant shall complete and file with the application. The supplemental forms shall require two sets of fingerprint cards and complete information and details with respect to the applicant's antecedents, habits, immediate family, character, state and federal criminal records, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.

J. In conducting a background investigation and preparing an investigative report on the applicant, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the board.

History: Laws 1997, ch. 190, § 16; 2002, ch. 102, § 10; 2007, ch. 39, § 31.

ANNOTATIONS

The 2007 amendment, effective March 15, 2007, in Subsection E, provided that an applicant for a license, a certification of finding of suitability or a work permit shall apply on forms provided by the board, that an applicant shall furnish to the board two sets of fingerprint cards, and that submission of an application constitutes consent to a national criminal background check of the applicant; in Subsection I, provided that the supplemental forms shall require two sets of fingerprint cards; and added Subsection J.

The 2002 amendment, effective March 5, 2002, added the last sentence in Subsection E.

60-2E-15. License, certification and work permit fees.

A. License and other fees shall be established by board regulation but shall not exceed the following amounts:

(1) manufacturer's license, twenty thousand dollars ($20,000) for the initial license and five thousand dollars ($5,000) for annual renewal;

(2) distributor's license, ten thousand dollars ($10,000) for the initial license and one thousand dollars ($1,000) for annual renewal;

(3) gaming operator's license for a racetrack, fifty thousand dollars ($50,000) for the initial license and ten thousand dollars ($10,000) for annual renewal;

(4) gaming operator's license for a nonprofit organization, one thousand dollars ($1,000) for the initial license and two hundred dollars ($200) for annual renewal;

(5) for each separate gaming machine licensed to a person holding an operator's license, five hundred dollars ($500) for the initial license and one hundred dollars ($100) for annual renewal; and

(6) work permit, one hundred dollars ($100) annually.

B. The board shall establish the fee for certifications or other actions by regulation, but no fee established by the board shall exceed one thousand dollars ($1,000), except for fees established pursuant to Paragraph (18) of Subsection C of Section 10 [60-2E-8 NMSA 1978] of the Gaming Control Act.

C. All license, certification or work permit fees shall be paid to the board at the time and in the manner established by regulations of the board.

History: Laws 1997, ch. 190, § 17.

60-2E-16. Action by board on applications.

A. A person that the board determines is qualified to receive a license pursuant to the provisions of the Gaming Control Act may be issued a license. The burden of proving qualifications is on the applicant.

B. A license shall not be issued unless the board is satisfied that the applicant is:

(1) a person of good moral character, honesty and integrity;

(2) a person whose prior activities, state and federal criminal records, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(3) in all other respects qualified to be licensed consistent with the laws of this state.

C. A license shall not be issued unless the applicant has satisfied the board that:

(1) the applicant has adequate business probity, competence and experience in business and gaming;

(2) the proposed financing of the applicant is adequate for the nature of the proposed license and from a suitable source; any lender or other source of money or credit that the board finds does not meet the standards set forth in Subsection B of this section shall be deemed unsuitable; and

(3) the applicant is sufficiently capitalized under standards set by the board to conduct the business covered by the license.

D. An application to receive a license, certification or work permit constitutes a request for a determination of the applicant's general moral character, integrity and ability to participate or engage in or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the board or by a witness

testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

E. The board shall not issue a license or certification to an applicant who has previously been denied a license or certification in this state or another state, who has had a certification, permit or license issued pursuant to the gaming laws of a state or the United States permanently suspended or revoked for cause or who is currently under suspension or subject to any other limiting action in this state or another state involving gaming activities or licensure for gaming activities, unless the violation that is the basis of the denial, permanent suspension or other limiting action regarding a license, certification or permit applied for or issued in this state or another state is determined by the board to be a technical violation, and, if the board finds the violation to be a technical violation, the board may choose to issue a license or certification.

F. The board shall investigate the qualifications of each applicant before a license, certification or work permit is issued by the board and shall continue to observe and monitor the conduct of all licensees, work permit holders, persons certified as being suitable and the persons having a material involvement directly or indirectly with a licensee.

G. The board has the authority to deny an application or limit, condition, restrict, revoke or suspend a license, certification or permit for any cause.

H. After issuance, a license, certification or permit shall continue in effect upon proper payment of the initial and renewal fees, subject to the power of the board to revoke, suspend, condition or limit licenses, certifications and permits.

I. The board has full and absolute power and authority to deny an application for any cause it deems reasonable. If an application is denied, the board shall prepare and file its written decision on which its order denying the application is based.

History: Laws 1997, ch. 190, § 18; 2007, ch. 39, § 32; 2009, ch. 199, § 5.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection E, after "licensure for gaming activities" added the remainder of the sentence.

The 2007 amendment, effective March 15, 2007, in Paragraph (2) of Subsection B, changed "criminal record" to "state and federal criminal records".

60-2E-17. Investigation for licenses, certifications and permits.

The board shall initiate an investigation of the applicant within thirty days after an application is filed and supplemental information that the board may require is received.

History: Laws 1997, ch. 190, § 19.

60-2E-18. Eligibility requirements for companies.

In order to be eligible to receive a license, a company shall:

A. be incorporated or otherwise organized and in good standing in this state or incorporated or otherwise organized in another state, qualified to do business in this state and in good standing in this state and in the state of incorporation;

B. comply with all of the requirements of the laws of this state pertaining to the company;

C. maintain a ledger in the principal office of the company in this state, which shall:

(1) at all times reflect the ownership according to company records of every class of security issued by the company; and

(2) be available for inspection by the board at all reasonable times without notice; and

D. file notice of all changes of ownership of all classes of securities issued by the company with the board within thirty days of the change.

History: Laws 1997, ch. 190, § 20.

60-2E-19. Company applicants; nonprofit organization applicants; required information.

A. A company applicant for a license or a renewal of a license shall provide the following information to the board on forms provided by the board:

(1) the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;

(2) the rights and privileges acquired by the holders of different classes of authorized securities;

(3) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(4) remuneration to persons, other than directors, officers and key executives, exceeding one hundred thousand dollars ($100,000) per year;

(5) bonus and profit-sharing arrangements within the company;

(6) a list of management and service contracts pertaining to the proposed gaming activity in this state;

(7) balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be audited by independent certified public accountants; and

(8) any further financial data that the board deems necessary or appropriate.

B. A nonprofit organization applying for a license or a renewal of a license as a nonprofit gaming operator pursuant to the Gaming Control Act shall provide in its application:

(1) the organization, financial structure and nature of the nonprofit organization, including the names of all officers, directors and key executives;

(2) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(3) management and service contracts pertaining to the proposed gaming activity in this state;

(4) balance and profit and loss statements for at least the three preceding fiscal years or, if the nonprofit organization has not been in business for a period of three years, balance sheets and profit and loss statements from the date of charter or incorporation and projected for three years from the date of charter or incorporation. All balance sheets and profit and loss statements shall be submitted in a manner prescribed by the board;

(5) any further financial data that the board deems necessary or appropriate;

(6) if the nonprofit organization has various classes of members, information detailing the rights and privileges attributed to each class of member and providing the number of members in each class;

(7) the level of remuneration for all paid employees of the nonprofit organization; and

(8) details about any other form of remuneration or awards that are conferred on members.

History: Laws 1997, ch. 190, § 21; 1999, ch. 251, § 2; 2009, ch. 199, § 6.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "A company applicant", added "for a license or a renewal of a license"; in Paragraph (4) of Subsection A, changed "fifty thousand dollars ($50,000)" to "one hundred thousand dollars ($100,000)"; in Paragraph (6) of Subsection A, at the beginning of the sentence, added "a list of"; in Paragraph (7) of Subsection A, in the last sentence, after "loss statements shall be", deleted "certified" and added "audited"; in Subsection B, after "applying for a license", added "or a renewal of a license"; and in Paragraph (4) of Subsection B, in the last sentence, after "loss statements shall be", deleted "certified by independent certified public accountants" and added "submitted in a manner prescribed by the board".

The 1999 amendment, effective June 18, 1999, redesignated former Subsections A through G as Subsections A(1) through A(7) and added Subsections A(8) and B.

60-2E-20. Individual certification of finding of suitability of officers, directors and other persons.

A. An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability, according to the provisions of the Gaming Control Act, and if, in the judgment of the board the public interest is served by requiring any or all of the company's key executives to apply for and obtain a certification of finding of suitability, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

B. The key executives of a nonprofit organization that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to apply for and obtain a certification of finding of suitability if the board determines the public interest is served by the additional certifications. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

History: Laws 1997, ch. 190, § 22; 1999, ch. 251, § 3; 2002, ch. 101, § 1; 2009, ch. 199, § 7.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, in the first sentence, after "applied for a license shall", deleted "be certified"; after "be certified individually", added "apply for and obtain a certification of finding of suitability"; after "company's key executives to", deleted "be certified" and added "apply for and obtain a certification of finding of suitability"; and added the fourth sentence; and in Subsection B, in the first sentence, after "applied for a license shall", deleted "be certified"; in the second sentence, after "volunteers and other persons to", deleted "become certified" and added "apply for and obtain a certification of finding of suitability"; and in the fifth sentence, at the beginning of the sentence, deleted "An officer, employee, volunteer or other" and after "requested to be certified", deleted "pursuant to this subsection".

The 2002 amendment, effective March 5, 2002, deleted "president or commander and" preceding "key executives" in the first sentence of Subsection B.

The 1999 amendment, effective June 18, 1999, substituted "subsection" for "section" in the second sentence in Subsection A and added Subsection B.

60-2E-21. Requirements if company is or becomes a subsidiary; investigations; restrictions on unsuitable persons; other requirements.

A. If the company applicant or licensee is or becomes a subsidiary, each nonpublicly traded holding company and intermediary company with respect to the subsidiary company shall:

(1) qualify to do business in New Mexico; and

(2) register with the board and furnish to the board the following information:

(a) a complete list of all beneficial owners of five percent or more of its equity securities, which shall be updated within thirty days after any change;

(b) the names of all company officers and directors within thirty days of their appointment or election;

(c) its organization, financial structure and nature of the business it operates;

(d) the terms, position, rights and privileges of the different classes of its outstanding securities;

(e) the terms on which its securities are to be, and during the preceding three years have been, offered;

(f) the holder of and the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest pertaining to the applicant or licensee;

(g) the extent of the securities holdings or other interest in the holding company or intermediary company of all officers, directors, key executives, underwriters, partners, principals, trustees or any direct or beneficial owners, and the amount of any remuneration paid them as compensation for their services in the form of salary, wages, fees or by contract pertaining to the licensee;

(h) remuneration to persons other than directors, officers and key executives exceeding two hundred fifty thousand dollars ($250,000) per year;

(i) bonus and profit-sharing arrangements within the holding company or intermediary company, if deemed necessary by the board;

(j) management and service contracts pertaining to the licensee or applicant, if deemed necessary by the board;

(k) options existing or to be created in respect to the company's securities or other interests, if deemed necessary by the board;

(l) balance sheets and profit and loss statements, audited by independent certified public accountants or their foreign equivalents, for not more than the three preceding fiscal years, or, if the holding company or intermediary company has not been in existence more than three years, balance sheets and profit and loss statements from the time of its establishment, together with projections for three years from the time of its establishment;

(m)any further financial statements necessary or appropriate to assist the board in making its determinations; and

(n) a current annual profit and loss statement, a current annual balance sheet and a copy of the company's most recent federal income tax return or its foreign equivalent within thirty days after the return is filed.

B. The board may require all holders of five percent or more of the equity security of a holding company or intermediary company to apply for a certification of finding of suitability.

C. The board may in its discretion perform the investigations concerning the officers, directors, key executives, underwriters, security holders, partners, principals, trustees or direct or beneficial owners of any interest in any holding company or intermediary company as it deems necessary, either at the time of initial registration or at any time thereafter.

D. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

E. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection D of this section, it is unlawful for the unsuitable person to:

(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

F. A holding company or intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

G. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock

exchanges, which shall instead comply with the provisions of Section 60-2E-22 NMSA 1978.

History: Laws 1997, ch. 190, § 23; 2009, ch. 199, § 8.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subparagraph (h) of Paragraph (2) of Subsection A, changed "fifty thousand dollars ($50,000)" to "two hundred fifty thousand dollars ($250,000)"; in Subparagraphs (i), (j) and (k) of Paragraph (2) of Subsection A, at the end of each sentence, added "if deemed necessary by the board"; in Subparagraph (l) of Paragraph (2) of Subsection A, after "loss statements" deleted "certified" and added "audited" and after "certified public accountants", added "or their foreign equivalents"; in Subparagraph (n) of Paragraph (2) of Subsection A, after "federal income tax return", added "or its foreign equivalent"; and in Subsection B, at the beginning of the sentence, added "The board may require"; after "intermediary company", changed "shall" to "to" and after "apply for a", added "certification of".

60-2E-22. Change in company ownership.

A. If a company applicant or company licensee proposes to transfer ownership of twenty percent or more of the applicant or licensee, it shall notify the board in writing and provide the following information about the successor company:

(1) if the company is a publicly traded corporation, as of the date the company became a publicly traded corporation, and on any later date when the information changes, the names of all stockholders of record who hold five percent or more of the outstanding shares of any class of equity securities issued by the publicly traded corporation;

(2) the names of all officers within thirty days of their respective appointments;

(3) the names of all directors within thirty days of their respective elections or appointments;

(4) the organization, financial structure and nature of the businesses the company operates;

(5) if the company is a publicly traded corporation, the terms, position, rights and privileges of the different classes of securities outstanding as of the date the company became a publicly traded corporation;

(6) if the company is a publicly traded corporation, the terms on which the company's securities were issued during the three years preceding the date on which the company became a publicly traded corporation and the terms on which the publicly

traded corporation's securities are to be offered to the public as of the date the company became a publicly traded corporation;

(7) the terms and conditions of all outstanding indebtedness and evidence of security pertaining directly or indirectly to the company;

(8) remuneration exceeding one hundred thousand dollars ($100,000) per year paid to persons other than directors, officers and key executives who are actively and directly engaged in the administration or supervision of the gaming activities of the company;

(9) bonus and profit-sharing arrangements within the company directly or indirectly relating to its gaming activities;

(10) management and service contracts of the company pertaining to its gaming activities;

(11) options existing or to be created pursuant to its equity securities;

(12) balance sheets and profit and loss statements, certified by independent certified public accountants or their foreign equivalents, for not less than the three fiscal years preceding the date of the proposed transfer of ownership;

(13) any further financial statements deemed necessary or appropriate by the board; and

(14) a description of the company's affiliated companies and intermediary companies and gaming licenses, permits and approvals held by those entities.

B. The board shall determine whether the proposed transaction is a transfer or assignment of the license as prohibited by Subsection G of Section 60-2E-14 NMSA 1978. If the board determines that the proposed transaction is prohibited, it shall notify the licensee in writing and shall require the proposed transferee to file an application for a license. If the board determines that the proposed transaction is not a prohibited transfer or assignment of the license, it shall make a determination as to whether to issue a certification approving the transaction. The board shall consider the following information about the successor company in determining whether to certify the transaction:

(1) the business history of the company, including its record of financial stability, integrity and success of its gaming operations in other jurisdictions;

(2) the current business activities and interests of the company, as well as those of its officers, promoters, lenders and other sources of financing, or any other persons associated with it;

(3) the current financial structure of the company as well as changes that could reasonably be expected to occur to its financial structure as a consequence of its proposed action;

(4) the present and proposed compensation arrangements between the company and its directors, officers, key executives, securities holders, lenders or other sources of financing;

(5) the equity investment, commitment or contribution of present or prospective directors, key executives, investors, lenders or other sources of financing; and

(6) the dealings and arrangements, prospective or otherwise, between the company and its investment bankers, promoters, finders or lenders and other sources of financing.

C. The board may issue a certification upon receipt of a proper application and consideration of the criteria set forth in Subsection B of this section if it finds that the certification would not be contrary to the public interest or the policy set forth in the Gaming Control Act.

D. The board shall require the officers, directors key executives and holders of an equity security interest of five percent or more of the successor company and any other person specified in the Gaming Control Act to apply for and obtain a certification of finding of suitability.

History: Laws 1997, ch. 190, § 24; 2009, ch. 199, § 9.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "company license", deleted "is or becomes a publicly traded corporation, it shall register with the board" and added "proposes to transfer ownership of twenty percent or more of the applicant or licensee, it shall notify the board in writing" and after "the following information", added "about the successor company"; added Paragraph (1) of Subsection A; in Paragraph (4) of Subsection A, after "nature of the business in", deleted "publicly traded corporation" and added "company"; in Paragraphs (5) and (6) of Subsection A, at the beginning of each sentence, added "if the company is a publicly traded corporation"; in Paragraph (7) of Subsection A, after "indirectly to the", deleted "publicly traded corporation" and added "company"; in Paragraph (8) of Subsection A, changed "fifty thousand dollars ($50,000)" to "one hundred thousand dollars ($100,000)" and after "gaming activities of the", deleted "publicly traded corporation" and added "company"; in Paragraph (9) of Subsection A, after "arrangements within the", deleted "publicly traded corporation" and added "company"; in Paragraph (10) of Subsection A, after "contracts of the", deleted "corporation" and added "company"; in Paragraph (12) of Subsection A, after "certified public accountants", added "or their

foreign equivalents" and after "preceding the date", deleted "the company became a publicly traded corporation" and added "of the proposed transfer of ownership"; in Paragraph (14) of Subsection A, after "description of the", deleted "publicly traded corporation's" and added "company's"; in Subsection B, after "The board shall", deleted "consider the following criteria in determining whether to certify a publicly traded corporation" and added the remainder of the subsection; in Paragraph (1) of Subsection B, after "business history of the", deleted "publicly traded corporation" and added "company"; in Paragraph (3) of Subsection B, after "financial structure of the", deleted "publicly traded corporation" and added "company"; in Paragraph (4) of Subsection B, after "arrangements between the", deleted "publicly traded corporation" and added "company"; in Paragraph (6) of Subsection B, after "otherwise, between the", deleted "publicly traded corporation" and added "company"; and added Subsection D.

60-2E-23. Finding of suitability required for directors, officers and key executives; removal from position if found unsuitable; suspension of suitability by board.

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation who the board determines is or is to become actively and directly engaged in the administration or supervision of, or in any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee.

History: Laws 1997, ch. 190, § 25; 1999, ch. 251, § 4; 2002, ch. 102, § 11.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, substituted "who" for "that" in Subsection A.

The 1999 amendment, effective June 18, 1999, purported to amend this section but made no change.

60-2E-24. Suitability of individuals acquiring beneficial ownership of voting security in publicly traded corporation; report of acquisition; application; prohibition.

A. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board may be required to be found suitable if the board has reason to believe that the acquisition of the ownership would otherwise be inconsistent with the declared policy of this state.

B. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any class of voting securities of a publicly traded corporation certified by the board shall notify the board within ten days after acquiring such interest.

C. Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than ten percent of any class of voting securities of a publicly traded corporation certified by the board shall apply to the board for a finding of suitability within thirty days after acquiring such interest.

D. Institutional investors that have been exempted from or have received a waiver of suitability requirements pursuant to regulations adopted by the board are not required to comply with this section.

E. Any person required by the board or by the provisions of this section to be found suitable shall apply for a finding of suitability within thirty days after the board requests that he do so.

F. Any person required by the board or the provisions of this section to be found suitable who subsequently is found unsuitable by the board shall not hold directly or indirectly the beneficial ownership of any security of a publicly traded corporation that is registered with the board beyond that period of time prescribed by the board.

G. The board may, but is not required to, deem a person qualified to hold a license or be found suitable as required by this section if the person currently holds a valid license issued by, or has been found suitable by, gaming regulatory authorities in another jurisdiction, provided that the board finds that the other jurisdiction has conducted a thorough investigation of the applicant and has criteria substantially similar to those of the board to determine when a person is to be found suitable or to obtain a license.

History: Laws 1997, ch. 190, § 26.

60-2E-25. Report of proposed issuance or transfer of ownership; report of change in corporate officers and directors; approval of board.

A. Before a company licensee, other than a publicly traded corporation, may issue or transfer five percent or more of its ownership to a person, it shall file a report of its proposed action with the board, which report shall request the approval of the board. The board shall have ninety days within which to approve or deny the request. If the board fails to act in ninety days, the request is deemed approved. If the board denies the request, the company shall not issue or transfer five percent or more of its securities to the person about whom the request was made.

B. A company licensee shall file a report of each change of the corporate officers and directors with the board within thirty days of the change. The board shall have ninety days from the date the report is filed within which to approve or disapprove such change. During the ninety-day period and thereafter, if the board does not disapprove the change, an officer or director is entitled to exercise all powers of the office to which the officer or director was elected or appointed.

C. A company licensee shall report to the board in writing a change in company personnel who have been designated as key executives. The report shall be made no later than thirty days after the change.

D. The board may require that a company licensee furnish the board with a copy of its federal income tax return within thirty days after the return is filed.

History: Laws 1997, ch. 190, § 27; 2009, ch. 199, § 10.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "five percent or more of its", deleted "securities" and added "ownership".

60-2E-26. Gaming operator licensees; general provisions; business plan; player age limit; restrictions.

A. An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling. The plan shall include regular educational training sessions for employees. Plan approval by the board is a condition of issuance of the license.

B. An applicant for a gaming operator's license shall submit with the application a proposed business plan. The plan shall include at least:

(1) a floor plan of the area to be used for gaming machine operations;

(2) an advertising and marketing plan;

(3) the proposed placement and number of gaming machines;

(4) a current financial status and gaming protection plan;

(5) a security plan;

(6) a staffing plan for gaming machine operations;

(7) internal control systems in compliance with Section 60-2E-35 NMSA 1978; and

(8) details of any proposed progressive systems.

C. A gaming operator licensee shall be granted a license to operate a number of machines, not to exceed the statutory maximum, at a gaming establishment identified in the license application and shall be granted a license for each gaming machine.

D. A gaming operator licensee shall apply for and pay the machine license fee for any increase in the number of authorized gaming machines in operation at the licensed premises and shall notify the board of any decrease in the number of authorized gaming machines in operation at the licensed premises.

E. Gaming machines may be available for play only in an area restricted to persons twenty-one years of age or older.

F. A gaming operator licensee shall erect a permanent physical barrier to allow for multiple uses of the premises by persons of all ages. For purposes of this subsection, "permanent physical barrier" means a floor-to-ceiling wall separating the general areas from the restricted areas. The entrance to the area where gaming machines are located shall display a sign that the premises are restricted to persons twenty-one years of age or older. Persons under the age of twenty-one shall not enter the area where gaming machines are located.

G. A gaming operator licensee shall not have automated teller machines in the area restricted pursuant to Subsection F of this section.

H. A gaming operator licensee shall not provide, allow, contract or arrange to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game.

I. Only a racetrack licensed by the state racing commission or a nonprofit organization may apply for or be issued a gaming operator's license. No other persons are qualified to apply for or be issued a gaming operator's license pursuant to the Gaming Control Act.

History: Laws 1997, ch. 190, § 28; 2009, ch. 199, § 11.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsections A and B, after "An applicant for" deleted "licensure as a gaming operator" and added "a gaming operator's license"; in Paragraph (4) of Subsection B, changed "a financial control plan" to "a current financial status and gaming protection plan"; added Paragraph (7) of Subsection B; in Subsection C, after "license to operate a", deleted "specific" and after "number of machines", added "not to exceed the statutory maximum"; in Subsection D, after "gaming operator licensee", deleted "who desires to change the number of machines in operation at a gaming establishment shall apply to the board for an amendment to this license authorizing a change in the number of machines" and added the remainder of the sentence.

60-2E-27. Gaming operator licensees; special conditions for racetracks; number of gaming machines; days and hours of operations.

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act [60-1A-1 NMSA 1978] to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.

B. A racetrack's gaming operator's license shall automatically become void if:

(1) the racetrack no longer holds an active license to conduct parimutuel wagering; or

(2) the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet, except as provided in Subsection F of this section.

C. Unless a larger number is allowed pursuant to Subsection D of this section, a gaming operator licensee that is a racetrack may have up to six hundred licensed gaming machines.

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to which the allocation is made, a gaming operator licensee that is a racetrack may allocate any number of its authorized gaming machines to another gaming operator licensee that is a racetrack. To be valid, the allocation agreement must bear the written approval of the board and the state racing commission, and this approval shall make specific reference to the meeting at which the action of approval was taken and the number of votes cast both for and against the approval. By allocating a number of its authorized machines to another racetrack, the allocating racetrack automatically surrenders all rights to operate the number of machines allocated. No

racetrack shall operate or be authorized to operate more than seven hundred fifty gaming machines.

E. Gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. On days when gaming machines are permitted to be operated, a racetrack gaming operator licensee may offer gaming machines for operation for up to eighteen hours per day; provided that the total number of hours in which gaming machines are operated does not exceed one hundred twelve hours in a one-week period beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following Tuesday. A racetrack gaming operator licensee may offer gaming machines for play at any time during a day; provided that the total hours of operation in each day from just after midnight of the previous day until midnight of the current day does not exceed eighteen hours. A racetrack gaming operator licensee shall determine, within the limitations imposed by this subsection, the hours it will offer gaming machines for operation each day and shall notify the board in writing of those hours.

F. Maintaining fewer than four live race days or nine live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races as required by Paragraph (2) of Subsection B of this section if the licensee submits to the board written approval by the state racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to:

(1) the inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) a strike or work stoppage by jockeys or other persons necessary to conduct a race or meet;

(4) a power outage, electrical failure or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that the board finds is not within the control of the licensee even with the exercise of reasonable diligence or care.

G. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 60-2E-26 NMSA 1978.

History: Laws 1997, ch. 190, § 29; 2000, ch. 90, § 1; 2001, ch. 334, § 1; 2005, ch. 350, § 1; 2009, ch. 199, § 12.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection B, after "licensed race meet", added the remainder of the sentence; in Subsection C, at the beginning of the sentence, added "Unless a larger number is allowed pursuant to Subsection C of this section" and after "six hundred licensed gaming machines", deleted "but the number of gaming machines to be located on the licensee's premises shall be specified in the gaming operator's license"; and added Subsection F.

The 2001 amendment, in Subsection C, substituted "six hundred" for "three hundred"; added Subsection D; and redesignated former Subsection D as E and former E as F.

The 2005 amendment, effective July 1, 2005, in Subsection B(2), deleted the former provision which provided that a license shall become void if the racetrack fails to maintain a minimum of three live race days a week with at least nine live races on each race day during it licensed race meet in the 1997 calendar year and in the 1998 and subsequent calendar years; in Subsection E, deleted the former provision which provided that a gaming operator licensee that is a racetrack shall be permitted to conduce games on only the aforementioned days for a daily period not to exceed twelve hours; and in Subsection E, provided for expanded operating hours for gaming machines at racetracks.

The 2000 amendment, effective May 17, 2000, updated the internal reference in Subsection E, deleted Subsection F, relating to the legal hours of operation for gaming machines at a racetrack, and deleted the internal reference to Subsection F from the beginning of Subsection D.

Compiler's notes. — Laws 2001, ch. 334, § 2 made the act effective when the compact negotiated between the state and the tribes during the first session of the forty-fifth legislature was approved in writing by the tribes, the state and the secretary of the interior and notice of such approval was published in the Federal Register. Notice was published in the Federal Register on December 14, 2001, of an agreement with the Pueblo of Tesuque, San Felipe, Isleta, Laguna, Sarida, San Juan, Santa Ana, Santa Clara, and Acona. Notice of an agreement with the Pueblo of Taos was published on December 20, 2000. Notice of an agreement with the Jicarilla Apache Nation was published on January 15, 2002. Notice of an agreement with the Pueblo of Nambe was published on Februrary 8, 2002.

License was void for failure to conduct live horse races. — Where the racing commission granted plaintiff a license to conduct live horse races for the 2010 meet which required plaintiff to conduct live horse racing from May 28, 2010 to September 6, 2010; the gaming control board granted plaintiff a conditional gaming license subject to the completion of construction of facilities to conduct live racing before the end of December 2009; plaintiff failed to hold the minimum number of live race days or races required by Subsection B(2); plaintiff filed a variance request with the racing commission in March 2010; the racing commission first tabled and then set the variance

request for hearing in December 2010; and as of September 17, 2010, plaintiff had not obtained a written variance from the racing commission and was unable to run live horse races for the remainder of the 2010 race meet because plaintiff had failed to construct any facilities to conduct live horse racing, Subsection F(6) was not applicable and plaintiff's gaming license became automatically void pursuant to Subsection B(2). La Mesa Racetrack & Casino v. N.M. Gaming Control Bd., 2012-NMCA-076, 283 P.3d 886.

60-2E-28. Gaming operator licensees; special conditions for nonprofit organizations; number of gaming machines; days and hours of operations.

A. A nonprofit organization may be issued a gaming operator's license to operate licensed gaming machines on its premises to be played only by active and auxiliary members.

B. No more than fifteen gaming machines may be offered for play on the premises of a nonprofit organization gaming operator licensee.

C. No gaming machine on the premises of a nonprofit organization gaming operator licensee may award a prize that exceeds four thousand dollars ($4,000).

D. Gaming machines may be played on the premises of a nonprofit organization gaming operator licensee from 12:00 noon until 12:00 midnight every day.

History: Laws 1997, ch. 190, § 30; 2002, ch. 107, § 1.

ANNOTATIONS

The 2002 amendment, effective May 15, 2002, deleted former Subsection E, which prohibited the sale or consumption of alcoholic beverages in areas where gaming machines are located.

60-2E-29. Licensing of manufacturers of gaming devices; exception; disposition of gaming devices.

A. It is unlawful for a person to operate, carry on, conduct or maintain any form of manufacturing of a gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of a gaming device or associated equipment in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a manufacturer's license.

B. If the board revokes a manufacturer's license:

(1) no new gaming device manufactured by the manufacturer may be approved for use in this state;

(2) any previously approved gaming device manufactured by the manufacturer is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment made by the manufacturer may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the manufacturer and a distributor licensee or gaming operator licensee in New Mexico shall be terminated.

C. An agreement between a manufacturer licensee and a distributor licensee or a gaming operator licensee in New Mexico shall be deemed to include a provision for its termination without liability for the termination on the part of either party upon a finding by the board that either party is unsuitable. Failure to include that condition in the agreement is not a defense in an action brought pursuant to this section to terminate the agreement.

D. A gaming device shall not be used and offered for play by a gaming operator licensee unless it is identical in all material aspects to a model that has been specifically tested and approved by:

(1) the board;

(2) a laboratory selected by the board; or

(3) gaming officials in Nevada or New Jersey for current use.

E. The board may inspect every gaming device that is manufactured:

(1) for use in New Mexico; or

(2) in New Mexico for use outside of New Mexico.

F. The board may inspect every gaming device that is offered for play within New Mexico by a gaming operator licensee.

G. The board may inspect all associated equipment that is manufactured and sold for use in New Mexico or manufactured in New Mexico for use outside of New Mexico.

H. In addition to all other fees and charges imposed pursuant to the Gaming Control Act, the board may determine, charge and collect from each manufacturer an inspection fee, which shall not exceed the actual cost of inspection and investigation.

I. The board may prohibit the use of a gaming device by a gaming operator licensee if it finds that the gaming device does not meet the requirements of this section.

History: Laws 1997, ch. 190, § 31; 2009, ch. 199, § 13.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, made grammatical changes.

60-2E-30. Licensing of distributors of gaming devices.

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of distribution of any gaming device for use or play in New Mexico or any form of distribution of any gaming device in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a distributor's or manufacturer's license.

B. If the board revokes a distributor's license:

(1) no new gaming device distributed by the person may be approved;

(2) any previously approved gaming device distributed by the distributor is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment distributed by the distributor may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the distributor and a gaming operator licensee shall be terminated. An agreement between a distributor licensee and a gaming operator licensee shall be deemed to include a provision for its termination without liability on the part of either party upon a finding by the board that the other party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

C. The board may inspect every gaming device that is distributed for use in New Mexico.

D. In addition to all other fees and charges imposed by the Gaming Control Act, the board may determine, charge and collect from each distributor an inspection fee, which shall not exceed the actual cost of inspection and investigation.

History: Laws 1997, ch. 190, § 32; 2002, ch. 102, § 12.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, inserted "or any form of distribution of any gaming device in New Mexico for use or play outside of New Mexico" in Subsection A.

60-2E-31. Suitability of certain persons furnishing services or property or doing business with gaming operators; termination of association.

A. The board may determine the suitability of any person who furnishes services or property to a gaming operator licensee under any arrangement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming. The board may require the person to comply with the requirements of the Gaming Control Act and with the regulations of the board. If the board determines that the person is unsuitable, it may require the arrangement to be terminated.

B. The board may require a person to apply for a finding of suitability to be associated with a gaming operator licensee if the person:

(1) does business on the premises of a gaming establishment; or

(2) provides any goods or services to a gaming operator licensee for compensation that the board finds to be grossly disproportionate to the value of the goods or services.

C. If the board determines that a person is unsuitable to be associated with a gaming operator licensee, the association shall be terminated. Any agreement that entitles a business other than gaming to be conducted on the premises of a gaming establishment, or entitles a person other than a licensee to conduct business with the gaming operator licensee, is subject to termination upon a finding of unsuitability of the person seeking association with a gaming operator licensee. Every agreement shall be deemed to include a provision for its termination without liability on the part of the gaming operator licensee upon a finding by the board of the unsuitability of the person seeking or having an association with the gaming operator licensee. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement. If the application is not presented to the board within thirty days following demand or the unsuitable association is not terminated, the board may pursue any remedy or combination of remedies provided in the Gaming Control Act.

History: Laws 1997, ch. 190, § 33.

60-2E-32. Reasons for investigations by board; complaint by board; board to appoint hearing examiner; review by board; order of board.

A. The board shall make appropriate investigations to:

(1) determine whether there has been any violation of the Gaming Control Act or of any regulations adopted pursuant to that act;

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the Gaming Control Act or regulations adopted pursuant to that act;

(3) aid in adopting regulations;

(4) secure information as a basis for recommending legislation relating to the Gaming Control Act; or

(5) determine whether a licensee is able to meet its financial obligations, including all financial obligations imposed by the Gaming Control Act, as they become due.

B. If after an investigation the board is satisfied that a license, registration, finding of suitability or prior approval by the board of any transaction for which approval was required by the provisions of the Gaming Control Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations. The summary of the evidence shall be confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.

C. The respondent shall file an answer within thirty days after service of the complaint.

D. Upon filing the complaint, the board shall appoint a hearing examiner to conduct further proceedings.

E. The hearing examiner shall conduct proceedings in accordance with the Gaming Control Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or imposition of a fine not to exceed fifty thousand dollars ($50,000) for each violation or any combination or all of the foregoing actions.

F. The hearing examiner shall prepare a written decision containing his recommendation to the board and shall serve it on all parties.

G. The board shall by a majority vote accept, reject or modify the recommendation.

H. If the board limits, conditions, suspends or revokes any license or imposes a fine or limits, conditions, suspends or revokes any registration, finding of suitability or prior approval, it shall issue a written order specifying its action.

I. The board's order is effective on the date issued and continues in effect unless reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

History: Laws 1997, ch. 190, § 34; 2002, ch. 102, § 13.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, deleted the former last sentence in Subsection F, which provided for requests for review by the board of the hearing examiner's recommendations; deleted former Subsection G, relating to the board's review; and redesignated the remaining subsections accordingly.

60-2E-33. Emergency orders of board.

The board may issue an emergency order for suspension, limitation or conditioning of a license, registration, finding of suitability or work permit or may issue an emergency order requiring a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee's gaming establishment or not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment in the following manner:

A. an emergency order may be issued only when the board believes that:

(1) a licensee has willfully failed to report, pay or truthfully account for and pay over any fee imposed by the provisions of the Gaming Control Act or willfully attempted in any manner to evade or defeat any fee or payment thereof;

(2) a licensee or gaming employee has cheated at a game; or

(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare;

B. the emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action;

C. the emergency order is effective immediately upon issuance and service upon the licensee or resident agent of the licensee or gaming employee or, in cases involving registration or findings of suitability, upon issuance and service upon the person or entity involved or resident agent of the entity involved; the emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the gaming operator licensee. The emergency order remains effective until further order of the board or final disposition of the case; and

D. within five days after issuance of an emergency order, the board shall cause a complaint to be filed and served upon the person or entity involved; thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing before the board and to judicial review of the decision and order of the board in accordance with the provisions of the board's regulations.

History: Laws 1997, ch. 190, § 35.

60-2E-34. Exclusion or ejection of certain persons from gaming establishments; persons included.

A. The board shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from a gaming establishment. The list may include any person whose presence in the gaming establishment is determined by the board to pose a threat to the public interest or licensed gaming activities.

B. In making the determination in Subsection A of this section, the board may consider a:

(1) prior conviction for a crime that is a felony under state or federal law, a crime involving moral turpitude or a violation of the gaming laws of any jurisdiction;

(2) violation or conspiracy to violate the provisions of the Gaming Control Act relating to:

(a) the failure to disclose an interest in a gaming activity for which the person must obtain a license; or

(b) willful evasion of fees or taxes;

(3) notorious or unsavory reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences; or

(4) written order of any other governmental agency in this state or any other state that authorizes the exclusion or ejection of the person from an establishment at which gaming is conducted.

C. A gaming operator licensee has the right, without a list established by the board, to exclude or eject a person from its gaming establishment who poses a threat to the public interest or for any business reason.

D. Race, color, creed, national origin or ancestry, age, disability or sex shall not be grounds for placing the name of a person on the list or for exclusion or ejection under Subsection A or C of this section.

History: Laws 1997, ch. 190, § 36.

60-2E-34.1. Self-exclusion from gaming establishments; procedure; fines; confidentiality.

A. The board shall develop rules that permit a person who is a compulsive gambler to be voluntarily excluded from a gaming establishment.

B. Self-exclusion shall occur through written application made by the compulsive gambler to the board and shall be governed by the following provisions:

(1) self-exclusion shall be enforceable upon issuance of a self-exclusion order by the board to each applicable gaming establishment identified in the order;

(2) only the person who is the compulsive gambler may apply on that person's behalf;

(3) the application shall be submitted to the board;

(4) except for notification of the gaming establishments for which the self-exclusion order is effective and for notification for mailing list exclusion pursuant to this section, the application and the self-exclusion order shall be held confidential by employees of the board and a gaming operator licensee and its employees and key executives;

(5) a self-exclusion order may apply to one or more gaming establishments licensed pursuant to the Gaming Control Act;

(6) a self-excluded person, if present at a gaming establishment from which the person is excluded, shall forfeit the following to that gaming establishment, provided that all money or other property forfeited shall be used by the gaming establishment only to supplement the one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers pursuant to Subsection E of Section 60-2E-47 NMSA 1978:

(a) all winnings of the person obtained while present at the gaming establishment; and

(b) all credits, tokens or vouchers received by the person while present at the gaming establishment;

(7) a gaming establishment is immune from liability arising out of its efforts to exclude a person identified in a self-exclusion order; and

(8) a specific term shall be set for each self-exclusion order.

C. Notice shall be submitted by the board at least monthly to all gaming establishments listing all persons who are currently self-excluded and ordering the removal of their names from direct mail or electronic advertisement or promotional lists.

D. The state gaming representative may negotiate an agreement with each tribal casino in the state to allow the state to include tribal casinos in the self-exclusion orders.

History: 1978 Comp., § 60-2E-34.1 as enacted by Laws 2009, ch. 199, § 14.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 199 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

60-2E-35. Internal control systems.

A. Each gaming operator licensee shall adopt internal control systems that shall include provisions for:

(1) safeguarding its assets and revenues, especially the recording of cash and evidences of indebtedness;

(2) making and maintaining reliable records, accounts and reports of transactions, operations and events, including reports to the board; and

(3) a system by which the amount wagered on each gaming machine and the amount paid out by each gaming machine is recorded on a daily basis, which results may be obtained by the board by appropriate means as described in regulations adopted by the board; all manufacturers are required to have such a system available for gaming operators for the gaming machines that it supplies for use in New Mexico, and all distributors shall make such a system available to gaming operators.

B. The internal control system shall be designed to reasonably ensure that:

(1) assets are safeguarded;

(2) financial records are accurate and reliable;

(3) transactions are performed only in accordance with management's general or specific authorization;

(4) transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes and to maintain accountability of assets;

(5) access to assets is allowed only in accordance with management's specific authorization;

(6) recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and

(7) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound accounting and management practices by competent, qualified personnel.

C. A gaming operator licensee and an applicant for a gaming operator's license shall describe, in the manner the board may approve or require, its administrative and accounting procedures in detail in a written system of internal control. A gaming operator licensee and an applicant for a gaming operator's license shall submit a copy of its written system to the board. Each written system shall include:

(1) an organizational chart depicting appropriate segregation of functions and responsibilities;

(2) a description of the duties and responsibilities of each position shown on the organizational chart;

(3) a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of Subsection A of this section;

(4) a written statement signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner attesting that the system satisfies the requirements of this section;

(5) if the written system is submitted by an applicant, a letter from an independent certified public accountant stating that the applicant's written system has been reviewed by the accountant and complies with the requirements of this section; and

(6) other items as the board may require.

D. The board shall adopt and publish minimum standards for internal control procedures.

History: Laws 1997, ch. 190, § 37.

60-2E-36. Gaming employees; issuance of work permits; revocation of work permits.

A. A person shall not be employed as a gaming employee unless the person holds a valid work permit issued by the board.

B. A work permit shall be issued and may be revoked by the board as provided in regulations adopted by the board.

C. Any person whose work permit has been denied or revoked may seek judicial review.

History: Laws 1997, ch. 190, § 38.

60-2E-37. Age requirement for patrons and gaming employees.

A person under the age of twenty-one years shall not:

A. play, be allowed to play, place wagers on or collect winnings from, whether personally or through an agent, any game authorized or offered to play pursuant to the Gaming Control Act; or

B. be employed as a gaming employee.

History: Laws 1997, ch. 190, § 39.

60-2E-38. Calculation of net take; certain expenses not deductible.

In calculating net take from gaming machines, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, except for travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

History: Laws 1997, ch. 190, § 40.

60-2E-39. Limitations on taxes and license fees.

A political subdivision of the state shall not impose a license fee or tax on any licensee licensed pursuant to the Gaming Control Act except for the imposition of property taxes, local option gross receipts taxes with respect to receipts not subject to

the gaming tax and the distribution provided for and determined pursuant to Subsection C of Section 60-1-15 and Section 60-1-15.2 NMSA 1978.

History: Laws 1997, ch. 190, § 41.

60-2E-40. Use of chips, tokens or legal tender required for all gaming.

All gaming shall be conducted with chips, tokens or other similar objects approved by the board or with the legal currency of the United States.

History: Laws 1997, ch. 190, § 42.

60-2E-41. Communication or document of applicant or licensee absolutely confidential; confidentiality not waived; disclosure of confidential information prohibited.

A. Any communication or document of an applicant or licensee is confidential and does not impose liability for defamation or constitute a ground for recovery in any civil action if it is required by:

(1) law or the regulations of the board; or

(2) a subpoena issued by the board to be made or transmitted to the board.

B. The confidentiality created pursuant to Subsection A of this section is not waived or lost because the document or communication is disclosed to the board.

C. Notwithstanding the powers granted to the board by the Gaming Control Act, the board:

(1) may release or disclose any confidential information, documents or communications provided by an applicant or licensee only with the prior written consent of the applicant or licensee or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee;

(2) shall maintain all confidential information, documents and communications in a secure place accessible only to members of the board; and

(3) shall adopt procedures and regulations to protect the confidentiality of information, documents and communications provided by an applicant or licensee.

History: Laws 1997, ch. 190, § 43.

60-2E-42. Motion for release of confidential information.

An application to a court for an order requiring the board to release any information declared by law to be confidential shall be made only by petition in district court. A hearing shall be held on the petition not less than ten days and not more than twenty days after the date of service of the petition on the board, the attorney general and all persons who may be affected by the entry of that order. A copy of the petition, all papers filed in support of it and a notice of hearing shall be served.

History: Laws 1997, ch. 190, § 44.

60-2E-43. Gaming machine central system.

The board shall develop and operate a central system into which all licensed gaming machines are connected. The central system shall be capable of:

A. monitoring continuously, retrieving and auditing the operations, financial data and program information of the network;

B. disabling from operation or play any gaming machine in the network that does not comply with the provisions of the Gaming Control Act or the regulations of the board;

C. communicating, through program modifications or other means equally effective, with all gaming machines licensed by the board;

D. interacting, reading, communicating and linking with gaming machines from a broad spectrum of manufacturers and associated equipment; and

E. providing linkage to each gaming machine in the network at a reasonable and affordable cost to the state and the gaming operator licensee and allowing for program modifications and system updating at a reasonable cost.

History: Laws 1997, ch. 190, § 45.

60-2E-44. Machine specifications.

To be eligible for licensure, each gaming machine shall meet all specifications established by regulations of the board and:

A. be unable to be manipulated in a manner that affects the random probability of winning plays or in any other manner determined by the board to be undesirable;

B. have at least one mechanism that accepts coins or currency;

C. be capable of having play suspended through the central system by the executive director until he resets the gaming machine;

D. house nonresettable mechanical and electronic meters within a readily accessible locked area of the gaming machine that maintain a permanent record of all money inserted into the machine, all cash payouts of winnings, all refunds of winnings, all credits played for additional games and all credits won by players;

E. be capable of printing out, at the request of the executive director, readings on the electronic meters of the machine;

F. for machines that do not dispense coins or tokens directly to players, be capable of printing a ticket voucher stating the value of a cash prize won by the player at the completion of each game, the date and time of day the game was played in a twenty-four-hour format showing hours and minutes, the machine serial number, the sequential number of the ticket voucher and an encrypted validation number for determining the validity of a winning ticket voucher;

G. be capable of being linked to the board's central system for the purpose of being monitored continuously as required by the board;

H. provide for a payback value for each credit wagered, determined over time, of not less than eighty percent;

I. meet the standards and specifications set by laws or regulations of the states of Nevada and New Jersey for gaming machines, whichever are more stringent;

J. offer only games authorized and examined by the board; and

K. display the gaming machine license issued for that machine in an easily accessible place, before and during the time that a machine is available for use.

History: Laws 1997, ch. 190, § 46; 2001, ch. 208, § 1; 2003, ch. 185, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted "or more than ninety-six percent" at the end of Subsection H.

The 2001 amendment, effective April 3, 2001, deleted "but does not accept bills of denominations greater than twenty dollars ($20.00)" from the end of Subsection B.

60-2E-45. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 199, § 15 repealed 60-2E-45 NMSA 1978, as enacted by Laws 1997, ch. 190, § 47, relating to posting of gaming machine odds, effective June

19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2E-46. Examination of gaming devices; cost allocation.

A. The board shall examine prototypes of gaming devices of manufacturers seeking a license as required.

B. The board by regulation shall require a manufacturer to pay the anticipated actual costs of the examination of a gaming device in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the board for underpayment of actual costs.

C. The board may contract for the examination of gaming devices to meet the requirements of this section.

History: Laws 1997, ch. 190, § 48.

60-2E-47. Gaming tax; imposition; administration.

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-six percent of the net take of every other gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act [7-1-1 NMSA 1978] apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules

adopted by the state racing commission. An amount not to exceed twenty percent of the interest earned on the balance of any fund consisting of money for purses distributed by racetrack gaming operator licensees pursuant to this subsection may be expended for the costs of administering the distributions. A racetrack gaming operator licensee shall spend no less than one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes.

History: Laws 1997, ch. 190, § 49; 1998, ch. 15, § 1; 1999, ch. 187, § 1; 2001, ch. 256, § 1; 2001, ch. 262, § 3; 2002, ch. 48, § 1; 2005, ch. 350, § 2.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, increased the tax rate on the net take of other gaming operator licensees in Subsection B from twenty-five percent to twenty-six percent.

The 2002 amendment, effective March 4, 2002, inserted the present second sentence in Subsection E. Laws 2002, ch. 48, § 2 repealed Laws 2001, ch. 256, § 1, effective March 4, 2002.

The 2001 amendment, effective June 15, 2001, in Subsection B inserted "ten percent of the net take of a gaming operator licensee that is a nonprofit organization" and inserted "other" preceding "gaming operator licensee".

The 1999 amendment, effective June 18, 1999, substituted "rules" for "regulations" in the first sentence in Subsection E and "sixty percent" for "eighty-eight percent" in Subsection F.

The 1998 amendment, effective March 5, 1998, added the last sentence in Subsection B; added the first sentence in Subsection D; substituted "its" for "the" in the first sentence in Subsection E; and inserted "its" preceding "net" in Subsection F.

60-2E-47.1. County gaming tax credit.

A. Subject to the provisions of Subsection C of this section, beginning January 1, 2011, a taxpayer that is a gaming operator licensee that is a racetrack may claim, and the department may allow, a tax credit in an amount of up to fifty percent of the taxpayer's monthly gaming tax liability pursuant to Section 60-2E-47 NMSA 1978, not to exceed a maximum credit of seven hundred fifty thousand dollars ($750,000) per state fiscal year, if the taxpayer:

(1) is located in a county in which the board of county commissioners has imposed and the electors have approved a county business retention gross receipts tax; and

(2) had in the immediately prior calendar year a combined net take and receipts, not including receipts for purses, from an allocation agreement made pursuant to Section 60-2E-27 NMSA 1978 of under fifteen million dollars ($15,000,000).

B. The tax credit that may be claimed pursuant to this section may be referred to as the "county gaming tax credit".

C. If in the prior fiscal year the total amount of county gaming tax credit claimed by the taxpayer exceeded the amount distributed to the state from the proceeds of a county business retention gross receipts tax imposed by the county in which the taxpayer is located, the taxpayer shall be deemed to owe an amount equal to the excess credit and shall remit to the state an amount equal to the excess credit. The taxpayer may not again claim the county gaming tax credit until the excess amount calculated pursuant to this subsection has been remitted to the state.

D. The county gaming tax credit shall be administered by the taxation and revenue department pursuant to the Tax Administration Act [7-1-1 NMSA 1978].

E. Subject to the provisions of Subsection C of this section, the credit created in this section may be claimed on a monthly basis against the gaming tax remitted to the state on a form provided by the department. The credit claimed each month may not exceed one-twelfth of fifty percent of the gaming tax paid in the prior calendar year. Any additional credit that may be allowed may be claimed in the last month of the fiscal year. The maximum county gaming tax credit claimed shall not exceed fifty percent of the gaming tax due from the taxpayer in the fiscal year.

History: Laws 2010, ch. 31, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 31, § 4 contained an emergency clause and was approved March 3, 2010.

60-2E-48. Civil actions to restrain violations of Gaming Control Act.

A. The attorney general, at the request of the board, may institute a civil action in any court of this state against any person to enjoin a violation of a prohibitory provision of the Gaming Control Act.

B. An action brought against a person pursuant to this section shall not preclude a criminal action or administrative proceeding against that person.

History: Laws 1997, ch. 190, § 50.

60-2E-49. Testimonial immunity.

A. The board may order a person to answer a question or produce evidence and confer immunity pursuant to this section. If, in the course of an investigation or hearing conducted pursuant to the Gaming Control Act, a person refuses to answer a question or produce evidence on the ground that he will be exposed to criminal prosecution by doing so, then the board may by approval of three members, after the written approval of the attorney general, issue an order to answer or to produce evidence with immunity.

B. If a person complies with an order issued pursuant to Subsection A of this section, he shall be immune from having a responsive answer given or responsive evidence produced, or evidence derived from either, used to expose him to criminal prosecution, except that the person may be prosecuted for any perjury committed in the answer or production of evidence and may also be prosecuted for contempt for failing to act in accordance with the order of the board. An answer given or evidence produced pursuant to the grant of immunity authorized by this section may be used against the person granted immunity in a prosecution of the person for perjury or a proceeding against him for contempt.

History: Laws 1997, ch. 190, § 51.

60-2E-50. Crime; manipulation of gaming device with intent to cheat.

A person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including varying the pull of the handle of a gaming machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 52; 2002, ch. 102, § 14.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, substituted "gaming machine" for "slot machine".

60-2E-51. Crime; use of counterfeit or unapproved tokens, currency or devices; possession of certain devices, equipment, products or materials.

A. A person who, in playing any game designed to be played with, to receive or to be operated by tokens approved by the board or by lawful currency of the United States, knowingly uses tokens other than those approved by the board, uses currency that is not lawful currency of the United States or uses currency not of the same denomination as the currency intended to be used in that game is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who knowingly has on his person or in his possession within a gaming establishment any device intended to be used by him to violate the provisions of the Gaming Control Act is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A person, other than a duly authorized employee of a gaming operator acting in furtherance of his employment within a gaming establishment, who knowingly has on his person or in his possession within a gaming establishment any key or device known by him to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any game, dropbox or any electronic or mechanical device connected to the game or dropbox or for removing money or other contents from them is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who knowingly and with intent to use them for cheating has on his person or in his possession any paraphernalia for manufacturing slugs is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. As used in this subsection, "paraphernalia for manufacturing slugs" means the equipment, products and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of tokens approved by the board or a lawful coin of the United States, the use of which is unlawful pursuant to the Gaming Control Act. The term includes:

(1) lead or lead alloy;

(2) molds, forms or similar equipment capable of producing a likeness of a gaming token or coin;

(3) melting pots or other receptacles;

(4) torches; and

(5) tongs, trimming tools or other similar equipment.

E. Possession of more than two items of the equipment, products or material described in Subsection D of this section permits a rebuttable inference that the possessor intended to use them for cheating.

History: Laws 1997, ch. 190, § 53.

60-2E-52. Crime; cheating.

A person who knowingly cheats at any game is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 54.

60-2E-53. Crime; possession of gaming device manufactured, sold or distributed in violation of law.

A person who knowingly possesses any gaming device that has been manufactured, sold or distributed in violation of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 55.

60-2E-54. Crime; reporting and record violations; penalty.

A person who, in an application, book or record required to be maintained by the Gaming Control Act or by a regulation adopted under that act or in a report required to be submitted by that act or a regulation adopted under that act, knowingly makes a statement or entry that is false or misleading or fails to maintain or make an entry the person knows is required to be maintained or made is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 56.

60-2E-55. Crime; unlawful manufacture, sale, distribution, marking, altering or modification of devices associated with gaming; unlawful instruction; penalty.

A. A person who manufactures, sells or distributes a device that is intended by him to be used to violate any provision of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who marks, alters or otherwise modifies any gaming device in a manner that affects the result of a wager by determining win or loss or alters the normal criteria of random selection that affects the operation of a game or that determines the outcome of a game is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 57.

60-2E-56. Underage gaming; penalty for permitting or participation.

A. A person who knowingly permits an individual who the person knows is younger than twenty-one years of age to participate in gaming is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. An individual who participates in gaming when he is younger than twenty-one years of age at the time of participation is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1997, ch. 190, § 58.

60-2E-57. Crime; general penalties for violation of act.

A person who willfully violates, attempts to violate or conspires to violate any of the provisions of the Gaming Control Act specifying prohibited acts, the classification of which is not specifically stated in that act, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 59.

60-2E-58. Detention and questioning of a person suspected of violating act; limitations on liability; posting of notice.

A. A gaming operator licensee or its officers, employees or agents may question a person in its gaming establishment suspected of violating any of the provisions of the Gaming Control Act. No gaming operator licensee or any of its officers, employees or agents is criminally or civilly liable:

(1) on account of any such questioning; or

(2) for reporting to the board or law enforcement authorities the person suspected of the violation.

B. A gaming operator licensee or any of its officers, employees or agents who has reasonable cause for believing that there has been a violation of the Gaming Control Act in the gaming establishment by a person may detain that person in the gaming establishment in a reasonable manner and for a reasonable length of time. Such a detention does not render the gaming operator licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence detention was unreasonable under the circumstances.

C. No gaming operator licensee or its officers, employees or agents are entitled to the immunity from liability provided for in Subsection B of this section unless there is displayed in a conspicuous place in the gaming establishment a notice in boldface type clearly legible and in substantially this form:

"Any gaming operator licensee or any of his officers, employees or agents who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."

History: Laws 1997, ch. 190, § 60.

60-2E-59. Administrative appeal of board action.

A. Any person aggrieved by an action taken by the board or one of its agents may request and receive a hearing for the purpose of reviewing the action. To obtain a hearing, the aggrieved person shall file a request for hearing with the board within thirty days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of shall be final with no further right to review, either administratively or by a court.

B. The board shall adopt procedural regulations to govern the procedures to be followed in administrative hearings pursuant to the provisions of this section. At a minimum, the regulations shall provide:

(1) for the hearings to be public;

(2) for the appointment of a hearing officer to conduct the hearing and make his recommendation to the board not more than thirty days after the completion of the hearing;

(3) procedures for discovery;

(4) assurance that procedural due process requirements are satisfied;

(5) for the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and

(6) for the hearing to be held in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

C. Actions taken by the board after a hearing pursuant to the provisions of this section shall be:

(1) written and shall state the reasons for the action;

(2) made public when taken;

(3) communicated to all persons who have made a written request for notification of the action taken; and

(4) taken not more than thirty days after the submission of the hearing officer's report to the board.

History: Laws 1997, ch. 190, § 61; 2002, ch. 102, § 15.

ANNOTATIONS

The 2002 amendment, effective March 5, 2002, in Subsection B, substituted "thirty days" for "ten days" in Paragraph (2), and rewrote Paragraph (6), which read: "for the hearing to be held in Santa Fe for enforcement hearings and hearings on actions of statewide application, and to be held in the place or area affected for enforcement hearings and hearings on actions of limited local concern".

60-2E-60. Judicial review of administrative actions.

A. Any person adversely affected by an action taken by the board after review pursuant to the provisions of Section 60-2E-59 NMSA 1978 may appeal the action to the court of appeals within thirty days after the date the action is taken. The appeal shall be on the record made at the hearing. To support his appeal, the appellant shall make arrangements with the board for a sufficient number of transcripts of the record of the hearing on which the appeal is based. The appellant shall pay for the preparation of the transcripts.

B. On appeal, the court of appeals shall set aside the administrative action only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the whole record; or

(3) otherwise not in accordance with law.

History: Laws 1997, ch. 190, § 62; 2002, ch. 102, § 16.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

The 2002 amendment, effective March 5, 2002, inserted the 30-day requirement in the first sentence of Subsection A.

60-2E-61. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 149, § 3 repealed 60-2E-61 NMSA 1978, as enacted by Laws 1997, ch. 190, § 63, relating to liens on winnings for debt collected by human services department, effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM*.

60-2E-61.1. Lien on winnings for debt owed to or collected by human services department; procedure.

A. By operation of law, a lien attaches to a payout of one thousand two hundred dollars ($1,200) or more from a gaming machine of a racetrack gaming operator licensee when won by a person owing a debt to or collected by the human services department acting as the state's child support enforcement agency pursuant to Title IV-D of the federal Social Security Act.

B. The human services department shall periodically provide the board with a verified list of names, social security numbers and the last known addresses of obligors owing a debt to or collected pursuant to Section 1 Subsection A by the department.

C. In order to enforce the lien, the board shall by rule adopt procedures applicable to racetrack gaming operator licensees when a payout occurs. The board shall provide a racetrack gaming operator licensee with an electronic system to search by the names and social security numbers of persons currently owing a debt subject to or collected by the human services department. Prior to the payment of a payout, the licensee shall make a good-faith effort to check the name of the winner against the list of names and social security numbers provided by the human services department to the board.

D. If the winner is a person owing a debt to or collected by the human services department, the racetrack gaming operator licensee shall retain the payout and promptly notify the department and the board on a form approved by the department. The human services department shall establish by rule an administrative process for support obligors to contest the obligation prior to release of the funds by the licensee to the department. The human services department shall, within seven working days of receipt of notice of the payout, provide the racetrack gaming operator licensee with written notice of its intent to enforce the administrative lien and of the amount claimed. After receiving the notice of intent, the racetrack gaming operator licensee shall retain the amount claimed in a suspense account and remit the balance to the payout winner. Upon final disposition of the administrative procedure, the human services department shall immediately notify the racetrack gaming operator licensee in writing of the amount

to be tendered to the department and release the lien for any funds to be distributed to the payout winner.

E. The board shall by rule adopt lien attachment and enforcement procedures applicable to other gaming operator licensees when a gaming machine payout equals one thousand two hundred dollars ($1,200) or more.

F. Neither the board nor any gaming operator shall be liable to the human services department or to the person on whose behalf the department is collecting the debt if the licensee fails, in good faith, to match a winner's name to a name on the list provided pursuant to Subsection B of this section.

History: Laws 2009, ch. 149, § 1.

ANNOTATIONS

Temporary provisions. — Laws 2009, ch. 149, § 2 provided that until July 1, 2010, the gaming control board shall not impose any regulatory sanction or other penalty upon a gaming operator licensee for a violation of Section 1 of this 2009 act.

Effective dates. — Laws 2009, ch. 149, § 4 provided that Laws 2009, ch. 149, § 1 was effective July 1, 2009.

60-2E-62. Crime; unlawful possession of gaming device.

A. It is unlawful for a person intentionally to possess an unlicensed or illegal gaming device, except that:

(1) a distributor licensee or a manufacturer licensee may possess an unlicensed gaming device while awaiting transfer of the gaming device to a gaming operator licensee for licensure; and

(2) a person may possess an unlicensed gaming device for the limited purposes provided for in Section 60-2E-13.1 NMSA 1978.

B. A person may possess an antique gambling device as defined in Subsection A of Section 30-19-1 NMSA 1978, provided the antique gambling device is not used in gambling.

C. A person violating this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2002, ch. 102, § 18.

ANNOTATIONS

Emergency clauses. — Laws 2002, ch. 102, § 19 contained an emergency clause and was approved March 5, 2002.

ARTICLE 2F
New Mexico Bingo and Raffle

60-2F-1. Short title.

Sections 1 through 26 of this act may be cited as the "New Mexico Bingo and Raffle Act".

History: Laws 2009, ch. 81, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-2. Purpose.

The purpose of the New Mexico Bingo and Raffle Act is to authorize and regulate certain games of chance by licensed nonprofit organizations.

History: Laws 2009, ch. 81, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-3. Gaming control board to administer act.

The gaming control board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

History: Laws 2009, ch. 81, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-4. Definitions.

As used in the New Mexico Bingo and Raffle Act:

A. "bingo" means a game of chance in which each player has one or more bingo cards printed with different numbers on which to place markers when the respective numbers are drawn and announced by a bingo caller;

B. "bingo caller" means the individual who, in the game of bingo, draws and announces numbers;

C. "bingo employee" means a person connected directly with a game of chance such as cashiers, floor sales clerks and pull-tab workers. A bingo employee may or may not be a member of a qualified organization;

D. "bingo manager" means the person responsible for overseeing bingo and pull-tab activities conducted pursuant to a bingo license;

E. "board" means the gaming control board;

F. "charitable organization" means an organization, not for pecuniary profit, that is operated for the relief of poverty, distress or other condition of public concern in New Mexico and that has been granted an exemption from federal income tax as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

G. "chartered branch, lodge or chapter of a national or state organization" means a branch, lodge or chapter that is a civic or service organization, not for pecuniary profit, and that is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose in New Mexico;

H. "distributor" means a person, other than a manufacturer, who provides equipment to a qualified organization but does not manufacture the equipment;

I. "educational organization" means an organization within the state, including recognized student organizations, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction;

J. "environmental organization" means an organization within the state, not organized for pecuniary profit, that is primarily concerned with the protection and preservation of the natural environment;

K. "equipment" means:

(1) with respect to bingo:

(a) the receptacle and numbered objects drawn from it;

(b) the master board upon which the numbered objects are placed as drawn;

(c) the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them;

(d) the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; and

(e) all other articles having a significant effect on the outcome of a game and necessary to the operation, conduct and playing of bingo; and

(2) with respect to pull-tabs:

(a) the pull-tabs;

(b) the pull-tab flares; and

(c) the dispensing machines;

L. "fraternal organization" means an organization within the state, not for pecuniary profit, that is a branch, lodge or chapter of a national or state organization and that exists for the common business, brotherhood or other interests of its members;

M. "game accountant" means the individual in charge of preparing and submitting the quarterly report form;

N. "game of chance" means that specific kind of game of chance commonly known as bingo, that specific kind of game of chance commonly known as a raffle or that specific game of chance commonly known as pull-tab;

O. "gross receipts" means proceeds received by a bingo licensee from the sale of bingo cards, raffle tickets or pull-tab tickets; the sale of rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge; the sale of playing materials; and all other miscellaneous receipts;

P. "lawful purposes" means:

(1) educational, charitable, patriotic, religious or public-spirited purposes that benefit an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them in establishing themselves in life, by erecting or maintaining public buildings or works, by providing legal assistance to peace officers or firefighters in defending civil or criminal actions arising out of the performance of their duties or by otherwise lessening the burden of government. "Lawful purposes" includes the erection, acquisition, improvement, maintenance, insurance or repair of property, real, personal or mixed, if the property is used for one or more of the benefits stated in this paragraph; or

(2) augmenting the revenue of and promoting the New Mexico state fair;

Q. "licensee" means any qualified organization to which a bingo license has been issued by the board or any person to which a manufacturer's or distributor's license has been issued by the board;

R. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to equipment for use or play in games of chance in New Mexico or for sale or distribution outside of New Mexico;

S. "occasion" means a single gathering at which a series of successive bingo games are played;

T. "permittee" means any person issued a permit by the board;

U. "premises" means a room, hall, enclosure or outdoor area that is identified on a license issued pursuant to the New Mexico Bingo and Raffle Act and used for the purpose of playing games of bingo or pull-tabs;

V. "prize" means cash or merchandise won for participation in a game of chance;

W. "progressive pot" means a prize from a pull-tab or a portion of a prize from a pull-tab that is allowed to carry over from one pull-tab game to the next so that the carried-over prizes are allowed to accumulate into a larger prize;

X. "pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols that must be exposed by the player to determine wins or losses or a gaming piece that is made completely of paper or paper products with an instant-win component that must be exposed by the player on a concealed card and can be used in a speed round for additional winnings utilizing a bingo blower. A "pull-tab" includes a tip board and can include a progressive pot;

Y. "qualified organization" means a bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members that has been in existence in New Mexico continuously for a period of two years immediately prior to conducting a raffle or making an application for a license under the New Mexico Bingo and Raffle Act and that has had a membership engaged in carrying out the objects of the corporation or organization. A voluntary firefighter's organization is a qualified organization and a labor organization is a qualified organization for the purposes of the New Mexico Bingo and Raffle Act if they use the proceeds from a game of chance solely for scholarship or charitable purposes;

Z. "raffle" means a drawing where multiple persons buy tickets to win a prize and the winner is determined by the drawing of the ticket stub out of a container that holds all the ticket stubs sold for the event;

AA. "religious organization" means an organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place; and

BB. "veterans' organization" means an organization within the state or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States.

History: Laws 2009, ch. 81, § 4; 2011, ch. 73, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, in Subsection I, changed the definition of "educational organization" to include recognized student organizations; and in Subsection L, changed the definition of "fraternal organization" to include college and high school fraternities by deleting the exception of college and high school fraternities.

60-2F-5. Application of act.

The New Mexico Bingo and Raffle Act applies to:

A. unless exempted pursuant to Section 26 [60-2F-26 NMSA 1978] of that act, qualified organizations that conduct games of chance and the games of chance conducted by the qualified organizations;

B. persons who provide equipment to qualified organizations for use or play of games of chance in New Mexico; and

C. persons who manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico.

History: Laws 2009, ch. 81, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-6. Board; powers.

The board may:

A. grant, deny, suspend, condition or revoke licenses or permits issued pursuant to the New Mexico Bingo and Raffle Act, establish the terms for each classification of license to be issued pursuant to that act and set fees for submitting an application for a license;

B. compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a licensee;

C. investigate the operations of a licensee and place a designated representative on the premises for the purpose of observing compliance with the New Mexico Bingo and Raffle Act and rules or orders of the board;

D. summon witnesses;

E. take testimony under oath for the effective discharge of the board's authority;

F. appoint a hearing officer to conduct hearings required by the New Mexico Bingo and Raffle Act or rules adopted pursuant to that act;

G. make rules to hold, conduct and operate all games of chance held in the state except those specifically exempted under the New Mexico Bingo and Raffle Act;

H. adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises;

I. determine qualifications for licensees;

J. establish a system of standard operating procedures for licensees;

K. adopt rules establishing a system of licensing distributors and manufacturers and licensing and governing qualified organizations;

L. adopt rules establishing a system of permits for individuals designated as bingo managers, bingo callers and such other bingo employees as the board requires;

M. require a statement under oath by the applicant for a license to be issued pursuant to the New Mexico Bingo and Raffle Act that the information on the application is true;

N. inspect any games of chance being conducted;

O. make on-site inspections of premises where games of chance are being held;

P. inspect all equipment used for games of chance;

Q. regulate the monetary value of prizes to be awarded for games of chance;

R. require disclosure of information sufficient to make a determination of the suitability of an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act;

S. adopt and enforce all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act; and

T. provide an annual report to the governor regarding the board's administration of the New Mexico Bingo and Raffle Act.

History: Laws 2009, ch. 81, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-7. Organizations eligible for bingo licenses.

A. Any qualified organization is eligible to apply for a bingo license to be issued by the board under the New Mexico Bingo and Raffle Act.

B. The New Mexico state fair:

(1) may apply to the board for and shall be issued a bingo license pursuant to the New Mexico Bingo and Raffle Act to conduct games of chance on the grounds of the New Mexico state fair during the state fair; and

(2) shall pay a licensing fee to the board of one hundred dollars ($100) per calendar year at the time of application for or renewal of a license issued pursuant to the New Mexico Bingo and Raffle Act.

C. A qualified organization may conduct a raffle on the grounds of the New Mexico state fair during the state fair only after obtaining express prior approval of the state fair commission and the board.

History: Laws 2009, ch. 81, § 7.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-8. Classifications of licenses and permits.

A. The board shall establish and may issue the following categories of licenses:

(1) bingo license;

(2) distributor's license; and

(3) manufacturer's license.

B. The board shall establish and may issue permits for the following employees:

(1) bingo manager;

(2) bingo caller; and

(3) any other bingo employee position for which the board, by rule, requires a permit.

History: Laws 2009, ch. 81, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-9. Disclosure of background information.

A. The board may require an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act to disclose information sufficient for the board to make a determination as to the applicant's suitability. The board may adopt rules to coordinate the manner in which the information is produced.

B. An applicant shall provide all of the information required by the board.

C. The cost of a background investigation, not to exceed one hundred dollars ($100), shall be paid by the applicant.

History: Laws 2009, ch. 81, § 9.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-10. Application for licenses or permits.

A. Each applicant for a license or permit to be issued under the New Mexico Bingo and Raffle Act shall file with the board a written application in the form prescribed by the board, duly executed and verified and containing:

(1) the name and address of the applicant;

(2) if not an individual, sufficient facts relating to its incorporation or organization to enable the board to determine whether or not the applicant is qualified and the names and addresses of its officers, members of the board of directors and managers;

(3) such other information deemed necessary by the board to ensure that the applicant complies with the provisions of the New Mexico Bingo and Raffle Act and rules adopted pursuant to that act; and

(4) an affirmation signed by the applicant or the applicant's agent that the information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

B. In addition to the requirements of Subsection A of this section, each applicant for a bingo license shall provide the board with the following:

(1) the names of the bingo manager, the bingo caller and the game accountant, and a statement from those persons that they shall be responsible for the holding, operation and conduct of games of chance in accordance with the terms of the license and the provisions of the New Mexico Bingo and Raffle Act;

(2) sufficient facts relating to the organization to enable the board to determine whether or not it is a qualified organization;

(3) the exact location at which the applicant will conduct bingo and pull-tabs;

(4) the specific kind of games of chance intended to be conducted; and

(5) whether the premises are owned or leased and, if leased, the name and address of the fee owner of the land or, if the owner is a corporation, the names of the directors and members of the board of directors.

C. The failure to accurately and truthfully provide the information required in Subsection A or B of this section is a violation of the New Mexico Bingo and Raffle Act and shall subject the applicant to the provisions of Sections 14 [60-2F-14 NMSA 1978], 23 [60-2F-23 NMSA 1978] and 25 [60-2F-25 NMSA 1978] of that act.

History: Laws 2009, ch. 81, § 10.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-11. Standards for granting a license or permit.

A. An application for a bingo license shall not be granted unless the applicant is a qualified organization and is authorized to do business in New Mexico.

B. An application for a manufacturer's license or a distributor's license shall not be granted unless the applicant is qualified to do business in New Mexico.

C. An application for a permit shall not be granted if the applicant has been convicted of a felony offense or a violation of the New Mexico Bingo and Raffle Act within ten years of the date of application.

D. The board may establish by rule additional qualifications for a licensee or permittee as it deems in the public interest.

History: Laws 2009, ch. 81, § 11.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-12. Licenses and permits; specific requirements.

A. A license issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years and may be renewed for successive three-year terms.

B. A permit issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years from the date of issuance and may be renewed for successive three-year terms.

C. A license or permit or a renewal of a license or permit is not transferable.

History: Laws 2009, ch. 81, § 12.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-13. Fees for licenses and permits; disposition of revenue.

A. Fees for licenses and permits issued pursuant to the New Mexico Bingo and Raffle Act shall be established by board rule but shall not exceed the following amounts:

(1) bingo license, five hundred dollars ($500) for the initial license and five hundred dollars ($500) for each renewal;

(2) manufacturer's license, five hundred dollars ($500) for the initial license and five hundred dollars ($500) for each renewal;

(3) distributor's license, five hundred dollars ($500) for the initial license and five hundred dollars ($500) for each renewal; and

(4) permit, seventy-five dollars ($75.00) for the initial permit and seventy-five dollars ($75.00) for each renewal.

B. All administrative receipts, including license and permit fees, collected pursuant to the New Mexico Bingo and Raffle Act shall be deposited in the general fund.

History: Laws 2009, ch. 81, § 13.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-14. Forfeiture of license; ineligibility to apply for license or permit.

Any person who makes a material false statement in an application for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act or in any statement submitted with the application, fails to keep sufficient books and records to substantiate the quarterly reports required under Section 19 [60-2F-19 NMSA 1978] of the New Mexico Bingo and Raffle Act, falsifies any books or records insofar as they relate to a transaction connected with the holding, operating and conducting of a game of chance under any such license or permit or violates any of the provisions of the New Mexico Bingo and Raffle Act or of any term of the license or permit, in addition to any other criminal or civil penalties that may be imposed, may, at the option of the board, be required to forfeit any license issued under that act and be ineligible to apply for a license under that act for at least one year thereafter.

History: Laws 2009, ch. 81, § 14.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-15. Persons permitted to conduct bingo and pull-tab games; premises.

A. The officers of a bingo licensee shall designate a bingo manager to be in charge and primarily responsible for the conduct of all games of bingo and pull-tabs. The bingo manager shall supervise all activities on the occasion for which the bingo manager is in charge. The bingo manager shall be familiar with the provisions of the state laws, the rules of the board and the provisions of the bingo license. The bingo manager shall be

present on the premises continuously during the games and for a period of at least thirty minutes after the last game.

B. The bingo manager shall designate a game accountant to be primarily responsible for the proper preparation of the quarterly reports in accordance [with] the New Mexico Bingo and Raffle Act.

C. For a bingo game, the bingo manager shall designate a bingo caller to be responsible for drawing and announcing the bingo numbers.

D. The premises where any game of chance is being held, operated or conducted or where it is intended that any equipment be used shall at all times be open to inspection by the board and its agents and employees and by peace officers of the state or any political subdivision of the state.

E. No owner or co-owner of the premises or, if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten percent of the outstanding stock shall be designated as a bingo manager, a game accountant or a bingo caller.

History: Laws 2009, ch. 81, § 15.

ANNOTATIONS

Bracketed material. — The bracketed material was added by the compiler and is not part of the law.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-16. Display of license.

Each license issued pursuant to the New Mexico Bingo and Raffle Act shall contain a statement of the name and address of the licensee, date of issuance and date of expiration. Any such license issued for the conduct of any games of bingo or pull-tab shall be conspicuously displayed at the place where the games are to be conducted.

History: Laws 2009, ch. 81, § 16.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-17. Equipment.

A. No bingo or pull-tab game shall be conducted with any equipment except that which is purchased or leased from a licensed distributor or manufacturer or another bingo licensee.

B. The equipment used in the playing of a bingo or pull-tab game and the method of play shall be such that each bingo card or pull-tab has an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection.

C. Electronic bingo machines and video pull-tabs are not authorized for use on the premises.

History: Laws 2009, ch. 81, § 17.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-18. Conduct of games of chance.

A. For games of bingo:

(1) a bingo licensee may hold, operate or conduct no more than two hundred sixty occasions in any twelve-month period;

(2) occasions shall not be conducted more than six times in any one calendar week, with no occasion lasting more than four hours and not more than three occasions conducted in one calendar day by any one licensee;

(3) when any merchandise prize is awarded in a bingo game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash;

(4) the aggregate amount of all prizes offered or given in all bingo games played on a single occasion shall not exceed two thousand five hundred dollars ($2,500), exclusive of pull-tabs, raffles and door prizes;

(5) all objects or balls to be used in a game shall be present in the receptacle before the game is begun. All numbers announced shall be plainly and clearly audible to all the players present. Where more than one room is used for any one game, the receptacle and the bingo caller shall be present in the room where the greatest number of players are present, and all numbers announced shall be plainly audible to the players in that room and also audible to the players in the other rooms;

(6) the receptacle and the bingo caller who removes the objects or balls from the receptacle shall be visible to all the players at all times except where more than one

room is used for any one game, in which case the provisions of Paragraph (5) of this subsection shall prevail;

(7) the particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly described and announced to the players immediately before each game is begun;

(8) any player is entitled to call for a verification of all numbers drawn at the time a winner is determined and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the bingo manager; and

(9) no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

B. For a raffle:

(1) all raffle tickets sold shall be represented in the container from which the winner is drawn;

(2) the drawing shall be open to the public;

(3) each raffle ticket shall display all information as directed by the board; and

(4) when any merchandise prize is awarded in a raffle, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

C. For games of pull-tabs:

(1) pull-tabs shall be sold only on the premises;

(2) winners shall be paid only on the premises; and

(3) when any merchandise prize is awarded in a pull-tab game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

History: Laws 2009, ch. 81, § 18.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-19. Quarterly reports required; accounting requirements.

A. On or before April 25, July 25, October 25 and January 25, the game accountant shall file with the board, upon forms prescribed by the board, a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during that period from games of chance, the total amount of prizes paid, the name and address of each person to whom has been paid six hundred dollars ($600) or more and the purpose of the expenditure, the gross receipts derived from each game of chance and the uses to which the net proceeds have been or are to be applied. It is the duty of each bingo licensee to maintain and keep the books and records necessary to substantiate the particulars of each report.

B. If a bingo licensee fails to file reports within the time required or if the reports are not properly verified or not fully, accurately and truthfully completed, the licensee is subject to disciplinary action, including a suspension, until the default has been corrected.

C. All money collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of chance shall be deposited in a bingo and raffle operating account of the bingo licensee that shall contain only such money. All expenses for the game shall be withdrawn from the account by consecutively numbered checks duly signed by specified officers of the licensee and payable to a specific person or organization. There shall be written on the check the nature of the expense for which the check is drawn.

D. No check shall be drawn to "cash" or a fictitious payee.

E. No portion of any contribution to lawful purposes, after it has been given over to another organization, shall be returned to the donor organization.

History: Laws 2009, ch. 81, § 19.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-20. Expenses; compensation.

A. No item of expense shall be incurred or paid in connection with the holding, operating or conducting of a game of chance held, operated or conducted pursuant to a bingo license except bona fide expenses in reasonable amounts for goods, wares and merchandise furnished or services rendered reasonably necessary for the holding, operating or conducting of a game of chance. Bona fide expenses include expenditures for payroll, building and equipment rent, utilities, security, janitorial supplies, office supplies, equipment, insurance, bank charges, automated teller machine fees, legal fees, advertising, accounting fees, state and federal payroll-related taxes, state and federal gaming-related taxes and all other reasonable expenses necessary for the operation of games of chance.

B. A qualified organization desiring to retain the receipts derived from games of chance in the bingo and raffle operating account and for a period longer than one year shall apply to the board for special permission and, upon good cause shown, the board shall grant the request.

History: Laws 2009, ch. 81, § 20.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-21. Tax imposition.

A. A bingo and raffle tax equal to one-half percent of the gross receipts of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

B. No other state or local gross receipts tax shall apply to a qualified organization's receipts generated by a game of chance authorized by the New Mexico Bingo and Raffle Act.

C. The tax imposed pursuant to this section shall be submitted quarterly to the taxation and revenue department on or before April 25, July 25, October 25 and January 25.

D. The taxation and revenue department shall administer the tax imposed in this section pursuant to the Tax Administration Act [7-1-1 NMSA 1978].

History: Laws 2009, ch. 81, § 21.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-22. Violation of act.

A. Unless exempted pursuant to Section 26 [60-2F-26 NMSA 1978] of the New Mexico Bingo and Raffle Act, it is a violation of that act for a qualified organization to hold a game of bingo or pull-tabs for profit or gain in any manner unless the person has been issued a bingo license by the board and has been authorized by the board to hold the game of chance.

B. It is a violation of the New Mexico Bingo and Raffle Act for a person who does not manufacture, fabricate, assemble, produce, program or make modifications to equipment to provide equipment to a qualified organization for use or play of games of

chance in New Mexico unless the person has been issued a distributor's license pursuant to that act.

C. It is a violation of the New Mexico Bingo and Raffle Act for a person to manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico unless the person has been issued a manufacturer's license pursuant to that act.

D. It is a violation of the New Mexico Bingo and Raffle Act for a person to act as a bingo manager, a bingo caller or any other bingo employee position for which the board, by rule, requires a permit unless the person has been issued a permit pursuant to that act.

History: Laws 2009, ch. 81, § 22.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-23. Enforcement hearings.

A. A license or permit shall not be revoked or suspended without just cause.

B. The board shall make appropriate investigations to:

(1) determine whether there has been any violation of the New Mexico Bingo and Raffle Act or of any regulations adopted pursuant to that act;

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the New Mexico Bingo and Raffle Act or regulations adopted pursuant to that act; or

(3) aid in adopting regulations.

C. If after an investigation the board is satisfied that a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or prior approval by the board of any transaction for which approval was required by the provisions of the New Mexico Bingo and Raffle Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee or permittee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or

regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations.

D. The respondent shall file an answer within thirty days after service of the complaint.

E. Upon filing the complaint, the board shall appoint a hearing examiner to conduct further proceedings.

F. The hearing examiner shall conduct proceedings in accordance with the New Mexico Bingo and Raffle Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or the imposition of a fine not to exceed one thousand dollars ($1,000) for each violation or any combination of the foregoing actions.

G. The hearing examiner shall prepare a written decision containing the hearing examiner's recommendation to the board and shall serve it on all parties.

H. The board shall by a majority vote accept, reject or modify the recommendation.

I. If the board limits, conditions, suspends or revokes any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or limits, conditions, suspends or revokes any prior approval or imposes any fine, it shall issue a written order specifying its action.

J. The board's order is effective on the date issued and continues in effect unless reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

History: Laws 2009, ch. 81, § 23.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-24. Appeals.

A. The decision of the board in denying, suspending or revoking any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or imposing any fine shall be subject to review. A licensee or permittee aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No proceeding to vacate, reverse or modify any final order rendered by the board shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the board, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute the petitioner's bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of the petitioner's obligation as a licensee or permittee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

History: Laws 2009, ch. 81, § 24.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-25. Duty to enforce act; criminal penalties.

A. It is the duty of all law enforcement officers to enforce the provisions of the New Mexico Bingo and Raffle Act. It is the duty of the district attorney of the county in which a violation is committed to prosecute such violation of that act in the manner and form as is now provided by law for the prosecutions of crimes and misdemeanors.

B. A licensee, a permittee or an officer, agent or employee of a licensee or any other person who willfully violates or who procures, aids or abets in the willful violation of the New Mexico Bingo and Raffle Act is guilty of a misdemeanor and, upon conviction thereof:

(1) for a first offense, shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or both; or

(2) for a subsequent offense, shall be punished by a fine of not more than two thousand five hundred dollars ($2,500) or by imprisonment for not more than one year, or both.

History: Laws 2009, ch. 81, § 25.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-26. Exemptions.

A. Except as provided in Subsection B of this section, nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to:

(1) a drawing or a prize at a fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions, or for the benefit of a religious organization situated in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that political subdivision, religious organization or charitable purpose; or

(2) a bingo or a raffle held by a qualified organization that holds no more than one bingo occasion or one raffle in any three consecutive calendar months and not exceeding four occasions in one calendar year.

B. Notwithstanding the provisions of Subsection A of this section, no raffle with an individual prize exceeding seventy-five thousand dollars ($75,000) shall be held without a ten-day prior notification to the board of the conduct of the event and a subsequent notification to the board of the names, addresses and phone numbers of all prize winners.

C. Nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to a lottery established and operated pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978] or gaming that is licensed and operated pursuant to the Gaming Control Act [60-2E-1 NMSA 1978].

History: Laws 2009, ch. 81, § 26.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

Temporary provisions. — Laws 2009, ch. 81, § 29, provided that:

A. On the effective date of this act, a licensee under the Bingo and Raffle Act shall, for all purposes, be considered to be a licensee under the New Mexico Bingo and Raffle Act until the term of the license expires, at which time the license may be renewed under the New Mexico Bingo and Raffle Act.

B. Any taxes, fines, civil penalties or other obligations owed under the Bingo and Raffle Act on the effective date of this act shall be owed and enforceable under the New Mexico Bingo and Raffle Act.

C. Notwithstanding the repeal of the Bingo and Raffle Act, any violation of that act prior to its repeal may be investigated and prosecuted pursuant to the provisions of that act unless otherwise prohibited by law.

ARTICLE 3
General Provisions

(Repealed by Laws 1981, ch. 39, § 128.)

60-3-1, 60-3-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repealed 60-3-1 and 60-3-2 NMSA 1978, relating to general provisions concerning the Liquor Control Act, effective July 1, 1981. For present provisions, *see* 60-3A-1 to 60-3A-5 NMSA 1978.

ARTICLE 3A
General Provisions

60-3A-1. Short title.

Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978 may be cited as the "Liquor Control Act".

History: Laws 1981, ch. 39, § 1; 1984, ch. 85, § 9; 2015, ch. 3, § 27; 2015, ch. 102, § 1.

ANNOTATIONS

2015 Multiple Amendments. – Laws 2015, ch. 3, § 27 and Laws 2015, ch. 102, § 1, both effective July 1, 2015, enacted amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 102, § 1, as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 3, § 27 and Laws 2015, ch. 102, § 1 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMONESOURCE.COM*.

The nature of the difference between the amendments is that Laws 2015, ch. 3, § 27 deleted references to Articles 4B and 4C while Laws 2015, ch. 102, § 1 only deleted the reference to Article 4C.

Laws 2015, ch. 102, § 1, effective July 1, 2015, moved "Chapter 60" to the beginning of the sentence; after "4B", deleted "4C"; and after "6C", added "6E".

Laws 2015, ch. 3, § 27, effective July 1, 2015, moved "Chapter 60" to the beginning of the sentence; after "Articles 3A", deleted "4B, 4C"; and after "6C", added "6E".

Veto of severability clause unconstitutional. — The governor's veto of Laws 1981, ch. 39, § 129, the severability clause of the Liquor Control Act, was unconstitutional under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

Transfer of license despite municipal disapproval. — Under the Liquor Control Act, the director of the alcohol and gaming division of the New Mexico regulation and licensing department may approve a transfer of a license despite municipal disapproval. The director must so act if the governing body fails to submit evidence supporting its decision or if, on its face, the governing body's decision is not based on evidence pertaining to the specific prospective transferee or location. Southland Corp. v. Manzagol, 118 N.M. 423, 882 P.2d 14 (1994).

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For note, "Constitutional Law - Regulating Nude Dancing in Liquor Establishments - The Preferred Position of the Twenty-First Amendment - Nall v. Baca," see 12 N.M.L. Rev. 611 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

60-3A-2. Liquor policy of state; investigation of applicants; responsibility of licensees.

A. It is the policy of the Liquor Control Act [60-3A-1 NMSA 1978] that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state; and it is the responsibility of the director to investigate the qualifications of all applicants for licenses under that act, to investigate the conditions existing in the community in which the premises for which any license is sought are located before the license is issued, to the end that licenses shall not be issued to persons or for locations when the issuance is prohibited by law or contrary to the public health, safety or morals.

B. It is the intent of the Liquor Control Act that each person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act and for all taxes charged against the license.

History: Laws 1981, ch. 39, § 2.

ANNOTATIONS

Federal preemption. — New Mexico’s regulatory scheme of airlines’ alcoholic beverage services provided to passengers is impliedly preempted as it falls within the field of aviation safety that Congress intended federal law to occupy exclusively. However, the Twenty-first Amendment of the United States Constitution requires a balancing of New Mexico’s core powers and the federal interests underlying the FAA. US Airways, Inc. v. O'Donnell, 627 F.3d 1318 (10th Cir. 2010).

New Mexico Liquor Control Act is exercise of police power of the state, for the welfare, health, peace, temperance and safety of its people. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

License not property right, but privilege in constitutional sense. — A liquor license is a privilege and not property within the meaning of the due process and contract clauses of the constitutions of this state and the nation, and in them licensees have no vested property rights. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

The licensee has no vested property right in a liquor license as it is a privilege and not property. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Sale of liquor not inherent privilege of United States or state citizenship. — Retail sale of intoxicating liquor is not reckoned among the inherent privileges of a citizen of the United States or the state, but is a business which is attended with dangers to the community so that it may be entirely prohibited or authorized under such conditions as will limit its evil propensities to the utmost degree. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

As between state and licensee, liquor license is mere revocable privilege vesting no property rights in the licensee. Nelson v. Naranjo, 74 N.M. 502, 395 P.2d 228 (1964).

Liability of lessors. — Lessors of a liquor license are fully liable and accountable for debts incurred by the lessee in the course of his use of the license. Gavin Maloof & Co. v. Sw. Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

In a case against an absent owner-lessor of a liquor license, arising out of the lessee's service of alcohol to an intoxicated patron who injured third parties (the plaintiffs), Section 41-11-1A NMSA 1978, enacted in 1983, under which the absent owner-lessor is liable for the acts of a lessee not in the employ of the licensee, was not applicable. At the time of the injury in 1982 the cause of action created by Subsection B of this section inured to the plaintiffs as a vested right, and the court could not apply Section 41-11-1A NMSA 1978 retroactively against the plaintiffs and divest them of that right. Ashbaugh v. Williams, 106 N.M. 598, 747 P.2d 244 (1987).

The lessor of a liquor license can be held liable under the terms of Section 60-7A-16 NMSA 1978 (sales to intoxicated persons) if a violation is proved. Williams v. Ashbaugh, 120 N.M. 731, 906 P.2d 263 (Ct. App. 1986), aff'd, 106 N.M. 598, 747 P.2d 244 (1987).

Purpose of liquor control legislation is to regulate and restrain and not to promote, and any loosening of that policy is the business of the legislature, not of the courts. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970); 1979 Op. Att'y Gen. No. 79-03.

Purpose of liquor control legislation. — The Liquor Control Act is a police regulation and its purpose is, as stated therein, to protect the public health, safety and morals of every community in the state. 1975 Op. Att'y Gen. No. 75-68.

Power to control distribution, sale and consumption of alcoholic liquors is vested in legislature. In exercising its power, the New Mexico legislature has enacted laws providing a uniform, comprehensive regulatory scheme governing those areas where the state's interest is preeminent. 1980 Op. Att'y Gen. No. 80-23.

Law reviews. — For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markup," see 4 Nat. Resources J. 189 (1964).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

For article, “Bartlett Revisited: New Mexico Tort Law Twenty Years After the Abolition of Joint and Several Liability – Part One,” see 33 N.M.L. Rev. 1 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 112.

"Owner," scope and import of term, in statutes requiring consent to granting of liquor license, 2 A.L.R. 800, 95 A.L.R. 1085.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Civil liability of one taking out license for sale of liquor for benefit of another, 2 A.L.R. 1516.

Test of intoxicating character of liquor, 4 A.L.R. 1137, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Federal constitutional or legislative provisions as to intoxicating liquors as affecting state legislation, 10 A.L.R. 1587, 11 A.L.R. 1320, 26 A.L.R. 661, 70 A.L.R. 132.

Validity of statute vesting discretion as to license for sale of liquor in public officials without prescribing a rule of action, 12 A.L.R. 1453, 54 A.L.R. 1104, 92 A.L.R. 400.

Private individual or corporation, power to impose license fee or a fine for benefit of, 13 A.L.R. 831, 19 A.L.R. 205.

Contracts of unlicensed dealers, validity and enforceability of, 30 A.L.R. 868, 42 A.L.R. 1226, 118 A.L.R. 646.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Validity of statute leaving number of licenses to be granted to discretion of licensing authority, 163 A.L.R. 581.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

Women, provisions as to sale of liquor to, as affecting validity of regulatory statute, 9 A.L.R.2d 541.

State power to regulate price of intoxicating liquors, 14 A.L.R.2d 699.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

48 C.J.S. Intoxicating Liquors § 193.

60-3A-3. Definitions.

As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, powdered alcohol, frozen or freeze-dried 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 percent alcohol, but excluding medicinal bitters;

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

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

D. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent alcohol by volume and not more than seven percent alcohol by volume;

E. "club" means:

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

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

(b) has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for an income tax exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier that maintains or operates a clubroom at an international airport terminal. As used in this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the federal aviation administration;

F. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "department" means the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "director" means the chief of the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol

and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

I. "dispenser" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises;

J. "distiller" means a person engaged in manufacturing spirituous liquors;

K. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens, driving ranges, recreational facilities, patios, pro shops, cart paths and public and private roads that are located within the tract of land;

L. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

M. "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider for consumption off premises;

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

O. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure and the grounds and vineyards of a structure that is a winery that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, "licensed premises" includes a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district, hotel, golf course or racetrack and all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack. "Licensed premises" also includes rural dispenser licenses located in the unincorporated areas of a county with a population of less than thirty thousand, located in buildings in existence as of January 1, 2012, that are within one hundred fifty feet of one another and that are under the direct control of the license holder;

P. "local option district" means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or an incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of

alcoholic beverages, or an incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

Q. "manufacturer" means a distiller, rectifier, brewer or winer;

R. "minor" means a person under twenty-one years of age;

S. "package" means an immediate container of alcoholic beverages that is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

T. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

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

V. "restaurant" means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

W. "retailer" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises;

X. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and ale;

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

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

AA. "wine bottler" means a New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale;

BB. "winegrower" means a person who owns or operates a business for the manufacture of wine;

CC. "winer" means a winegrower; and

DD. "winery" means a facility in which a winegrower manufactures and stores wine.

History: Laws 1981, ch. 39, § 3; 1984, ch. 58, § 1; 1987, ch. 254, § 23; 1998, ch. 109, § 1; 1999, ch. 64, § 1; 2001, ch. 86, § 2; 2004, ch. 22, § 1; 2009, ch. 139, § 1; 2012, ch. 25, § 1; 2015, ch. 3, § 28; 2015, ch. 102, § 2.

ANNOTATIONS

Cross references. — For Section 501(a) of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(a).

2015 Multiple Amendments. – Laws 2015, ch. 3, § 28 and Laws 2015, ch. 102, § 2, both effective July 1, 2015, enacted amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 102, § 2, as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 3, § 28 and Laws 2015, ch. 102, § 2 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMONESOURCE.COM*.

The nature of the difference between the amendments is that Laws 2015, ch. 3, § 28 amended certain definitions within the Liquor Control Act to reflect the reorganization of the department of public safety, and Laws 2015, ch. 102, § 2 added "powdered alcohol, frozen or freeze-dried alcohol" to the definition of alcoholic beverages, and added definitions for cider and growler.

Laws 2015, ch. 102, § 2, effective July 1, 2015, in Subsection A, after "potable alcohol," added "powdered alcohol, frozen or freeze-dried alcohol; added Subsection D and redesignated former Subsections E through K as Subsections F through L, respectively; and added Subsection M and redesignated the remaining subsections accordingly.

Laws 2015, ch. 3, § 28, effective July 1, 2015, in Subsection F, after "'department' means the", deleted "special investigations" and added "New Mexico state police"; in Subsection G, after "'director' means the", deleted "director" and added "chief"; and after the present language "chief of the", deleted "special investigations" and added "New Mexico state police".

The 2012 amendment, effective May 16, 2012, clarified the meaning of "licensed premises" to include certain rural dispenser licenses; in Subsection M, in the first sentence after "in the case of a restaurant", deleted "including" and added "'licensed premises' includes", and after "golf course or racetrack", deleted "'licensed premises' includes" and added "and"; and added the last sentence.

The 2009 amendment, effective June 19, 2009, in Subsection M, after "lounge areas of the structure", added "and the grounds and vineyards of a structure that is a winery"; and added Subsection BB.

The 2004 amendment, effective February 28, 2004, amended Subsection M to add after "a restaurant", "including a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district".

The 2001 amendment, effective July 1, 2001, substituted "director of the alcohol and gaming division of the regulation and licensing department" for "superintendent of regulation and licensing" in Subsections F and G, and made stylistic changes throughout the section.

The 1999 amendment, effective July 1, 1999, added Subsection J, redesignated former Subsections J through Z as Subsections K through AA, inserted "golf course" in two places in Subsection M, and made minor stylistic changes.

The 1998 amendment, effective July 1, 1998, substituted "1986" for "1954" near the middle of Paragraph D(1)(b); in Subsections F and G inserted "department of" near the beginning and deleted "department" following "safety"; made a minor stylistic change in Subsections X and Y; substituted "winegrower" for "winer" at the beginning of Subsection Y; and added Subsection Z.

Section classifies "beverages" as alcoholic without regard to minimum contents. — This section classifies all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, as alcoholic liquors without regard to minimum alcoholic contents. "Beer" is classified as any alcoholic beverage obtained by fermentation. State v. Spahr, 64 N.M. 395, 328 P.2d 1093 (1958).

Finding beyond reasonable doubt that beer met definition not required. — Trial court committed no fundamental error when it failed on its own motion to instruct the jury they must find beyond a reasonable doubt the beer claimed to have been sold contained more than one-half of one percent of alcohol which is the statutory definition of alcoholic liquor as it relates to beer. State v. Baize, 64 N.M. 168, 326 P.2d 367 (1958).

Nor instruction to find beyond reasonable doubt required. — The refusal of the court to instruct the jury they must find beyond a reasonable doubt that beer alleged to

have been sold contained more than one-half of one percent alcohol was not error. State v. Spahr, 64 N.M. 395, 328 P.2d 1093 (1958).

Meaning of "dispenser". — Dispenser is any person "selling, offering for sale or having in his possession with intent to sell, alcoholic liquors by the drink or in packages" and a dispenser "sells" by the drink, not just "serves," and the word "sell" is not limited to liquor in packages. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

"Licensed premises". — Since this section limits the use of the license only to the "licensed premises," this section will not permit the licensing of two or more totally independent structures under a single liquor license where one of the structures is already licensed as a full service lounge and the licensee proposes to operate a restaurant which would provide full service liquor sales in another structure located several hundred yards away from the lounge. 1987 Op. Att'y Gen. No. 87-10.

Electoral history determines whether city and county separate "local option districts". — In order for a city to constitute a separate local option district, it is essential that the city have a population in excess of five thousand residents and that the city have voted in favor of the sale of alcoholic liquors within its distinct limits, and will depend on the electoral history of the governmental subdivisions with respect to the approval of the sale of alcoholic liquors within their respective geographical limits. 1971 Op. Att'y Gen. No. 71-116, overruled by 1982 Op. Att'y Gen. No. 82-15.

Veterans' clubs qualify for "club" license. — Legally constituted chapters of the American Legion and the Veterans of Foreign Wars do qualify for the issuance of a "club" license under this section. 1959-60 Op. Att'y Gen. No. 59-118.

Meaning of "beverage". — Fitness for beverage purposes is an essential attribute of intoxicating liquor, and, notwithstanding a liquor contains the requisite amount of alcohol, it is not an intoxicating liquor if it is unfit for beverage purposes. The word "beverage," as used in the statutes relating to intoxicating liquors, means a liquor that is capable of being drunk, and, in determining whether a liquor is capable of being used as a beverage, the test applied is not limited to the case of an average individual with average tastes. 1959-60 Op. Att'y Gen. No. 59-190.

Alcoholic concoction within scope of liquor laws if "beverage". — In order to permit salted (cooking) wines to be sold in food store outlets without the payment of excise tax, the question must first be, either judicially or administratively, determined: "is the concoction in question capable of being used as a beverage?" If the answer is in the affirmative, then because of its alcoholic content, it would definitely be within the scope of the law pertaining to the sale of alcoholic liquors. If the question is answered in the negative, then no liquor tax would have to be paid on it and the product could be marketed in food stores without a license. 1959-60 Op. Att'y Gen. No. 59-190.

Meaning of "package". — In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 9, 22.

Right of state to interfere with shipment of liquor through its territory, 27 A.L.R. 108.

Forbidding prescription, or restricting the amount, of intoxicating liquor for medicinal purposes, 49 A.L.R. 588.

What is a "meal" within contemplation of constitutional or statutory provisions relating to intoxicating liquors, 93 A.L.R. 962.

What amounts to "restaurant" or "restaurant business" within intoxicating liquor law, 105 A.L.R. 566.

State statute or ordinance prohibiting or regulating transportation of intoxicating liquor as interference with interstate commerce, 110 A.L.R. 931, 138 A.L.R. 1150.

Reasonableness of statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school or other institution, 119 A.L.R. 643.

Constitutionality of statute providing for sale of intoxicating liquor by a state or state agencies, 121 A.L.R. 300.

Constitutionality, construction, and application of statutes designed to prevent or limit control of retail liquor dealers by manufacturers, wholesalers, or importers, 136 A.L.R. 1238.

Validity, construction, and application of statute or ordinance requiring closing, during certain hours, of places where intoxicating liquor is sold, as affected by fact that such places are also used for other business, 139 A.L.R. 756.

Regulations regarding bringing into state intoxicating liquor intended for personal use of consignee or carrier, 155 A.L.R. 816.

Construction and application of constitutional or statutory provision respecting taxation or regulation of sale or purchase of food or drink for consumption off the premises, 167 A.L.R. 206.

"Grandfather clause" of statute or ordinance, 4 A.L.R.2d 667.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R.2d 1216.

Sale of liquor to women, 9 A.L.R.2d 541.

Zoning regulations in respect of intoxicating liquors, 9 A.L.R.2d 877, 65 A.L.R.4th 555.

Price regulation, 14 A.L.R.2d 699.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like, within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them, 99 A.L.R.2d 1216.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold, 46 A.L.R.3d 369.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R.3d 1071.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxication liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors §§ 1, 29, 35.

60-3A-4. Storage permitted.

Nothing in the Liquor Control Act [60-3A-1 NMSA 1978] shall be construed to prohibit the storage of alcoholic beverages in bona fide public warehouses or guardian warehouses by nonresident licensees or wholesalers for usual and ordinary commercial purposes.

History: Laws 1981, ch. 39, § 72.

60-3A-5. Exemptions from act.

Nothing in the Liquor Control Act [60-3A-1 NMSA 1978] applies to:

A. the transportation of alcoholic beverages through New Mexico;

B. the transportation of alcoholic beverages into a United States customs bonded warehouse located in New Mexico;

C. ethyl alcohol intended for or used for any of the following purposes:

(1) scientific, mechanical, industrial, medical, chemical or culinary purposes;

(2) use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder; or

(3) in the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder; or

D. the sale, service, possession or public consumption of alcoholic beverages by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction if the alcoholic beverages are purchased from New Mexico wholesalers and if the sale, service, possession or public consumption of alcoholic beverages is authorized by the laws of the Indian nation, tribe or pueblo having jurisdiction over those lands and is consistent with the ordinance of the Indian nation, tribe or pueblo certified by the secretary of the interior and published in the federal register according to the laws of the United States.

History: Laws 1981, ch. 39, § 112; 1995, ch. 203, § 1.

ANNOTATIONS

The 1995 amendment, effective April 6, 1995, added Subsection D and made minor stylistic changes in Subsections B and C.

Provisions governing hours of operation do not apply to Indian casino. — Where alcohol distributors sold alcohol to an Indian casino knowing that the casino planned to sell alcohol continuously in a twenty-four hour period, the provisions of the Liquor Control Act, Section 60-3A-1 NMSA 1978 et seq., that alcohol may be served, did not create a duty of care to motorists who were injured in an accident caused by a drunk driver who was served alcohol which intoxicated at the casino because the act does not apply to Indian casinos. Chavez v. Desert Eagle Distributing Co. of N.M., 2007-NMSA-018, 141 N.M. 116, 151 P.3d 77, cert. denied, 2007-NMCERT-001, 141 N.M. 164, 152 P.3d 151.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 62.

48 C.J.S. Intoxicating Liquors § 222.

60-3A-6. Authority of department of public safety.

The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act [60-3A-1 NMSA 1978] except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department.

History: 1978 Comp., § 60-3A-6, enacted by Laws 1987, ch. 254, § 24; 2001, ch. 86, § 3.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "department of public safety" for "public safety department" in the section heading and in the section text and substituted "director of the alcohol and gaming division of the regulation and licensing department" for "superintendent of regulation and licensing".

60-3A-6.1. Local law enforcement; department of public safety; reporting requirements; authority to request investigations.

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.

B. The director of the alcohol and gaming division of the regulation and licensing department may request the investigators of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act.

History: 1978 Comp., § 60-4B-4.1, enacted by Laws 1993, ch. 329, § 1; recompiled and amended as § 60-3A-6.1 by Laws 2015, ch. 3, § 29.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 3, § 29 recompiled and amended 60-4B-4.1 NMSA 1978 as 60-3A-6.1 NMSA 1978, effective July 1, 2015.

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by changing which investigators are charged with investigating violations of the Liquor Control Act; in Subsection B, after "investigators", deleted "of the special investigations division".

60-3A-7. Authority of the alcohol and gaming division.

The alcohol and gaming division of the regulation and licensing department has the authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act [60-3A-1 NMSA 1978]. The director of the alcohol and gaming division of the regulation and licensing department may request the department of public safety to provide investigatory and enforcement support as deemed necessary.

History: 1978 Comp., § 60-3A-7, enacted by Laws 1987, ch. 254, § 25; 2001, ch. 86, § 4.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, added the section heading; inserted "alcohol and gaming division of the" preceding "regulation and licensing department"; substituted "director of the alcohol and gaming division" for "superintendent"; and substituted "department of public safety" for "public safety department".

60-3A-8. Powers and duties of the director of the alcohol and gaming division.

The director of the alcohol and gaming division of the regulation and licensing department is responsible for the operation of the division. It is his duty to supervise all operations of the division and to:

A. administer the laws that the division administers, including the Liquor Control Act [60-3A-1 NMSA 1978]. The director shall request the department of public safety to enforce the provisions of the Liquor Control Act as deemed necessary;

B. exercise general supervisory authority over all employees of the division;

C. organize the division into units to enable it to function most effectively;

D. confer authority and delegate responsibility as is necessary and appropriate;

E. employ, within the limitations of current appropriations and personnel laws, persons as are required to discharge his duties;

F. undertake studies and conduct courses of instruction for division employees that will improve the operations of the division and advance its purposes; and

G. require compliance by employees of the division with his verbal and written instructions by whatever disciplinary means appropriate.

History: Laws 2001, ch. 86, § 5.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-8.1. Investigative authority and powers.

A. For the purpose of enforcing the provisions of the Liquor Control Act, the director is authorized to examine and to require the production of pertinent records, books, information or evidence, to require the presence of any person and to require the person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. Any subpoena issued by the director shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon a person, if the person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce the person's books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The director may exchange identification records and information with law enforcement agencies for official use. Identification records received from the United States department of justice, including identification records based on fingerprints, shall be used only to effectuate the licensing purposes and provisions of the Liquor Control Act. The department shall not disseminate such information except to other law enforcement agencies for official use only.

F. For the purposes of this section, "director" means the director of the alcohol and gaming division of the regulation and licensing department.

History: Laws 1981, ch. 39, § 7; 1978 Comp., § 60-4B-4 recompiled and amended as § 60-3A-8.1 by Laws 2015, ch. 3, § 30.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 3, § 30 recompiled and amended former 60-4B-4 NMSA 1978 as 60-3A-8.1 NMSA 1978, effective July 1, 2015.

Cross references. — For identification of criminals generally, *see* 29-3-1 NMSA 1978 et seq.

For subpoenas generally, *see* Rule 1-045 NMRA.

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by providing the director of the alcohol and gaming division of the regulation and licensing department with investigative authority and the powers to enforce the Liquor Control Act; in Subsection A, after "production of", deleted "any", and after "require", deleted "him" and added "the person"; in the first sentence of Subsection D, after "subpoena upon", deleted "him" and added "a person", after "if", deleted "any" and added "the"; in the second sentence of Subsection D, after "produce", deleted "his" and added "the person's"; in Subsection E, at the beginning of the second sentence, deleted "Any"; and added Subsection F.

Director's power to investigate for public interest. — Authority rests in the chief of the liquor control division (now director) to make investigations, personally or through his employees, and he may reach his determination upon what he thus learns and upon what he deems to be to the public interest. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Types of evidence considered during investigations. — In his investigations the chief of the division of liquor control (now director) is not limited in his determinations to considering what would constitute admissible evidence in a court of law. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Determination of facts required prior to license cancellation. — Before cancelling a license pursuant to his duty to cancel, the chief of division (now director), must, of necessity, determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 177.

60-3A-9. Administrative authority and powers.

A. For the purpose of administering the licensing provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the alcohol and gaming division of the regulation and licensing department, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the legal counsel for the alcohol and gaming division of the regulation and licensing department shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of

the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The alcohol and gaming division of the regulation and licensing department shall require criminal history background checks for purposes of administering the licensing provisions of the Liquor Control Act. For purposes of conducting the criminal history background check, the alcohol and gaming division shall require the fingerprinting of applicants for liquor licenses as required by the Liquor Control Act. Fingerprint cards shall be submitted by the director to the department of public safety records bureau for processing through the federal bureau of investigation. The director shall establish procedures within the alcohol and gaming division to maintain the confidentiality of information received from the department of public safety and the federal bureau of investigation.

History: Laws 2001, ch. 86, § 6.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-10. Administrative rules and orders; presumption of correctness.

A. The director shall issue and file as required by law all rules and orders necessary to administer the licensing provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. Directives issued by the director shall be in form substantially as follows:

(1) rules are written statements of the director, of general application to licensees, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and

(3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, a rule shall first be issued as a proposed rule and filed for public inspection in the office of the director. Distribution of the rule shall be made to interested persons and their comments shall be invited. After the proposed rule has been on file for thirty days and a public hearing has been held, the director may issue it as a final rule by filing as required by law.

D. The director shall furnish a copy of the rules to all licensees and other interested persons at a nominal cost.

E. A rule or order issued by the director is presumed to be a proper implementation of the licensing provisions of the Liquor Control Act.

F. All rules and orders shall be applied prospectively only.

History: Laws 2001, ch. 86, § 7.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-11. Written decisions by director.

Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license, or other disposition of a charge against a licensee, shall be accompanied by a written order containing findings of fact and the specific grounds relied upon for the decision.

History: Laws 2001, ch. 86, § 8.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-12. Partially consumed bottle of wine; licensed premises.

A. Notwithstanding any other provision of law, a dispenser, canopy licensee or restaurant licensee may permit a customer of the licensee to remove from the licensed premises one opened bottle of partially consumed wine; provided that:

(1) the customer has purchased a full-course meal and a bottle of wine and consumed a portion of the bottle of wine with the meal on the licensed premises; and

(2) the dispenser, canopy licensee or restaurant licensee or an agent or employee of the dispenser, canopy licensee or restaurant licensee attaches the customer receipt issued for the bottle of wine and reseals the bottle of partially consumed wine by reinserting a cork and sealing the bottle in a tamper-proof bag.

B. When operating a motor vehicle, the customer shall possess and transport the partially consumed bottle of wine in accordance with Section 66-8-138 NMSA 1978.

History: Laws 2007, ch. 78, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 78, § 2 made the section effective July 1, 2007.

ARTICLE 4
Department of Alcoholic Beverage Control

(Repealed by Laws 1981, ch. 39, § 128.)

60-4-1 to 60-4-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-4-1 through 60-4-10 NMSA 1978, relating to the department of alcoholic beverage control, effective July 1, 1981. For present provisions, see 60-4B-1 through 60-4B-8 NMSA 1978.

ARTICLE 4A
Conflict of Interest in Department

(Repealed by Laws 1981, ch. 39, § 128.)

60-4A-1, 60-4A-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-4A-1, 60-4A-2 NMSA 1978, relating to conflict of interest, effective July 1, 1981.

ARTICLE 4B
Special Investigations Division

60-4B-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-1 NMSA 1978, as enacted by Laws 1981, ch. 39, § 4, relating to special investigations division, director, effective July 1,

2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMONESOURCE.COM*.

60-4B-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-2 NMSA 1978, as enacted by Laws 1981, ch. 39, § 5, relating to powers and duties of the director, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMONESOURCE.COM*.

60-4B-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 204, § 26 repealed 60-4B-3 NMSA 1978, as enacted by Laws 1981, ch. 39, § 6, relating to the legal advisor, effective July 1, 1989.

60-4B-4. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 3, § 30 recompiled and amended former 60-4B-4 NMSA 1978 as 60-3A-8.1 NMSA 1978, effective July 1, 2015.

60-4B-4.1. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2015, ch. 3, § 29 recompiled and amended former 60-4B-4.1 NMSA 1978 as 60-3A-6.1 NMSA 1978, effective July 1, 2015.

60-4B-5, 60-4B-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 86, § 9 repealed 60-4B-5 NMSA 1978, as enacted by Laws 1981, ch. 39, § 8, relating to the director's regulations, orders and rulings, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, *see* 60-3A-9 and 60-3A-10 NMSA 1978.

Laws 2001, ch. 86, § 9 repealed 60-4B-6 NMSA 1978, as enacted by Laws 1981, ch. 39, § 9, relating to the written decision of the director concerning licenses, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on

NMONESOURCE.COM. For present comparable provisions, *see* 60-3A-11 NMSA 1978.

60-4B-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-7 NMSA 1978, as enacted by Laws 1981, ch. 39, § 10, relating to report to the governor, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMONESOURCE.COM*.

60-4B-8, 60-4B-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 204, § 26 repealed 60-4B-8 and 60-4B-9 NMSA 1978, as enacted by Laws 1981, ch. 39, § 11 and Laws 1987, ch. 333, § 5, relating to training of alcoholic beverage control agents and termination of agency life, effective July 1, 1989.

ARTICLE 4C
Alcoholic Beverage Control Commission

(Repealed by Laws 1987, ch. 254, § 27.)

60-4C-1 to 60-4C-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 254, § 27 repeals 60-4C-1 through 60-4C-3 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 12-14, relating to the alcoholic beverage control commission, effective July 1, 1987. For provisions of former sections, see 1981 Replacement Pamphlet.

ARTICLE 5
Local Option

(Repealed by Laws 1981, ch. 39, § 128.)

60-5-1, 60-5-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-5-1, 60-5-2 NMSA 1978, relating to elections for local option, effective July 1, 1981. For present provisions, see 60-5A-1, 60-5A-2 NMSA 1978.

ARTICLE 5A
Local Option

60-5A-1. Elections for local option.

Any municipality containing over five thousand population according to the latest United States census, whether the county in which that municipality is situated has adopted the local option provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any former act or not, or any county in the state may adopt local option in the county or municipality upon the following terms and conditions:

A. at any time after the effective date of the Liquor Control Act, the registered qualified electors of any proposed local option district may petition the governing body by filing one or more petitions in the appropriate office to hold an election for the purpose of determining whether the county or municipality shall adopt the local option provisions of the Liquor Control Act. If the aggregate of the signatures of such elector on all the petitions equals or exceeds five percent of the number of registered voters of the district, the governing body shall call an election within seventy-five days of the verification of the petition. The date of the filing of the petition shall be the date of the filing of the last petition which brings the number of signatures up to the required five percent; provided, however, that the governing body shall refuse to recognize the petition if more than three months have elapsed between the date of the first signature and the filing of the last petition necessary to bring the number of signatures on the petition up to five percent;

B. the election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections within the municipality, except as otherwise provided in this section;

C. the votes at the election shall be counted, returned and canvassed as provided for in the case of general elections within the county or special municipal elections within the municipality;

D. except as otherwise provided in this section, contests, recounts and rechecks shall be permitted as provided for in the case of candidates for county office in general elections or as provided for in the case of special municipal elections within the municipality. Applications for contests, recounts or rechecks may be filed by any person who voted in the election, and service shall be made upon the county clerk or municipal clerk as the case may be;

E. if a majority of all the votes cast at the election are cast in favor of the sale, service or public consumption of alcoholic beverages in the county or municipality, the chairman of the governing body shall declare by order entered upon the records of the county or municipality that the county or municipality has adopted the local option provisions of the Liquor Control Act and shall notify the department of such results;

F. no election held pursuant to this section shall be held within forty-two days of any primary, general, municipal or school district election. If, within sixty days from the verification of any petition as provided in Subsection A of this section, a primary, general, municipal or school election is held, the governing body may call an election for a day not less than sixty days after the primary, general, municipal or school election;

G. if an election is held under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] in any county which contains within its limits any municipality of more than five thousand persons according to the last United States census, it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of adopting the local option provisions of the Liquor Control Act by the municipality. The election in the county shall be conducted so as to separate the votes in the municipality from those in the remaining parts of the county. If a majority of the voters in the county, including the voters in the municipality, vote against the sale, service or public consumption of alcoholic beverages in the county, the county shall not adopt the local option provisions of the Liquor Control Act; but if a majority of the votes in the municipality are in favor of the sale, service or public consumption of alcoholic beverages, the municipality shall have adopted the local option provisions of the Liquor Control Act. Nothing contained in this subsection shall prevent any municipality from having a separate election under the terms of this section;

H. any county or municipality composing a local option district under the provisions of the Liquor Control Act or any former act may vote to discontinue the sale, service or public consumption of alcoholic beverages in the local option district; the discontinuance shall become effective on the ninetieth day after the local option election is held; and

I. nothing in this section shall invalidate any local option election held pursuant to any former act prior to July 1, 1981.

History: Laws 1981, ch. 39, § 15; 1985, ch. 208, § 124; 1987, ch. 323, § 27.

ANNOTATIONS

Cross references. — For registration for elections, see 1-4-1 NMSA 1978 et seq.

Effective date of the Liquor Control Act. — The effective date of the Liquor Control Act, referred to near the beginning of Subsection A, means the effective date of Laws 1981, ch. 39, which is July 1, 1981.

Contest and recount provisions of Election Code are inapplicable to local option elections. State ex rel. Denton v. Vinyard, 55 N.M. 205, 230 P.2d 238 (1951) (decided under prior law).

Discretion as to denial of transfers. — Once a municipality has decided to allow liquor sales, the discretion the city council has to deny a transfer on moral grounds must be based on the moral effects of the operation by a specific applicant or at a particular location. Dick v. City of Portales, 118 N.M. 541, 883 P.2d 127 (1994).

"Local option district" defined. — The term "local option district" must be read to mean any county which has voted to approve the sale of alcoholic beverages, or any incorporated municipality which falls within such a county, or any incorporated municipality over 5,000 which has independently approved the sale of alcoholic beverages. 1981 Op. Att'y Gen. No. 81-09.

For the purpose of placing the question of Sunday sales on the general election ballots, each county except Roosevelt and Curry, which have rejected local option district status, and the incorporated municipalities of Clovis and Portales, which have independently voted to become local option districts, are considered "local option districts." 1982 Op. Att'y Gen. No. 82-15.

Election invalid when it conflicts with state or municipal election. — The provision of Subsection A, which requires election to be called within 60 (now 75) days after filing of the petition, is invalidated when it conflicts with a state or municipal election, since it was evident intention of the legislature not to have a local option election conflict therewith. 1943-44 Op. Att'y Gen. No. 44-4477.

Where initial petition bears insufficient signatures, the board of county commissioners must accept additional names submitted and consider the aggregate of petitions submitted within the three-month period. 1951-52 Op. Att'y Gen. No. 51-5379.

"General election" defined. — The term "general election" has been defined as the biennial election held throughout the state for choosing state and county officers and national representatives in the congress. 1977 Op. Att'y Gen. No. 77-17.

Election under this section may be held in conjunction with county bond election so long as the scheduling and other requirements of the two elections are compatible. 1981 Op. Att'y Gen. No. 81-09.

"Manner" defined. — "Manner" is defined as the mode or method in which something is done or happens: a mode of procedure or way of acting. 1977 Op. Att'y Gen. No. 77-17.

Absent Voter Act applicable. — The Absent Voter Act, Sections 1-6-1 to 1-6-18 NMSA 1978, is applicable to local option district elections, thereby directing the

absentee voting procedures to be followed in such elections. 1977 Op. Att'y Gen. No. 77-17.

Law reviews. — For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 85.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation, 26 A.L.R. 672, 70 A.L.R. 132.

Submission of question to electors of municipality as only way in which sale of intoxicants may be entirely prohibited, under state liquor control act, 113 A.L.R. 1386.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation, 134 A.L.R. 434.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense, 8 A.L.R.2d 750.

Change of "wet" or "dry" status fixed by local option election by change of name, character or boundaries of voting unit without later election, 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

48 C.J.S. Intoxicating Liquors § 71.

60-5A-2. Resubmission of local option question.

In any local option district in which the local option provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or former act have been rejected by the voters, it shall be permissible after the expiration of two years from the date of the election at which the local option provisions of the Liquor Control Act or any former act were rejected, to have another local option election in the district by following the procedure provided for in Section 15 [60-5A-1 NMSA 1978] of the Liquor Control Act. At the option of the petitioners referred to in Subsection A of Section 15 of that act, it shall be permissible to resubmit to the voters of one district not only the question of the sale, service or public consumption of alcoholic beverages, but it shall also be permissible to petition for a local option election for the purpose of submitting to the voters of the district the question of permitting the sale of alcoholic beverages by retailers only in the district.

History: Laws 1981, ch. 39, § 16.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 109.

48 C.J.S. Intoxicating Liquors § 73.

ARTICLE 6
Powers of Municipalities and Counties to Regulate Sales

(Repealed by Laws 1981, ch. 39, § 128.)

60-6-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-6-1 NMSA 1978, relating to the power of municipalities and counties to regulate sales, effective July 1, 1981.

ARTICLE 6A
State Licenses

60-6A-1. Wholesaler's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license. As used in this section, "received at and shipped from" means that all alcoholic beverages shall be unloaded at the wholesaler's licensed premises and placed into inventory before being sold and shipped to a licensed retailer.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license, a governmental licensee or its lessee or an enterprise owned, operated or licensed by an Indian nation, tribe or pueblo within the state in conformity with an ordinance duly adopted by the Indian nation, tribe or pueblo having jurisdiction over the situs of the transaction within the area of Indian country, certified by the secretary of the interior, published in the federal register, according to the laws of the United States.

History: Laws 1981, ch. 39, § 18; 1993, ch. 68, § 5; 1995, ch. 203, § 2.

ANNOTATIONS

The 1995 amendment, effective April 6, 1995, in Subsection C, added the language beginning "or an enterprise" at the end of the Subsection and made a minor stylistic change.

The 1993 amendment, effective July 1, 1993, inserted the second sentence of Subsection B.

Out-of-state shipment requires permit. — If the state excise tax has been paid on alcoholic liquors which a wholesaler ships out of New Mexico, a refund can be made pursuant to Section 7-17-11 NMSA 1978 upon adequate proof of out-of-state shipment. Further, shipment out of the state requires a permit from the division (now director of alcohol and gaming division) even though the state excise tax has been paid. 1963-64 Op. Att'y Gen. No. 63-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 126.

48 C.J.S. Intoxicating Liquors § 128.

60-6A-2. Retailer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a retailer's license for the retail sale of alcoholic beverages.

B. A retailer's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 19.

ANNOTATIONS

Director cannot authorize transfer of license from county to county. — The director has no power to authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 272.

48 C.J.S. Intoxicating Liquors § 121.

60-6A-3. Dispenser's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a dispenser's license for the sale of alcoholic beverages.

B. A dispenser's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 20.

ANNOTATIONS

Director cannot authorize transfer of license from county to county. — The director has no power to authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 130.

Hotel or inn, what constitutes, within meaning of liquor statute, 19 A.L.R. 531, 53 A.L.R. 988.

48 C.J.S. Intoxicating Liquors § 135.

60-6A-4. Restaurant license.

A. At any time after the effective date of the Liquor Control Act [60-3A-1 NMSA 1978], a local option district may approve the issuance of restaurant licenses for the sale of beer and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the governing body of the local option district without a petition from registered qualified electors having been submitted.

B. After the approval of restaurant licenses by the registered qualified electors of the local option district and upon completion of all requirements in the Liquor Control Act for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant license to sell, serve or allow the consumption of beer and wine subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that he has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from meals and not from the sale of beer and wine;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of meals;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of meals and from beer and wine sales;

(5) restaurant licensees shall not sell beer and wine for consumption off the licensed premises;

(6) all sales, services and consumption of beer and wine authorized by a restaurant license shall cease at the time meals [meal] sales and services cease or at 11:00 p.m., whichever time is earlier;

(7) if Sunday sales have been approved in the local option district, a restaurant licensee may serve beer and wine on Sundays until the time meals [meal] sales and services cease or 11:00 p.m., whichever time is earlier; and

(8) a restaurant license shall not be transferable from person to person or from one location to another.

C. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to restaurant licenses.

D. Nothing in this section shall prevent a restaurant licensee from receiving other licenses pursuant to the Liquor Control Act.

History: Laws 1981, ch. 39, § 21; 2003, ch. 103, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, in Subsection A, substituted "60-5A-1 NMSA 1978" for "15 of that Act" following "out in Section", added the last sentence; substituted "60-6A-18 NMSA 1978" for "35 of the Liquor Control Act" in Subsection C.

60-6A-5. Club licenses.

A. In any local option district, a club qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a club license.

B. Club licenses shall not be transferred from one owner to another. A club license may be transferred from one location to another upon compliance with the provisions of the Liquor Control Act. A club license shall not be leased.

C. The provisions of Section 35 [60-6A-18 NMSA 1978] of the Liquor Control Act shall not apply to club licenses.

History: Laws 1981, ch. 39, § 22.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 183.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

48 C.J.S. Intoxicating Liquors § 123.

60-6A-6. Manufacturer's license.

In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a manufacturer's license.

History: Laws 1981, ch. 39, § 23.

ANNOTATIONS

Temporary provisions. — Laws 2011, ch. 110, § 5 provided that:

A. If a person has submitted an application for a manufacturer's license as a distiller to the director of the alcohol and gaming division of the regulation and licensing department and, on July 1, 2011, the application has not yet been approved, the person may submit a request in writing to the director no later than July 31, 2011 to convert the application from a manufacturer's license as a distiller to an application for a craft distiller's license in accordance with procedures adopted by the director.

B. If, within one hundred twenty days prior to or subsequent to July 1, 2011, a person obtains approval for a manufacturer's license as a distiller, the person may submit a request in writing to the director of the alcohol and gaming division of the regulation and licensing department to convert the manufacturer's license as a distiller to a craft distiller's license pursuant to procedures adopted by the director and upon payment of licensing fees as provided in Section 60-6A-27 NMSA 1978. There shall be no refunds of application or licensing fees unless otherwise provided by law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 126.

48 C.J.S. Intoxicating Liquors § 125.

60-6A-6.1. Craft distiller's license.

A. In any local option district, a person qualified pursuant to the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act, may apply for and be issued a craft distiller's license subject to the following conditions:

(1) the applicant submits evidence to the department that the applicant has a valid and appropriate permit issued by the federal government to be a craft distiller;

(2) renewal of the license shall be conditioned upon:

(a) no less than sixty percent of the gross receipts from the sale of spirituous liquors for the preceding twelve months of the licensee's operation being derived from the sale of spirituous liquors produced by the licensee;

(b) the manufacture of no less than one thousand proof gallons of spirituous liquors per license year at the licensee's premises; and

(c) submission to the department by the licensee of a report showing the number of proof gallons of spirituous liquors manufactured by the licensee at the licensee's premises and the annual gross receipts from the sale of spirituous liquors produced by the licensee and from the licensee's sale of distilled spirituous liquors produced by other New Mexico licensed craft distillers;

(3) a craft distiller's license shall not be transferred from person to person or from one location to another;

(4) the provisions of Section 60-6A-18 NMSA 1978 shall not apply to a craft distiller's license; and

(5) nothing in this section shall prevent a craft distiller from receiving other licenses pursuant to the Liquor Control Act.

B. A person to whom a craft distiller's license is issued pursuant to this section may do any of the following:

(1) manufacture or produce spirituous liquors, including aging, filtering, blending, mixing, flavoring, coloring, bottling and labeling;

(2) store, transport, import or export spirituous liquors;

(3) sell only spirituous liquors that are packaged by or for the craft distiller to a person holding a wholesaler's license, a craft distiller's license or a manufacturer's license;

(4) deal in warehouse receipts for spirituous liquors;

(5) buy spirituous liquors from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, flavoring, mixing or bottling of spirituous liquors;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(7) conduct spirituous liquor tastings and sell, by the glass or by the bottle, or in unbroken packages for consumption off the premises but not for resale, spirituous liquors of the craft distiller's own production or spirituous liquors produced by another New Mexico craft distiller or New Mexico manufacturer on the craft distiller's premises; and

(8) at no more than three other locations off the craft distiller's premises, after the craft distiller has paid the applicable fee for a craft distiller's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a craft distiller's off-premises permit for each off-premises location, conduct spirituous liquor tastings and sell by the glass, or in unbroken packages for consumption and not for resale, spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer.

C. For a public celebration off the craft distiller's premises in any local option district permitting the sale of alcoholic beverages, a craft distiller shall pay ten dollars ($10.00) to the department for a "craft distiller's public celebration permit" to be issued under rules adopted by the director. Upon request, the department may issue to a craft distiller a public celebration permit for a location at the public celebration that is to be shared with other craft distillers, small brewers and winegrowers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or other activity held on an intermittent basis.

D. Sales and tastings of spirituous liquors authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas day sales and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday as set forth in Section 60-7A-1 NMSA 1978.

History: Laws 2011, ch. 110, § 3; 2015, ch. 102, § 3.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, increased the number of locations that a craft distiller licensee may, after meeting certain requirements, conduct spirituous liquor tastings and sell by the glass spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer; in Subsection A, after "person qualified", deleted "under" and added "pursuant to"; and in Paragraph (8) of Subsection B, after "no more than", deleted "two" and added "three".

60-6A-7. Nonresident license.

A. A nonresident manufacturer or wholesaler who qualifies may apply for and be issued a nonresident license.

B. No nonresident wholesaler or manufacturer shall, directly or indirectly or through an affiliate or subsidiary, apply for, be granted or hold a license under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] as a New Mexico wholesaler, manufacturer, dispenser or retailer; provided that a nonresident wholesaler may be granted and hold a New Mexico wholesaler's license only if the business operated, and the New Mexico wholesaler's license, was purchased from an existing wholesaler and is operated as a separate and distinct business from all other businesses of the nonresident wholesaler, including for the purpose of Section 60-8A-6 NMSA 1978, and no alcoholic beverages are transshipped between any of the other businesses and the business operated under that license.

C. Nonresident licensees may sell, offer for sale or ship into the state alcoholic beverages only to licensed New Mexico manufacturers and wholesalers.

D. Every nonresident licensee or every New Mexico wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler shall mail to the department one duplicate invoice covering all shipments into or sales in the state, stating the prices, together with all terms, concessions, allowances, forbearances and deductions. In cases of shipments, a copy of the bill of lading or way bill shall accompany the invoice mailed to the department. On each invoice for alcoholic beverages, the total number of cases and the total number of liters of alcoholic beverage shall also be noted by the shipper or vendor. The invoice of all shipments or sales shall also state the brand, labels and size of containers of each item, unless shipped or sold in bulk to be bottled by a licensed rectifier or wine bottler using his own label and brand; provided, however, this section shall not apply to intrastate sales and shipments from one New Mexico wholesaler to another wholesaler.

E. The director may suspend or revoke the license of a nonresident licensee or wholesaler who does not comply with the provisions of Subsections B through D of this section.

History: Laws 1981, ch. 39, § 24; 1984, ch. 54, § 1.

ANNOTATIONS

Compiler's notes. — Subsection B reads as amended by Laws 1984, ch. 54, § 1.

Effect of one wholesaler dominating market. — Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. Levers v. Anderson, 153 F.2d 1008 (10th Cir.), cert. denied, 328 U.S. 866, 66 S. Ct. 1376, 90 L. Ed. 1636 (1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 50.

Nonresidents, discrimination against issuance of license, 61 A.L.R. 340, 112 A.L.R. 63.

48 C.J.S. Intoxicating Liquors § 113.

60-6A-8. Wine bottler's license.

Before any wholesaler whose license permits the sale of wine for resale packages wine for resale, he shall procure from the department a wine bottler's license.

History: Laws 1981, ch. 39, § 25; 1988, ch. 60, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 124.

60-6A-9. Public service license.

A. Every person selling alcoholic beverages to travelers on trains or airplanes within the state shall secure a public service license from the department on or before July 1 of each year.

B. A photostatic copy of the license shall be posted in each train car from which alcoholic beverages are sold, or on the premises at each airport where alcoholic beverages are stored and issued to airplanes.

History: Laws 1981, ch. 39, § 26.

ANNOTATIONS

Federal preemption. — New Mexico's regulatory scheme of airlines' alcoholic beverage services provided to passengers is impliedly preempted as it falls within the field of aviation safety that congress intended federal law to occupy exclusively. However, the twenty-first amendment of the United States constitution requires a balancing of New Mexico's core powers and the federal interests underlying the FAA. US Airways, Inc. v. O'Donnell, 627 F.3d 1318 (10th Cir. 2010).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 132.

48 C.J.S. Intoxicating Liquors § 20.

60-6A-10. Governmental license.

A. A governmental entity may sell alcoholic beverages directly or through its lessee at a governmental facility if the governing body applies to the director for a governmental license. The governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for its operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises. On the licensed premises of a municipal baseball park, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a municipal baseball park. A server as defined in Section 60-6E-3 NMSA 1978 is not required to be present in a skybox to serve alcoholic beverages to the person leasing the skybox or the person's guests.

C. A governmental entity holding a governmental license shall annually and not less than sixty days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, the director shall notify the governing body of the decision and shall conduct a hearing as provided by law. If the director finds that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license.

D. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to governmental licenses.

E. For the purposes of this section:

(1) "governmental entity" means a municipality, a county, a state fair that is held for less than ten days per year, the state fair commission, a state museum or a state university;

(2) "governmental facility" means locations on property owned or operated by a governmental entity, including county fairs; state fairs held for less than ten days per year; convention centers; airports; civic centers; food service facilities in state museums; auditoriums; all facilities on the New Mexico state fairgrounds; facilities used for athletic competitions; golf courses, including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee; and other facilities used for cultural or artistic performances, but "governmental facility" does not include tennis facilities;

(3) "lessee" means an individual, corporation, partnership, firm or association that fulfills the requirements set forth in Subsections A through D of Section 60-6B-2 NMSA 1978;

(4) "municipal baseball park" means a governmental facility owned by a governmental entity in a class A county having a population of three hundred fifty thousand or more pursuant to the most recent federal decennial census that is the home stadium of an affiliate of a professional baseball team and that may be used throughout the year for baseball games and other events; and

(5) "skybox" means a room or area of seating of a municipal baseball park, separated from the general seating and usually located in the upper decks of the park, leased to a person for that person's exclusive use during baseball games and at any other time throughout the year.

F. The provisions of Section 60-6B-10 NMSA 1978, with respect to golf courses owned by a governmental entity and civic centers owned and operated by a governmental entity, shall not apply to governmental licenses.

History: Laws 1981, ch. 39, § 27; 1989, ch. 379, § 1; 1992, ch. 14, § 1; 2002, ch. 108, § 1; 2003, ch. 117, § 1; 2015, ch. 117, § 1.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, amended the Liquor Control Act by removing the restriction that a governmental entity that sells alcoholic beverages at a governmental facility that is a food service facility in a state museum or a municipal golf course may only sell beer and wine; in the first sentence of Subsection A, deleted "Except as provided in Subsection G of this section, a" and added "A"; in Subsection B, after "leasing the skybox or", deleted "his" and added "the person's"; in Subsection C, after "proof is inadequate", deleted "he" and added "the director", and after "governing

body of", deleted "his" and added "the"; in Paragraph (4) of Subsection E, after "facility owned by a", deleted "government" and added "governmental"; in Subsection F, after "NMSA 1978", deleted "as regards" and added "with respect"; deleted Subsection G which restricted the sale of alcoholic beverages to beer and wine only for governmental entities that sold alcoholic beverages at state museums and municipal golf courses.

The 2003 amendment, effective June 20, 2003, inserted "On the licensed premises of a municipal baseball park, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a municipal baseball park. A server as defined in Section 60-6E-3 NMSA 1978 is not required to be present in a skybox to serve alcoholic beverages to the person leasing the skybox or his guests." at the end of Subsection B; inserted "a state museum" following "commission," near the end of Subsection E(1); in Subsection E(2), inserted "food service facilities in state museums" following "civic centers" near the middle and substituted "governmental facility" for "the term" near the end; inserted present Subsections E(4) and E(5); and inserted "a food service facility in a state museum or" following "facility that is" near the middle of Subsection G.

The 2002 amendment, effective July 1, 2002, inserted "the New Mexico state fair commission" in Subsection E(1); and inserted "all facilities on the New Mexico state fairgrounds" in Subsection E(2).

The 1992 amendment, effective March 3, 1992, added "Except as provided in Subsection G of this section," in the first sentence of Subsection A; inserted "including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee," in Subsection E(2); inserted "and civic centers owned and operated by a governmental entity" in Subsection F; and added Subsection G.

Quota limitations enforced when licenses issued. — The director of the department of alcoholic beverage control cannot legally issue a liquor license to a city without regard to the quota limitation imposed under former Section 60-7-29 NMSA 1978. 1975 Op. Att'y Gen. No. 75-41.

60-6A-11. Winegrower's license.

A. A person in this state who produces wine is exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director; provided, however, that, for purposes of determining annual production and compliance with the fifty percent New Mexico grown provision of this subsection, the calculation of a winegrower's overall annual production of wine shall not include the winegrower's production of wine for out-of-state wine producer license holders.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced for a winegrower or an out-of-state wine producer holding a permit issued pursuant to the Federal Alcohol Administration Act and a valid license in a state that authorizes the wine producer to manufacture, produce, store or sell wine;

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

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than two hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of a license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) buy or otherwise obtain beer from a small brewer for the purposes described in this subsection;

(9) conduct wine tastings and sell, by the glass or by the bottle, or sell in unbroken packages for consumption off the premises, but not for resale, wine of the winegrower's own production, wine produced by another New Mexico winegrower on the winegrower's premises or beer produced and bottled by or for a small brewer pursuant to Section 60-2A-26.1 [60-6A-26.1] NMSA 1978;

(10) at no more than three off-premises locations, conduct wine tastings, sell by the glass and sell in unbroken packages for consumption off premises, but not for resale, wine of the winegrower's own production, wine produced by another New Mexico winegrower or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(11) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

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

(13) sell wine or cider in a growler for consumption off premises; and

(14) in accordance with the provisions of this section that relate to the sale of wine, accept and fulfill an order for wine that is placed via an internet web site, whether the financial transaction related to the order is administered by the licensee or the licensee's agent.

C. Sales of wine or beer as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle, or sell in unbroken packages for consumption off premises, but not for resale, wine of the winegrower's own production or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the regulation and licensing department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

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

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

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

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

History: Laws 1981, ch. 39, § 28; 1985, ch. 15, § 1; 1987, ch. 98, § 2; 1988, ch. 60, § 3; 1993, ch. 329, § 2; 1995, ch. 122, § 1; 1998, ch. 109, § 2; 1999, ch. 211, § 1; 2001, ch.

248, § 1; 2001, ch. 260, § 1; 2005, ch. 216, § 1; 2011, ch. 71, § 1; 2015, ch. 102, § 4; 2015, ch. 105, § 1; 2015, ch. 124, § 1.

ANNOTATIONS

Cross references. — For the Federal Alcohol Administration Act, *see* Title 27, U.S.C. §§ 201 to 212.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Subsection B (9) references "Section 60-2A-26.1 NMSA 1978". The reference should be to Section 60-6A-26.1 NMSA 1978.

2015 Multiple Amendments. — Laws 2015, ch. 102, § 4, Laws 2015, ch. 105, § 1, and Laws 2015, ch. 124, § 1, all effective July 1, 2015, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 124, § 1, as the last act signed by the governor, is set out above and incorporates all amendments. The amendments enacted by Laws 2015, ch. 102, § 4, Laws 2015, ch. 105, § 1, and Laws 2015, ch. 124, § 1 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMONESOURCE.COM*.

The nature of the difference between the amendments is that Laws 2015, ch. 124, § 1 provided for retail reciprocity between winegrowers and small brewers by allowing winegrowers to buy and sell beer produced and bottled by a New Mexico small brewer's licensee; Laws 2015, ch. 105, § 1, authorized a person issued a winegrower's license or the licensee's agent to make sales of wine via an internet web site; and Laws 2015, ch. 102, § 4, authorized a person issued a winegrower's license to sell wine or cider in a growler for consumption off premises.

Laws 2015, ch. 124, § 1, effective July 1, 2015, in Subsection A, added "A person in this state who produces wine is", and after "procurement of a winegrower's license", deleted "is a person in this state who produces wine"; in Paragraph (1) of Subsection B, after "producer holding permit issued", deleted "by the federal alcohol tax unit of the internal revenue service" and added "pursuant to the Federal Alcohol Administration Act"; added Paragraph (8) of Subsection B and redesignated the succeeding paragraphs accordingly; in Paragraph (9) of Subsection B, after "winegrower's own production", deleted "or", and after "winegrower's premises", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-2A-26.1 [60-6A-26.1] NMSA 1978"; in Paragraph (10) of Subsection B, after "winegrower's own production", deleted "or", and after "New Mexico winegrower", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978"; and in Subsection C, after "Sales of wine", added "or beer", after "by the glass or bottle, or", added "sell", and after "winegrower's own production", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978".

Laws 2015, ch. 105, § 1, effective July 1, 2015, added Paragraph (12) of Subsection B.

Laws 2015, ch. 102, § 4, effective July 1, 2015, in Subsection A, added "A person in this state who produces wine is", after "winegrower's license", deleted "is a person in this state who produces wine"; and added Paragraph (12) of Subsection B.

The 2011 amendment, effective June 17, 2011, permitted winegrowers to produce wine for out-of-state wine producers and provided that wine produced for out-of-state wine producers shall not be included in the calculation of the winegrower's annual production of wine.

The 2005 amendment, effective June 17, 2005, increased from "one hundred" to "two hundred" in Subsection B(4) the number of cases of wine that may be transported; added the right to sell by the glass in Subsection B(9); and deleted the former exception in Subsection C that referred to the limitation in Section 60-7A-1D NMSA 1978.

The 2001 amendment, effective July 1, 2001, in Subsection B, inserted "or wine produced by another New Mexico winegrower" in Paragraphs (8) and (9); deleted Paragraph (12), giving a licensed winegrower the ability to apply for a permit to join other licensed winegrowers to sell wine produced at a common facility; in Subsection D, inserted "alcohol and gaming division of the regulation and licensing" preceding "department" in two places, and substituted "winegrowers and small brewers" for "permittees".

The 1999 amendment, effective April 6, 1999, in Subsection B added present Paragraph (4) and redesignated the subsequent paragraphs accordingly.

The 1998 amendment, effective July 1, 1998, substituted "pursuant to" for "under" near the beginning of Subsection A; in Subsection B, substituted "A" for "Any" near the beginning, deleted "Subsection A of" near the end; inserted "manufacture or" in two places in Paragraph B(1); in Paragraph B(3), deleted "winer's" following "wine wholesaler's," and inserted "or to a winegrower's agent;" near the end; added Paragraph B(4) and redesignated former Paragraphs B(4)-B(7) as Paragraphs B(5)-B(8); substituted "the" for "such a" near the end of Paragraph B(5); rewrote Paragraph B(7); substituted "three" for "two" at the beginning of Paragraph B(8); added Paragraphs B(9)-B(11); in Subsection C, inserted "for" near the beginning, deleted "Paragraphs (6) and (7) of Subsection B of" following "this section shall be permitted", inserted "or public celebration permit" near the middle, inserted "bottle or" following "in unbroken packages", and inserted "for consumption off premises but not for resale" near the end; and in Subsection D, substituted "shall pay" for "upon the payment of" near the beginning and deleted "may conduct tastings, sell in unbroken packages for consumption at other than the public celebration, but not for resale, and sell, for consumption at a public celebration, wine of his own production" near the middle.

The 1995 amendment, effective June 16, 1995, in Subsection C, substituted "Subsection D" for "Subsections C and D" and deleted "in local option districts in which Sunday sales are permitted" preceding "the holder of".

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

Sunday sales. — Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 211.

48 C.J.S. Intoxicating Liquors § 129.

60-6A-11.1. Direct wine shipment permit; authorization; restrictions.

A. A licensee with a winegrower's license or a person licensed in a state other than New Mexico that holds a winery license may apply to the director for and the director may issue to the applicant a direct wine shipment permit. An application for a direct wine shipment permit shall include:

(1) contact information for the applicant in a form required by the department;

(2) an annual application fee of fifty dollars ($50.00) if the applicant does not hold a winegrower's license;

(3) the number of the applicant's winegrower's license if the applicant is located in New Mexico or a copy of the applicant's winery license if the applicant is located in a state other than New Mexico; and

(4) any other information or documents required by the director. Upon approval of an applicant for a permit, the director shall forward to the taxation and revenue department the name of each permittee and the contact information for the permittee.

B. A direct wine shipment permit shall be valid for a permit year. A permittee shall renew a direct wine shipment permit annually as required by the department to continue making direct shipments of wine to New Mexico residents.

C. A permittee may ship:

(1) not more than two nine-liter cases of wine monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and

(2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words:

"CONTAINS ALCOHOL
SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED
FOR DELIVERY".

D. A permittee shall:

(1) register with the taxation and revenue department for the payment of liquor excise tax and gross receipts taxes due on the sales of wine pursuant to the permittee's activities in New Mexico;

(2) submit to the jurisdiction of New Mexico courts to resolve legal actions that arise from the shipping by the permittee of wine into New Mexico to New Mexico residents;

(3) monthly, by the twenty-fifth day of each month following the month in which the permittee was issued a direct wine shipment permit, pay to the taxation and revenue department the liquor excise tax due and the gross receipts tax due; and

(4) submit to an audit by an agent of the taxation and revenue department of the permittee's records of the wine shipped pursuant to this section to New Mexico residents upon notice and during usual business hours.

E. As used in this section:

(1) "permit year" means the period between July 1 and June 30 of a year; and

(2) "permittee" means a person that is the holder of a direct wine shipment permit.

History: 1978 Comp., § 60-6A-11.1, enacted by Laws 2011, ch. 109, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 109, § 3 made Laws 2011, ch. 109, § 1 effective July 1, 2011.

60-6A-12. Special dispenser's permits; state and local fees.

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving written approval from the governing body in charge of the public celebration and upon the payment of fifty dollars ($50.00) to the department for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars ($25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities. All fees collected by the governing body of the local option district may be used to fund free ride home programs.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business, provided the governing body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars ($25.00) together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function for which the permit was sought. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

F. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section.

G. Any person holding a dispenser's license who dispenses alcoholic beverages at a church's public celebration under a special dispenser's permit pursuant to this section may donate to the church holding the public celebration any portion of the profits from the sale of alcoholic beverages at that public celebration. Employees of that dispenser or other individuals who have completed a certified alcohol server training program may donate to the church holding a public celebration their services as servers of alcoholic beverages at that public celebration.

History: Laws 1981, ch. 39, § 29; 1989, ch. 144, § 1; 1993, ch. 68, § 6; 1997, ch. 265, § 1; 1998, ch. 79, § 1.

ANNOTATIONS

The 1998 amendment effective May 20, 1998, deleted "board or other" following "from the" in Subsections A and F; rewrote Subsection E; and, substituted "pursuant to" for "under" near the beginning of Subsection F.

The 1997 amendment, effective June 20, 1997, added Subsection G.

The 1993 amendment, effective July 1, 1993, substituted "written approval" for "a concession" and "fifty dollars ($50.00)" for "ten dollars ($10.00)" in Subsection A; substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" in the first sentence of Subsection C; added the final sentence of Subsection C; added the proviso at the end of the first sentence of Subsection D; substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" and deleted "by regulation" at the end of the third sentence of Subsection D; substituted "and all local regulations" for "governing dispenser's privileges and disabilities" in the fourth sentence of Subsection D; added present Subsection E; and redesignated former Subsection E as present Subsection F.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R.2d 1216.

60-6A-13. Registration to transport.

For the renewal year beginning on July 1, 1998 and every three years thereafter, every common carrier transporting alcoholic beverages into and for delivery within the state shall register with the department and pay a registration fee of fifty dollars ($50.00).

History: Laws 1981, ch. 39, § 30; 1998, ch. 79, § 2.

ANNOTATIONS

The 1998 amendment, effective May 20, 1998, substituted "For the renewal year beginning on July 1, 1998 and every three years thereafter" for "On July 1 of each year" at the beginning of the section and "fifty dollars ($50.00)" for "fifteen dollars ($15.00)" at the end.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 131.

48 C.J.S. Intoxicating Liquors § 208.

60-6A-14. Sacramental wine.

No license shall be required of any person to sell wine for use in this state which is to be used exclusively for sacramental or religious purposes when the wine is consigned to any bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel of any religious faith or denomination and the container, barrel, case or carton is plainly and legibly labeled: "Wine To Be Used Exclusively For Sacramental And Religious Purposes"; no licenses or transportation permit or other permit shall be required for the importation, delivery, transportation or distribution of any such wine when it is consigned to any such bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel, and the container, barrel, case or carton thereof is plainly and legibly labeled as provided in this section.

History: Laws 1981, ch. 39, § 31.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 75.

48 C.J.S. Intoxicating Liquors §§ 129, 200.

60-6A-15. License fees.

Every application for the issuance or renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

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

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

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

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

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

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

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

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

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

J. retailer's license, one thousand three hundred dollars ($1,300);

K. dispenser's license, one thousand three hundred dollars ($1,300);

L. canopy license, one thousand three hundred dollars ($1,300);

M. restaurant license, one thousand fifty dollars ($1,050);

N. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars ($1,250), and for clubs with two hundred fifty members or fewer, two hundred fifty dollars ($250);

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

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

Q. nonresident licenses, for a total billing to New Mexico wholesalers:

(1) in excess of:

	$3,000,000	annually	$10,500;
	1,000,000	annually	5,250;
	500,000	annually	3,750;
	200,000	annually	2,700;
	100,000	annually	1,800;
and			
	50,000	annually	900;
and			
(2)	of $50,000 or less		$300;

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

S. beer bottler's license, two hundred dollars ($200).

History: Laws 1981, ch. 39, § 32; 1983, ch. 280, § 1; 1988, ch. 60, § 5; 1989, ch. 241, § 1; 1993, ch. 68, § 7; 1998, ch. 79, § 3; 1999, ch. 276, § 1; 2000, ch. 13, § 1; 2003, ch. 246, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "one thousand three hundred dollars ($1,300)" for "one thousand two hundred fifty dollars ($1,250)" in Subsections J, K and L, and substituted "one thousand fifty dollars ($1,050)" for "one thousand dollars ($1,000)" in Subsection M.

The 2000 amendment, effective May 17, 2000, rewrote Subsection N, which read "club license, one thousand two hundred fifty dollars ($1,250)."

The 1999 amendment, effective June 18, 1999, in Subsection Q, designated the formerly undesignated paragraph as Paragraph (1), in that paragraph, deleted "or less" following "50,000", and added Paragraph (2).

The 1998 amendment, effective May 20, 1998, deleted "annual" following "issuance or" in the introductory paragraph, and rewrote Subsection Q.

The 1993 amendment, effective July 1, 1993, deleted the Subsection A designation at the beginning; designated former Paragraphs (1) through (18) of former Subsection A as Subsections A through R; substituted "one thousand two hundred fifty dollars ($1,250)" for "one thousand five hundred dollars ($1,500)" in Subsections G, K to N, and P; added Subsection S; deleted former Subsection B, pertaining to the renewal fee for licenses issued under former acts; and made a minor stylistic change.

Director unable to apply fee for canceled license to new license. — Liquor chief (now director) is without power to cancel a license issued under one paragraph and then apply the amount paid on such license to the fee requisite to obtaining a license under another paragraph, the full amount being payable for the latter regardless of the number of other licenses which may be held by the particular licensee. 1943-44 Op. Att'y Gen. No. 43-4430.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 233.

Liability for license fee of one who has conducted business without required license, 5 A.L.R. 1312, 107 A.L.R. 652.

48 C.J.S. Intoxicating Liquors § 182.

60-6A-16. Proration of fees.

A. License fees for new licenses issued after the beginning of the license year shall be prorated.

B. Dispenser, retailer, restaurant, club and public service license fees shall be prorated as follows:

(1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

(2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

(3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

(4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

C. License fees for all new licenses not provided for in Subsection B of this section, except nonresident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

D. Nonresident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for nonresident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Nonresident licenses and common carrier registrations issued at any time during the:

(1) first license year shall be subject to payment of the full amount of the three-year license fee;

(2) second license year shall be subject to payment of two-thirds of the three-year license fee; and

(3) third license year shall be subject to payment of one-third of the three-year license fee.

History: Laws 1981, ch. 39, § 33; 1998, ch. 79, § 4; repealed and reenacted by Laws 2015, ch. 86, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 2015, ch. 86, § 1 repealed and reenacted 60-6A-16 NMSA 1978, effective June 19, 2015.

Temporary provisions. — Laws 2015, ch. 86, § 3 provided:

A. License renewal fees due on August 1, 2015 shall include an additional one-third of the annual license fee for the period from July 1, 2015 through October 31, 2015. All restaurant, club, wholesaler and manufacturer licensees shall be issued temporary licenses prior to June 30, 2015 that shall expire on October 31, 2015 unless renewed. New restaurant or club licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

B. License renewal fees due on December 1, 2015 shall include an additional two-thirds of the annual license fee for the period of time from July 1, 2015 through February 28, 2016. All licensees that are required to file a renewal application and pay the renewal fee on December 1, 2015 shall be issued temporary licenses prior to June 30, 2015 that expire on February 28, 2016 unless renewed. Public service licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

The 1998 amendment, effective May 20, 1998, deleted "nonresident licensees" following "wine bottlers" in Subsection B, and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 183.

60-6A-17. Issuance of licenses and collection of fees.

All licenses provided for pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] shall be issued by the director in strict compliance with the provisions of that act, and license fees shall be collected by the director and remitted to the state treasurer.

History: Laws 1981, ch. 39, § 34.

ANNOTATIONS

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 187.

60-6A-18. Limitation on number of licenses; exceptions.

A. The maximum number of licenses to be issued under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978 shall be as follows:

(1) in incorporated municipalities, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof; and

(2) in unincorporated areas of each county, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof, excluding the population of incorporated municipalities within the county.

B. For the purpose of this section, the number of inhabitants of a local option district shall be determined by annual population estimates published by the economic development department.

C. Subsection A of this section shall not be construed to prevent any licensee holding a valid license issued under the Liquor Control Act [60-3A-1 NMSA 1978], or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Liquor Control Act and department regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted in Subsection A of this section.

History: Laws 1981, ch. 39, § 35; 1988, ch. 12, § 1; 1991, ch. 21, § 39.

ANNOTATIONS

The 1991 amendment, effective March 27, 1991, deleted "and tourism" following "development" in Subsection B.

Splitting of single liquor license under lease agreement not permitted. — Splitting of a single liquor license under a lease agreement in order to circumvent this section is not permitted. The state ABC board regulations intend to prevent such splits, and these regulations manifest the public policy of the state; any contracts in violation of the public policy are void. DiGesu v. Weingardt, 91 N.M. 441, 575 P.2d 950 (1978).

Hearings within scope of director's administrative powers. — It is entirely within the administrative powers of the chief of the division of liquor control (now director) to proceed with hearing to determine whether liquor license had originally been issued without authority under the statute. Petroleum Club Inn Co. v. Franklin, 72 N.M. 347, 383 P.2d 824 (1963).

Section constitutional. — This section, as now constituted, is clearly constitutional. The police power of the state to regulate and/or prohibit the possession, sale and dispensing of alcoholic beverages has been upheld against constitutional attack so many times that it is unnecessary to cite authority so holding. 1959-60 Op. Att'y Gen. No. 59-137.

Intent of quota. — The quota provisions of this section are intended to limit the number of liquor licenses allowed in the state. 1979 Op. Att'y Gen. No. 79-03.

Section inapplicable to transfer of existing licenses. — A liquor dispenser's license may not be transferred from one municipality to another even though limitations as to the number of licenses per population apply only to the issuance of new licenses and not to the transfer of existing licenses. A transfer from one municipality to another would be without restriction in this regard but would result in thwarting the legislative intent of limiting the number of licenses that can be issued to any one municipality. 1970 Op. Att'y Gen. No. 70-56.

Quota limitation enforced when licenses issued. — The director cannot legally issue a liquor license to a city without regard to the quota limitation imposed under this section. 1975 Op. Att'y Gen. No. 75-41.

"Major fraction thereof " could only mean more than one half. 1955-56 Op. Att'y Gen. No. 56-6384.

Each incorporated municipality is eligible for one license even though the population of the municipality is less than a major fraction of 2000. 1961-62 Op. Att'y Gen. No. 61-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 133.

Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825, 163 A.L.R. 581.

Validity of statutory classifications based on population - intoxicating liquor statutes, 100 A.L.R.3d 850.

48 C.J.S. Intoxicating Liquors § 100.

60-6A-19. No property right in license; exception.

A. The holder of any license issued under the Liquor Control Act [60-3A-1 NMSA 1978] or any former act has no vested property right in the license, which is the property of the state; provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978:

(1) shall be considered property subject to execution, attachment, a security transaction, liens, receivership and all other incidents of tangible personal property under the laws of this state, except as otherwise provided in the Liquor Control Act;

(2) may be assigned, transferred from person to person or leased, provided all requirements of the Liquor Control Act and department regulations are fulfilled; and

(3) shall be transferred as personal property upon attachment, execution, repossession by a secured party or lienor, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee. The director may by rule or regulation determine any application or notice requirement for a person who temporarily holds a license pursuant to this subsection.

B. Any license issued under the Liquor Control Act [60-3A-1 NMSA 1978] may be transferred to any location not otherwise contrary to law within the same local option

district where the license is then located, provided all requirements of the Liquor Control Act and department regulations are fulfilled.

History: Laws 1981, ch. 39, § 36; 1991, ch. 257, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, designated the previously undesignated provisions as Subsection A and Paragraph (1) thereof; in Subsection A, substituted "provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978" for "provided that until June 30, 1991 licenses issued prior to the effective date of the Liquor Control Act" at the end of the introductory paragraph and added Paragraphs (2) and (3); and added Subsection B.

Constitutionality. — This section is constitutional. It does not take existing property interests without due process and it does not unreasonably deprive the owner of a liquor license of all or substantially all of the beneficial use of his license. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

A liquor license is a privilege subject to regulation and not a property right. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6A-20. Vested rights of licensees operating breweries, distilleries, rectifying plants or wineries.

If a permit or license is issued to a person for the operation of a brewery, distillery, rectifying plant or winery, and the permittee or licensee has commenced the operation of the brewery, distillery, rectifying plant or winery under the terms of the permit or license, the permit or license shall be construed to constitute a contract vesting in the licensee, for a period of fifty years from the date of the original issuance of the license or permit, a right to operate the business, which right shall not be impaired by any subsequent legislation or local option election. This section shall not be construed to permit the licensee or permittee to sell its products in this state contrary to the current laws of this state.

History: Laws 1981, ch. 39, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 108.

60-6A-21. Short title.

Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery, Small Brewery and Craft Distillery Act"."

History: 1978 Comp., § 60-6A-21, enacted by Laws 1983, ch. 280, § 2; 1993, ch. 68, § 8; 2011, ch. 110, § 1.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, changed the name of the act to include craft distilleries.

The 1993 amendment, effective July 1, 1993, inserted "and Small Brewery".

60-6A-22. Definitions.

As used in the Domestic Winery, Small Brewery and Craft Distillery Act:

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

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

C. "craft distiller" means a person licensed as a craft distiller who owns or operates a business for the manufacture of spirituous liquors but who does not manufacture more than one hundred fifty thousand proof gallons per license year;

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

E. "proof gallon" means a gallon of liquid at sixty degrees Fahrenheit that contains fifty percent ethyl alcohol by volume or its equivalent;

F. "public celebration" means any state fair, county fair, community fiesta or cultural or artistic performance;

G. "wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar, or any such alcoholic beverage to which is added grape brandy, fruit brandy or spirits of wine that is distilled from the particular agricultural products of which the wine is made, and other rectified wine products by whatever name that do not contain more

than fifteen percent added flavoring, coloring and blending material and that contain not more than twenty-four percent alcohol by volume, and includes vermouth;

H. "wine blender" means a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the internal revenue laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities; provided that any person who produces or blends not to exceed three hundred gallons of wine per year shall not, because of such production or blending, be considered a wine blender; and

I. "winer" means a person licensed as a winegrower.

History: 1978 Comp., § 60-6A-22, enacted by Laws 1983, ch. 280, § 3; 1985, ch. 217, § 1; 1998, ch. 109, § 3; 2011, ch. 110, § 2.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added definitions of "craft distiller" and "proof gallon".

The 1998 amendment, effective July 1, 1998, substituted "a person licensed as a winegrower" for "any person who has facilities and equipment for the conversion in New Mexico, of grapes, berries or other fruit into wine and is engaged in the commercial production of wine; provided that any person who produces not to exceed two hundred gallons of wine per year for his own consumption shall not, because of such production, be considered a winer" near the beginning of Subsection G.

60-6A-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 109, § 8 repeals 60-6A-23 NMSA 1978, enacted by Laws 1983, ch. 280, § 4, relating to winer's license, effective July 1, 1998. For provisions of former section, see 1997 Cumulative Supplement.

60-6A-24. Wine blender's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], except as otherwise provided in the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978], may apply for and be issued a wine blender's license.

B. A wine blender's license authorizes the person to whom it is issued to:

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

(2) sell only wine packaged by or for him to a person holding a New Mexico wine wholesaler's, wholesaler's, winegrower's or wine exporter's license or to a winegrower's agent;

(3) deal in warehouse receipts for wine; and

(4) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

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

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

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

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

(4) to conduct wine tastings or sell for consumption off premises, at retail, or to sponsor wine tastings, either on or off the wine blender's premises.

History: 1978 Comp., § 60-6A-24, enacted by Laws 1983, ch. 280, § 5; 1985, ch. 217, § 3; 1998, ch. 109, § 4.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, added Subsection B and redesignated former Subsection B as Subsection C, rewriting the subsection.

60-6A-25. Brandy manufacturer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], except as otherwise provided in the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978], may apply for and be issued a brandy manufacturer's license.

B. A brandy manufacturer is authorized to engage in the manufacture of brandy only and no other distilled spirits.

C. A brandy manufacturer shall sell only such brandy as is manufactured by him to persons holding a wholesaler's license or a winer's license or to a licensed wine exporter.

History: 1978 Comp., § 60-6A-25, enacted by Laws 1983, ch. 280, § 6; 1985, ch. 217, § 4.

60-6A-26. Wine exporter's license.

A wine exporter's license authorizes the person to whom it is issued, and under regulations prescribed by the director, to sell, deliver or consign wine or brandy manufactured or produced within this state for delivery, use or sale without the state.

History: 1978 Comp., § 60-6A-26, enacted by Laws 1983, ch. 280, § 7.

ANNOTATIONS

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

60-6A-26.1. Small brewer's license.

A. In a local option district, a person qualified pursuant to the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

(1) manufacture or produce beer;

(2) package, label and export beer, whether manufactured, bottled or produced by the licensee or any other person;

(3) sell only beer that is packaged by or for the licensee to a person holding a wholesaler's license or a small brewer's license;

(4) deal in warehouse receipts for beer;

(5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee, beer produced and bottled by or for another New Mexico small brewer on the small brewer's premises or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;

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

(7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer

produced and bottled by or for the small brewer or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;

(8) buy or otherwise obtain wine from a winegrower;

(9) for the purposes described in this subsection, at no more than three other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer, beer produced and bottled by or for another New Mexico small brewer or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978;

(10) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients; and

(11) sell beer in a growler for consumption off premises.

C. At public celebrations off the small brewer's premises in a local option district permitting the sale of alcoholic beverages, the holder of a small brewer's license shall pay ten dollars ($10.00) to the alcohol and gaming division of the regulation and licensing department for a "small brewer's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a small brewer's license a public celebration permit for a location at the public celebration that is to be shared with other small brewers and winegrowers. As used in this subsection, "public celebration" includes a state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

D. Sales and tastings of beer or wine authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday.

History: 1978 Comp., § 60-6A-26.1, enacted by Laws 1985, ch. 217, § 5; 1993, ch. 68, § 9; 1997, ch. 229, § 1; 1998, ch. 111, § 1; 1999, ch. 160, § 1; 2001, ch. 248, § 2; 2001, ch. 260, § 2; 2015, ch. 102, § 5; 2015, ch. 124, § 2.

ANNOTATIONS

Repeals. — Laws 2015, ch. 102, § 10 and Laws 2015, ch. 124, § 3 repealed Laws 2001, ch. 248, § 2, effective July 1, 2015.

2015 Multiple Amendments. — Laws 2015, ch. 102, § 5 and Laws 2015, ch. 124, § 2, both effective July 1, 2015, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 124, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 102, § 5 and Laws 2015, ch. 124, § 2 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMONESOURCE.COM*.

The nature of the difference between the amendments is that Laws 2015, ch. 124, § 2 provided retail reciprocity between small brewers and winegrowers by allowing a small brewer's licensee to buy and sell wine produced by a New Mexico winegrower's licensee, and Laws 2015, ch. 102, §5 authorized a person who has been issued a small brewer's license to sell beer in a growler for consumption off the licensee's premises. Both laws increased the number of locations that a person who has been issued a small brewer's license may conduct beer tastings and sell, by the glass for consumption off the licensee's premises, beer produced and bottled by or for the small brewer or beer produced and bottled by or for another New Mexico small brewer.

Laws 2015, ch. 124, § 2, effective July 1, 2015, in Subsection A, after "Domestic Winery", deleted "and", and after "Small Brewery", added "and Craft Distillery"; in Paragraph (2) of Subsection B, after "bottled or produced by", deleted "him" and added "the licensee"; in Paragraph (3) of Subsection B, after "packaged by or for", deleted "him" and added "the licensee"; in Paragraph (5) of Subsection B, after "the licensee", deleted "or" and added "beer", and after "small brewer's premises", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978"; in Paragraph (7) of Subsection B, after the second occurrence of "small brewer", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978"; added new Paragraph (8) of Subsection B and redesignated the succeeding paragraphs accordingly; and in Paragraph (9) of Subsection B, after "(9)", added "for the purposes described in this subsection", after "at no more than", deleted "two" and added "three", after "bottled by or for the small brewer", deleted "or", and after "bottled by or for another New Mexico small brewer", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978".

Laws 2015, ch. 102, § 5, effective July 1, 2015, in Subsection A, after "In", deleted "any", after "a person qualified", deleted "under" and added "pursuant to", after "Domestic Winery", deleted "and", and after "Small Brewery", added "and Craft Distillery"; in Paragraph (1) of Subsection B, after "(1)", deleted "become a manufacturer or producer of" and added "manufacture or produce"; in Paragraph (2) of Subsection B, after "produced by", deleted "him" and added "the licensee"; in Paragraph (3) of Subsection B, after "packaged by or for", deleted "him" and added "the licensee"; in Paragraph (8) of Subsection B, after "no more than", deleted "two" and added "three", after "small brewer", deleted "and"; in Paragraph (9) of Subsection B, after "ingredients",

added "and"; added Paragraph (10) of Subsection B; and in Subsection C, after "off the small brewer's premises in", deleted "any" and added "a", and after "'public celebration' includes", deleted "any" and added "a".

The 2001 amendment, effective July 1, 2001, in Subsection B, inserted "or produced and bottled by or for another New Mexico small brewer" in Paragraph (5), inserted "or beer produced and bottled by or for another New Mexico small brewer; and" in Paragraph (8), deleted Paragraph (10), giving a licensed brewer the ability to apply for a permit to join other licensed brewers to sell beer produced at a common facility; added Subsection C and renumbered former Subsection C as D.

The 1999 amendment, effective July 1, 1999, added Subsection B(10).

The 1998 amendment, effective March 10, 1998, deleted "and" at the end of Paragraph B(6) and added Paragraphs B(8) and (9).

The 1997 amendment, effective April 11, 1997, deleted "do any of the following" at the end of the introductory paragraph of Subsection B, added Paragraphs B(7) through B(9), added Subsection C, and made minor stylistic changes.

The 1993 amendment, effective July 1, 1993, inserted "bottled" in Paragraph (2) of Subsection B.

60-6A-26.2. Beer bottler's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], before he bottles beer for a person holding a small brewer's license, shall procure from the department a beer bottler's license.

B. A beer bottler's license authorizes the person to whom it has been issued to do the following:

(1) bottle beer for the holder of a small brewer's license;

(2) hold or store beer in bulk that was produced by a small brewer until it is bottled; and

(3) hold or store beer that he has bottled on his premises.

C. A beer bottler's license shall not authorize the person to whom it has been issued to sell, serve, deliver or allow consumption of beer in unopened packages or by the drink at wholesale or retail on his licensed premises.

History: Laws 1993, ch. 68, § 10.

60-6A-27. License fees.

Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

A. brandy manufacturer's license, seven hundred fifty dollars ($750);

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

C. wine blender's license, seven hundred fifty dollars ($750);

D. wine exporter's license, five hundred dollars ($500);

E. small brewer's public celebrations permit, ten dollars ($10.00) for each public celebration;

F. small brewer's off-premises permit, two hundred dollars ($200) for each off-premises location;

G. craft distiller's license, seven hundred fifty dollars ($750); and

H. craft distiller's off-premises permit, two hundred dollars ($200) for each off-premises location.

History: 1978 Comp., § 60-6A-27, enacted by Laws 1983, ch. 280, § 8; 1985, ch. 217, § 6; 1997, ch. 229, § 2; 1998, ch. 109, § 5; 1998, ch. 111, § 2; 2011, ch. 110, § 4.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added a craft distiller’s license fee and a craft distiller’s off-premises license fee.

Temporary provisions. — Laws 2011, ch. 110, § 5 provided that:

A. If a person has submitted an application for a manufacturer's license as a distiller to the director of the alcohol and gaming division of the regulation and licensing department and, on July 1, 2011, the application has not yet been approved, the person may submit a request in writing to the director no later than July 31, 2011 to convert the application from a manufacturer's license as a distiller to an application for a craft distiller's license in accordance with procedures adopted by the director.

B. If, within one hundred twenty days prior to or subsequent to July 1, 2011, a person obtains approval for a manufacturer's license as a distiller, the person may submit a request in writing to the director of the alcohol and gaming division of the regulation and licensing department to convert the manufacturer's license as a distiller to a craft distiller's license pursuant to procedures adopted by the director and upon

payment of licensing fees as provided in Section 60-6A-27 NMSA 1978. There shall be no refunds of application or licensing fees unless otherwise provided by law.

The 1998 amendments. — Laws 1998, ch. 109, § 5, deleted former Subsections C, F and G, and redesignated former Subsections D, E and H as Subsections C, D and E, effective July 1, 1998. However, Laws 1998, ch. 111, § 2, also amending this section by making minor stylistic changes and adding Subsection I, but not giving effect to the changes made by the first 1998 amendment, was approved March 10, 1998. This section is set out as amended by Laws 1998, ch. 111, § 2. See 12-1-8 NMSA 1978.

The 1997 amendment, effective April 11, 1997, added Subsections H and I, and made minor stylistic changes.

60-6A-28. Nonresident licenses.

Notwithstanding the provisions of Sections 60-6B-1 and 60-6B-2 NMSA 1978, a person not a citizen of the United States may apply for and be granted, subject to other qualifications required by the Liquor Control Act [60-3A-1 NMSA 1978], any license established by the provisions of the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978]; provided that the director of the department of alcoholic beverage control, in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act.

History: 1978 Comp., § 60-6A-28, enacted by Laws 1983, ch. 280, § 9; 1985, ch. 217, § 7.

ANNOTATIONS

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

60-6A-29. Wine wholesaler's license.

A. In any local option district, a winegrower licensed under the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a license as a wine wholesaler of wines produced by or for New Mexico winegrowers.

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

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

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

History: Laws 1988, ch. 60, § 1; 1998, ch. 109, § 6.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection A, deleted "or winer" preceding "a winegrower" near the beginning and inserted "or for" near the end, and deleted "or winers" preceding "New Mexico winegrowers".

60-6A-30. Posting of warnings.

Any licensee holding a license pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978 or Section 60-6B-16 NMSA 1978 shall post in a conspicuous place a sign in both English and Spanish that reads as follows:

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

The director shall prescribe the form of such warning and shall make warning signs available to all such license holders.

History: Laws 1991, ch. 68, § 1.

60-6A-31. State fair; golf courses; alcoholic beverage sales restrictions.

Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair, on the grounds of golf courses and on the grounds and in the vineyards of a winery only on the licensed premises in controlled access areas of the state fair, golf courses and wineries, the designation of which has been negotiated as part of the license application or renewal process.

History: Laws 1993, ch. 68, § 37; 1999, ch. 64, § 2; 2009, ch. 139, § 2.

ANNOTATIONS

Cross references. — For service of alcohol at state fair, see 16-6-4 NMSA 1978.

The 2009 amendment, effective June 19, 2009, after the first occurrence of "golf courses", added "and on the grounds and in the vineyards of a winery", and after the second occurrence added "and wineries".

The 1999 amendment, effective July 1, 1999, inserted "golf courses" in the section heading, inserted "and on the grounds of golf courses", and inserted "of the state fair and golf courses".

60-6A-32. Interstate wine tastings; competitions; permits.

A. Exempt from the procurement of any other license or permit issued pursuant to the terms of the Liquor Control Act [60-3A-1 NMSA 1978], but not exempt from the procurement of a competition permit, is a winemaker or winery licensed outside of New Mexico that desires to participate in a regional wine tasting or competition within New Mexico. One permit shall be issued by the director to an out-of-state winemaker or winery for the duration of the wine tasting or competition.

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

(1) bring no more than twenty-five cases of wine into New Mexico after indicating on his permit application the number of cases to be brought into the state;

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

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

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

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

D. As used in this section:

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

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

(3) "regional wine tasting" means a wine tasting at which the wines offered for tasting are from more than one state or country;

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

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

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

History: Laws 1998, ch. 109, § 7.

60-6A-33. Tasting permit; fees.

A. The director is authorized to issue a tasting permit to a licensed dispenser, retailer, resident manufacturer, nonresident manufacturer, wholesaler or winegrower or an agent of any such licensed entity to conduct tastings of wine, beer, cider or spirituous liquor on a licensed premises in accordance with rules promulgated by the director to protect public health and safety. A person serving wine, beer, cider or spirituous liquor at a tasting event permitted pursuant to this section shall have a server permit.

B. To apply for a tasting permit, the holder of a license described in Subsection A of this section shall submit to the department a tasting permit fee of one hundred dollars ($100) and such information as the director may require. A tasting permit shall be valid for one year from the date that it is issued and may be renewed upon application to the department and payment of the tasting permit fee of one hundred dollars ($100). A person permitted to hold tastings pursuant to this section shall notify the director no less than forty-eight hours before a tasting event of the person's intent to hold the event. Notification shall include the times and locations of, and the types of products to be included in, the tasting event. Upon receipt of notification, the director shall forward the notice to the appropriate staff member of the special investigations division [New Mexico state police division] of the department of public safety.

C. The director may impose the following administrative penalties on a person who holds a tasting permit for violations of the Liquor Control Act that occur during tastings conducted pursuant to the person's tasting permit:

(1) for a first violation, a fine no greater than one thousand dollars ($1,000) or a restriction on issuance of tasting permits to the person for a period of two months, or both;

(2) for a second violation within a year of the first violation, a fine no greater than two thousand dollars ($2,000) or a restriction on issuance of tasting permits to the person for a period of six months, or both; and

(3) for a third violation within a year of the first violation, a citation against the license held by the person, a fine no greater than five thousand dollars ($5,000) and a restriction on issuance of tasting permits to the person for a period of one year.

History: Laws 2013, ch. 148, § 1; 2015, ch. 77, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2015, ch. 3, § 43 provided that all references in law to the special investigations division of the department of public safety shall be deemed to refer to the New Mexico state police division of the department of public safety

The 2015 amendment, effective July 1, 2015, provided for administrative penalties for violations of the Liquor Control Act by persons who hold tasting permits; and added Subsection C.

60-6A-34. Special bed and breakfast dispensing license; fees; limitations.

A. The director is authorized to issue a special bed and breakfast dispensing license to an owner or operator of a bed and breakfast in accordance with rules promulgated by the director to protect public health and safety. The license shall be limited to the serving of wine and beer in conjunction with food to the guests of the bed and breakfast.

B. A bed and breakfast establishment may apply for a special bed and breakfast dispensing license by submitting to the department a fee of one hundred dollars ($100) and such information as the director may require. A license shall be valid for one year from the date that it is issued and may be renewed for a fee of one hundred dollars ($100). The license shall allow the owner, operator or employee of a bed and breakfast who holds a server permit to dispense only wine or beer only to guests of the bed and breakfast in conjunction with the serving of food in a common area of the bed and breakfast.

C. The issuance of a bed and breakfast license for beer and wine service shall be contingent on the approval of the local public governing body or local option district of the jurisdiction in which the business is domiciled.

D. Service of beer or wine with food to guests at a bed and breakfast shall be limited to two twelve-ounce servings of beer or two six-ounce servings of wine per guest.

E. A special bed and breakfast dispensing license shall not be transferable from person to person or from one location to another.

F. An owner, operator or employee of a bed and breakfast who holds a server permit shall comply with the provisions of the Alcohol Server Education Article of the Liquor Control Act [Chapter 60, Article 6E NMSA 1978].

G. For the purposes of this section, "bed and breakfast" means a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons.

History: Laws 2013, ch. 150, § 1 and Laws 2013, ch. 159, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2013, ch. 150, § 1 and Laws 2013, ch. 159, § 1 enacted identical new sections, both effective July 1, 2013. The section was set out as enacted by Laws 2013, ch. 159, § 1. *See* 12-1-8 NMSA 1978.

60-6A-35. Small brewer and winegrower limited wholesaler's license.

In any local option district, a small brewer or a winegrower that is licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act and that also holds a restaurant license or a dispenser's license may apply for and be issued a small brewer and winegrower limited wholesaler's license. A small brewer that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship beer manufactured by the small brewer. A winegrower that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship wine manufactured by the winegrower.

History: Laws 2015, ch. 113, § 2.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 113, § 3 made Laws 2015, ch. 113, § 2 effective July 1, 2015.

ARTICLE 6B
License Provisions

60-6B-1. Persons prohibited from receiving or holding licenses.

The following classes of persons shall be prohibited from receiving or holding licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978]:

A. a person who has been convicted of two separate misdemeanor or petty misdemeanor violations of the Liquor Control Act in any calendar year or of any felony,

unless the person is restored to the privilege of receiving and holding licenses by the governor or unless the director determines that the person merits the public trust, in which case the person shall receive licenses under reasonable terms and conditions fixed by the director, which shall include that the person pay an administrative penalty of two thousand five hundred dollars ($2,500) for each license held by that person;

B. a person whose spouse had been convicted of a felony unless the person demonstrates that the convicted spouse will have no involvement in the operation of the license;

C. a minor; or

D. a corporation that is not duly qualified to do business in New Mexico, unless the licensee holds a public service license or a nonresident license issued under Section 60-6A-7 NMSA 1978; provided, however, that a corporation that owns stock in a corporation that owns a New Mexico liquor license does not need to be qualified to do business in New Mexico regardless of the size of the ownership interest.

History: Laws 1981, ch. 39, § 37; 1987, ch. 198, § 1; 1989, ch. 292, § 1; 1991, ch. 119, § 6; 1993, ch. 329, § 3.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, added present Subsection B; redesignated former Subsections B and C as present Subsections C and D; and made stylistic changes in Subsection D.

The 1991 amendment, effective June 14, 1991, inserted "or petty misdemeanor" in Subsection A.

Persons convicted of felonies. — A bar and liquor license had been held in trust by a father for his son, a convicted felon. Upon the son's death, the doctrine of unclean hands did not preclude judgment in favor of the son's heirs, who sued to enforce the trust. Granado v. Granado, 107 N.M. 456, 760 P.2d 148 (1988).

The director of the department of alcoholic beverage control (now alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

Two misdemeanors in same year preclude license renewal. — Two personal misdemeanor violations of the liquor act within one calendar year are requisite before prohibition on receiving a renewal license becomes applicable. 1945-46 Op. Att'y Gen. No. 45-4680.

Conviction, subsequent arrest on another charge, insufficient for section's prohibition. — Two convictions, and not merely one conviction and a subsequent

arrest on another charge, must occur in the same calendar year in order for the prohibition of this section to become operative. 1965 Op. Att'y Gen. No. 65-215.

One-year sentence imposed by court-martial not felony. — Imposition of a sentence of more than one year by a duly appointed court-martial is not to be considered a felony per se as contemplated by the language of this section. 1957-58 Op. Att'y Gen. No. 58-06.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 157 to 162.

48 C.J.S. Intoxicating Liquors § 135.

60-6B-1.1. Licenses held by noncitizens.

A person not a citizen of the United States may apply for and be granted any license, subject to other qualifications required by the Liquor Control Act [60-3A-1 NMSA 1978]; provided that the director of the department of alcoholic beverage control in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act.

History: 1978 Comp., § 60-6B-1.1, enacted by Laws 1989, ch. 292, § 2.

60-6B-2. Applications.

A. Before a new license authorized by the Liquor Control Act [60-3A-1 NMSA 1978] may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of two hundred dollars ($200);

(2) submit to the director for approval a description, including floor plans, in a form prescribed by the director, that shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) submit the name and street address of a New Mexico resident who is not a felon, who has power of attorney and authority to bind the applicant to matters related to liquor sales and operations and upon whom the director may serve any notice related to ownership or operation of the license, including any notice of charge pursuant to Chapter 60, Article 6C NMSA 1978;

(4) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than a ten percent interest in the applicant entity would not be eligible to hold a license pursuant to the Liquor Control Act; and

(c) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(5) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. A limited partnership shall not receive a license if a partner or holder of a ten percent or greater interest in the applicant entity designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility;

(6) if the applicant is a limited liability company, submit as part of its application the following:

(a) a copy of the articles of organization, with a copy of the certificate of filing with the public regulation commission;

(b) the name and addresses of all the managing members and all of the nonmanaging members that own a greater than ten percent interest in the limited liability company. Any direct or indirect parent entity of the limited liability company with an interest of ten percent or more in the applicant entity shall submit application forms and qualify to hold a license; and

(c) such additional information regarding the limited liability company as the director may require to assure full disclosure of the limited liability company's structure and financial responsibility;

(7) if the applicant is a trust, submit as part of its application:

(a) the names and addresses of the trustees;

(b) the names and addresses of any beneficiaries having control over the property of the trust or receiving regular and substantial distributions of principal and income from the trust. Any beneficiary receiving regular and substantial distributions from the trust shall qualify to hold a license. The director may request a copy of the trust agreement for review, which trust agreement need not become part of the application. Affidavits as to the operation and distribution of the principal and income may be requested in lieu of, or in addition to, the copy of the trust agreement that is supplied for review by the department; and

(c) such additional information regarding the trust as the director may require to assure full disclosure of the trust's structure and financial responsibility; and

(8) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Except for individual officers, directors, shareholders, members or partners of entities that are publicly traded on a national stock exchange and for individuals who have been fingerprinted for another New Mexico license and had no prior criminal or arrest record, every applicant for a new license or for a transfer of ownership of a license shall file with the application two complete sets of fingerprints taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff, a municipal chief of police, a police officer in a foreign country or an individual qualified to take fingerprints by virtue of training or experience, for each of the following individuals:

(1) if the applicant is a person, for the applicant;

(2) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a corporation, for each principal officer, for each member of the board of directors and for each stockholder with a ten percent or greater interest in the applicant entity;

(3) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a general partnership, for each partner;

(4) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited partnership, for each general partner, for each limited partner

holding a ten percent or greater interest in the applicant entity and for any principal officers of the limited partnership;

(5) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited liability company, for each managing member, for each member who owns a ten percent or greater interest in the applicant entity and for any principal officer of the limited liability company; and

(6) if the applicant is a trust, for each trustee and for each beneficiary who has control over trust property and income or who receives substantial and regular distributions from the trust.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, the director shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection K of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. A license shall not be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an

equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in a calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. A person shall not file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before a new license is issued for a location, the director shall cause a notice of the application for the license to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license. The director shall prescribe the manner in which the posting may be accomplished by the licensee, the licensee's representative or the director's designee.

N. A license shall not be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for a person to remove or deface a notice posted in accordance with this section. A person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. A person aggrieved by a decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to an appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court.

History: Laws 1981, ch. 39, § 38; 1983, ch. 6, § 1; 1989, ch. 118, § 1; 1993, ch. 329, § 4; 1998, ch. 55, § 1; 1998, ch. 93, § 1; 1999, ch. 265, § 74; 2003, ch. 246, § 2; 2007, ch. 220, § 1.

ANNOTATIONS

Cross references. — For definitions of "department" and "director," see 60-3A-3 NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 2007 amendment, effective June 15, 2007, added Paragraph (3) of Subsection A; eliminated the exception that corporations whose stock is listed on a national securities exchange do not have to provide the names and addresses of officers and directors and stockholders; eliminated from Paragraph (3) of Subsection A the requirement that a corporation state the name of its resident agent and the requirement that a power of attorney authorize the resident agent to conduct the corporation’s business in New Mexico; adds Paragraphs (6) and (7) of Subsection A; excepted certain persons from the requirement to submit fingerprints; and added Paragraphs (1) through (6) of Subsection B.

The 2003 amendment, effective July 1, 2003, substituted "two hundred dollars ($200)" for "one hundred fifty dollars ($150)" in Paragraph A(1).

The 1999 amendment, effective July 1, 1999, in Subsection Q, substituted "pursuant to the provisions of Section 39-3-1.1 NMSA 1978" for "pursuant to the provisions of Section 12-8A-1 NMSA 1978."

1998 amendments. — Laws 1998, ch. 55, § 71, amending Subsection Q to provide for appeals pursuant to Section 12-8A-1 (compiled as Section 39-3-1.1 NMSA 1978), was approved March 9, 1998. However, Laws 1998, ch. 93, § 1, amending Subsection G by deleting "documentation of the actual purchase price paid for the license" following "shall contain" near the beginning of the second sentence and revising the last sentence to permit the director to grant extensions for a period of time determined by the director, was approved March 10, 1998. The section is set out as amended by Laws 1998, ch. 93, § 1. See 12-1-8 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "shall" for "must" in Subparagraph (c) of Paragraph (3) of Subsection A; deleted the former last sentence of Subsection B, which read: "Licenses may be issued by the department pending the results of any investigation based on the fingerprints submitted"; added present Subsections C, D, and G, redesignating former Subsections C through M accordingly and making related reference changes in Subsections I and O; rewrote the last sentence of Subsection M; deleted "retailer's or dispenser's" before "license" and "where alcoholic beverages are not then being sold" after "location" near the beginning of Subsection N; deleted "the hearing for the" after "prior to" near the end of Subsection N; and added the present second sentence of Subsection R.

Section applies to transfer of license. — Although this section and Section 60-6B-10 NMSA 1978 refer only to a license "issued", the sections apply equally to the transfer of a license; therefore, the decision by the director of the alcohol and gaming division of the department of regulation and licensing granting an application for transfer of a liquor license was reviewable by way of the statutory appeal provided in Subsection M (now Q) of this section. Regents of Univ. of N.M. v. Hughes, 114 N.M. 304, 838 P.2d 458 (1992).

Posting requirements must be satisfied before license issued. — This section clearly shows that there is no authority on the part of the chief of liquor control (now director of division of alcohol and gaming) to issue any license until the provisions in the statute with reference to posting are fulfilled. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Posting conspicuous notice mandatory. — This section specifies how and where the notice of application shall be posted. It is precise and clear. This statute is mandatory. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

"Conspicuous" defined. — The word "conspicuous" means: "Obvious to the eye or mind; plainly visible, manifest, attracting or tending to attract attention, as by reason of size, brilliance, contrast or station." Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Meaning of "such posting". — The language "such posting" in the last sentence of former Subsection C (now Subsection M) means that it must be conspicuous and it must be on the front entrance of the immediate premises. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

When notice not posted "conspicuously". — A notice was not posted conspicuously where it was posted back on unimproved property at a distance sufficient so that it could not be read by anyone at the edge of the highway and at the fence at the front of the premises but could be read only by those who took the trouble to climb over, or crawl through and go back to the post to read the notice thereon placed. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Purpose of posting requirement. — The purpose behind the requirement that there be a posting of the liquor license application is to give notice to any interested person who may wish to protest it. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Protests acceptable in either oral or written form. — As no provision is made for a hearing of the protest of individuals, it seems that this section concerning posting of notice contemplates protests may be in writing or oral. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953); Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Right of appeal from director's decision limited. — Since a right of appeal exists only with reference to the issuance or refusal to issue of liquor licenses, and appeal does not lie from a decision of the chief of the division of liquor control (now director of alcohol and gaming division) denying application for the change of location in authorized use of the existing license. Taggader v. Montoya, 54 N.M. 18, 212 P.2d 1049 (1950).

Generally, court cannot modify or overrule director's orders. — As long as the chief of the division of liquor control (now director of alcohol and gaming division) acts within the provisions of the law, courts cannot modify or overrule his administrative orders, or otherwise question the expediency or wisdom shown in issuing or revoking of liquor licenses. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

District court cannot usurp administrative functions. — The district court does not have the administrative function of determining whether or not a liquor permit should be granted. The Liquor Control Act gives the court authority only to determine whether, upon the facts and law, the action of the official in cancelling the license was based upon an error of law or was unsupported by substantial evidence or clearly arbitrary or capricious; otherwise it would be a delegation of administrative authority to the district court in violation of the constitution. Floeck v. Bureau of Revenue, 44 N.M. 194, 100 P.2d 225 (1940); Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

District court cannot pass upon legislative policy. — It is not for the courts to pass upon the wisdom of a legislative policy which removes from the municipality or county a segment of home rule which has long been associated with the liquor traffic. Sprunk v. Ward, 51 N.M. 403, 186 P.2d 382 (1947).

Court's authority under section is limited to determining whether under the facts and law, the action of the chief (now director of alcohol and gaming division) was based on error of law, was not supported by substantial evidence or was patently arbitrary or capricious. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

License renewal pending approval. — Where the liquor chief (now director of alcohol and gaming division) had suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case the district court's judgment should be reversed, on appeal. State v. Romero, 49 N.M. 127, 158 P.2d 850 (1944).

Aggrieved person needs direct interest to obtain relief. — A person aggrieved must be a person having a direct interest, pecuniary or otherwise, one different from the public as a whole. Padilla v. Franklin, 70 N.M. 243, 372 P.2d 820 (1962).

Aggrieved person must differ from interests of public. — Individual and institutional appellants who did not set forth nor show such a direct or pecuniary interest in the matter in controversy as to make them "aggrieved persons" were not entitled to relief under this section, since their interests in the public health, safety and morals of a community were no different than the interests of the public as a whole. Runyan v. Jaramillo, 90 N.M. 629, 567 P.2d 478 (1977).

Jurisdiction of appeal from decision of district court. — The court of appeals had original appellate jurisdiction over an order of the division; however, for judicial economy and because the court of appeals requested direction as to the application of case law, the supreme court could decide the merits of the case. City of Santa Fe v. Woodard, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Standing necessary for appeal. — Present owner of a liquor license which he claimed was within the 10-mile limit which could prevent the issuance of a new license to opposing party, had a direct pecuniary interest as distinguished from the public as a whole, and was an aggrieved person who had standing to appeal the decision of the chief of division of liquor control (now director of alcohol and gaming division). Runyan v. Jaramillo, 90 N.M. 629, 567 P.2d 478 (1977).

One appealing solely as remonstrant lacks standing. — One who appeals solely as a remonstrant challenging the jurisdiction of the chief of division (now director of alcohol and gaming division) in regard to the issuance of licenses to other applicants has no standing under this section. Padilla v. Franklin, 70 N.M. 243, 372 P.2d 820 (1962).

Writ of mandamus available as remedy when no right to appeal. — The fact that a city has no right to an appeal does not mean that it cannot bring an action for a writ of mandamus. City of Santa Rosa v. Jaramillo, 85 N.M. 747, 517 P.2d 69 (1973).

When issuance of writ of mandamus erroneous. — Where a letter from the division of liquor control (now director of alcohol and gaming division) clearly shows that the

application had been considered and in fact that the application cannot be processed because the quota of one license to each 2000 people has been more than filled in Rio Arriba county, there can be no doubt this amounted to a final decision on the division's part to refuse the application. A decision is a determination arrived at after consideration, an opinion formed, or a course of action decided upon. The applicant's remedy upon being advised of the decision was by appeal to the district court of Santa Fe county as expressly provided by this section. It follows that the district court erred in entering its judgment ordering the issuance of a peremptory writ of mandamus. Armijo v. Armijo, 77 N.M. 742, 427 P.2d 258 (1967).

Law reviews. — For comment on Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 160, 183, 187, 189, 190, 192, 194, 195.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Transfer of retail liquor license or permit from one location to another, 98 A.L.R.2d 1123.

48 C.J.S. Intoxicating Liquors §§ 116, 138, 142, 168.

60-6B-3. Wholesaler's lien.

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

History: 1978 Comp., § 60-6B-3, enacted by Laws 1991, ch. 257, § 2.

ANNOTATIONS

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

Repeals and reenactments. — Laws 1991, ch. 257, § 2 repeals former 60-6B-3 NMSA 1978, as amended by Laws 1984, ch. 58, § 2, relating to transfer of licenses, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

General lien law not applicable. — General lien law does not apply to a claim made under this section. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

Notice of lien. — This section does not require that notice of the lien be recorded to effectuate the liquor wholesaler's lien. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

This section does not require notice of the lien to be filed to perfect the liquor wholesaler's lien. Automatic perfection of the wholesaler's lien occurs on the date the debt is incurred. The statute allows a wholesale liquor distributor to forego the requirement of filing a financing statement each time a credit sale is made to a retail distributor. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

Priority of lien. — A lien pursuant to this section has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under Section 7-1-38 NMSA 1978 or under applicable general law prior to the date the licensee incurred debts owed to wholesaler creditors. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the New Mexico taxation and revenue department, if the tax lien is perfected pursuant to Section 7-1-38 NMSA 1978. The tax lien is effective as of the date the notice is filed. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by this section were prior to a bank's perfected security interest even if there was a violation of Section 60-7A-9 NMSA 1978, governing credit extension by wholesalers. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

This section does not allow the wholesaler to claim priority for each subsequent sale as of the date of the first transaction. Instead, each separate credit sale creates a separate lien. All liens other than tax liens become subordinate to the wholesaler's liens regardless of the date of perfection. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6B-4. Issuance or transfer of license; approval of appropriate governing body.

A. Prior to the approval of the issuance of a new license, and prior to the approval of a transfer permitted by Section 60-6B-3 or 60-6B-12 NMSA 1978, the director shall notify the governing body of the director's preliminary approval of the issuance or transfer of the license. Notice to the governing body shall be by certified mail.

B. A governing body that has received a notice of preliminary approval of the issuance or transfer of a license from the department may approve or disapprove the issuance or transfer of the license in accordance with the provisions of this section.

C. Within forty-five days after receipt of a notice of preliminary approval from the department, the governing body shall hold a public hearing on the question of whether the department should approve the proposed issuance or transfer.

D. The governing body shall give notice of the public hearing, as required by Subsection C of this section, and the notice shall:

(1) be published at least twice, with the initial notice published at least thirty days before the hearing, in a newspaper of general circulation within the territorial limits of the governing body;

(2) in addition to required print publication, be published on a local option district's web site, if the district has a web site;

(3) set forth:

(a) the date, time and place of the hearing;

(b) the name and address of the licensee;

(c) the action proposed to be taken by the department;

(d) the location of the licensee's premises; and

(e) such other information as may be required by the department; and

(4) be sent by certified mail to the applicant.

E. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

F. The governing body may disapprove the issuance or transfer of the license if:

(1) the proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico;

(2) the issuance or transfer would be in violation of a zoning or other ordinance of the governing body; or

(3) the issuance or transfer would be detrimental to the public health, safety or morals of the residents of the local option district.

G. Within thirty days after the public hearing, the governing body shall notify the department as to whether the governing body has approved or disapproved the proposed issuance or transfer of the license. If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the

public hearing, the director may give final approval to the issuance or transfer of the license.

H. If the governing body disapproves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the department by the governing body with the notice of disapproval. If the governing body disapproves of the issuance or transfer of the license, the director shall disapprove the issuance or transfer of the license.

I. If the governing body approves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section of its approval. If the governing body approves of the issuance or transfer of the license, the director shall approve the issuance or transfer of the license.

History: Laws 1981, ch. 39, § 40; 2015, ch. 102, § 6.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, changed the notice requirements for a hearing prior to the approval of the issuance of a new liquor license or of a transfer of a liquor license; in Subsection A, after "prior to the approval of", deleted "any" and added "a", after "Section", deleted "39 or 113 of the Liquor Control Act" and added "60-6B-3 or 60-6B-12 NMSA 1978", after "governing body of", deleted "his" and added "the director's"; in Subsection B, after "governing body", deleted "which" and added "that"; in the introductory sentence of Subsection D, after "D.", deleted "Notice of the public hearing required by Subsection C of this section shall be given by", and after "governing body", deleted "by" and added "shall give notice of the public hearing, as required by Subsection C of this section, and the notice shall"; in Paragraph (1) of Subsection D, after "(1)", deleted "publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks" and added "be published at least twice, with the initial notice published at least thirty days before the hearing", and after the semicolon, deleted "The notice shall"; added Paragraph (2) of Subsection D; redesignated the phrase "set forth:" as Paragraph (3) of Subsection D; added new Subparagraph D(3)(a) and redesignated the succeeding subparagraphs accordingly; deleted the paragraph designation from former Paragraph (2) of Subsection D and deleted "sending a notice"; designated the language from former Paragraph (2) of Subsection D as Paragraph (4) of Subsection D; in Paragraph (4) of Subsection D, after "(4)", added "be sent", and after "mail to the applicant", deleted "of the date, time and place of the public hearing".

Motion to intervene held timely. — Indian tribe political chapter's motion to intervene on appeal in a liquor license transfer case was timely filed, where the proposed transfer site was located within the geographical boundaries of the chapter, and the chapter wished to argue on behalf of the state's position on appeal. Thriftway Mktg. Corp. v. State, 111 N.M. 763, 810 P.2d 349 (Ct. App. 1990).

Formal preservation of error not required. — Because applicants at administrative hearings often are not represented by legal counsel, state statutes do not require formal preservation of error before appeal may be taken from these decisions. Dick v. City of Portales, 118 N.M. 541, 883 P.2d 127 (1994).

Same standard applicable to transfers and issuance of new licenses. — Once voters approve the sale of alcoholic beverages in a community and the proposed location meets zoning and ordinance requirements, denial of either the transfer of a license, or issuance of a new license, must be based on a finding of health, safety, or moral hazards at the location. City of Santa Fe v. Woodard, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Transfer of license despite municipal disapproval. — Under the Liquor Control Act, Section 60-3A-1 NMSA 1978, the director of the alcohol and gaming division of the New Mexico regulation and licensing department may approve a transfer of a license despite municipal disapproval. The director must so act if the governing body fails to submit evidence supporting its decision or if, on its face, the governing body's decision is not based on evidence pertaining to the specific prospective transferee or location. Southland Corp. v. Manzagol, 118 N.M. 423, 882 P.2d 14 (1994).

City's disapproval of new license not supported by evidence. — Since there was an absence of substantial evidence to support the conclusion of negative impact upon the health, safety, or morals of residents of the area, the city's disapproval of a restaurant license to sell beer and wine was properly disregarded by the director. City of Santa Fe v. Woodard, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Day care and transfer of liquor license. — Where evidence was presented to the hearing officers showing that a day care was not an accredited institution and that its employees and owner were not licensed teachers, there was substantial evidence to support the conclusion that the day care was not a "school" for the purposes of a liquor license transfer. Concerned Residents for Neighborhood Inc. v. Shollenbarger, 113 N.M. 667, 831 P.2d 603 (Ct. App.), overruled on other grounds, Regents of Univ. of N.M. v. Hughes, 114 N.M. 304, 838 P.2d 458 (1992).

Discretion of director. — The word "may" as used in Subsection G invests the director with discretion as to whether to give final approval to the issuance or transfer of a license when a governing body of a county has failed to either approve or disapprove the issuance or transfer of the license within 30 days after a public hearing. Thriftway Mktg. Corp. v. State, 114 N.M. 578, 844 P.2d 828 (Ct. App. 1992).

Disapproval of transfer. — City council's decision to disapprove transfer of a liquor license as part of the administrative licensing process had to be supported by substantial evidence using whole record review. Dick v. City of Portales, 118 N.M. 541, 883 P.2d 127 (1994).

Disapproval of transfer based on moral considerations. — To support a disapproval of the transfer of ownership of a liquor license alone, any detriment to the morals of the residents of the local option district must relate to the qualifications of the transferee to hold the license. Dick v. City of Portales, 118 N.M. 541, 883 P.2d 127 (1994).

In a proceeding regarding the transfer of a liquor license, testimony that a greater availability of alcohol would increase the possibility of accidents involving harm in the community was based upon speculation and was irrelevant; it was relevant, if at all, only to general safety concerns and was unsubstantiated with statistics based on facts relevant to the local community. Disapproval of a liquor license transfer must be based upon authentic facts related to a specific prospective licensee or location. Town & Country Food Stores, Inc. v. Hughes, 118 N.M. 545, 883 P.2d 131 (1994).

The city commission failed to support its finding that the particular liquor license transfer would be detrimental to the safety of the residents and therefore its disapproval was invalid. Town & Country Food Stores, Inc. v. Hughes, 118 N.M. 545, 883 P.2d 131 (1994).

Constitutionality of moral considerations. — The delegation to a municipality of the legislative authority to disapprove the transfer of a liquor license on moral as well as on safety and health grounds is within the traditional definition of the state's police power and thus constitutional. Dick v. City of Portales, 116 N.M. 472, 863 P.2d 1093 (Ct. App. 1993), rev'd on other grounds, 118 N.M. 541, 883 P.2d 127 (1994).

No authority to restrict licensee's operation as condition for approval of waiver. — This section confers no express authority on local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by the predecessor of Section 60-6B-10 NMSA 1978, nor can such authority be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

Delegation of liquor law functions to local governments strictly construed. — Although there is no present question concerning the propriety of certain statutes delegating liquor law functions to local governments, such statutes must be strictly construed against any greater delegation of legislative power than clearly appears in the language used. 1980 Op. Att'y Gen. No. 80-23.

60-6B-5. Expiration and renewal of licenses.

A. All licenses provided for in the Liquor Control Act, except for nonresident licenses and common carrier registrations, shall be issued for a one-year period except for new licenses issued after the beginning of the license year. Nonresident licenses and common carrier registrations shall be issued for a three-year period.

B. The license year for dispenser, retailer and canopy licenses shall end on June 30 of each year. All dispenser, retailer and canopy licenses shall expire on June 30 unless

renewed. The annual renewal application and renewal fee are due on April 1 of each year.

C. The license year for restaurant, club, wholesaler and manufacturer licenses shall end on October 31 of each year. All restaurant, club, wholesaler and manufacturer licenses shall expire on October 31 unless renewed. The annual renewal application and renewal fee are due on August 1 of each year.

D. All licenses not provided for in Subsections B and C of this section, except nonresident licenses and common carrier registrations, shall expire on February 28 of each year. The annual renewal application and renewal fee are due on December 1 of each year.

E. Nonresident licenses and common carrier registrations shall expire on June 30 every three years. The renewal application and renewal fee are due on April 1 of each third year.

F. A license shall not be issued or renewed if the applicant or licensee is delinquent in payment of any taxes administered by the taxation and revenue department.

G. The director shall also determine whether there exists any other reason why a license should not be renewed.

H. If the director determines that the license should not be renewed, the director shall enter an order requiring the licensee, after notice, to show cause why the license should be renewed, and the director shall conduct a hearing on the matter. If, after the hearing, the director finds that no reason exists why the license should not be renewed, the director shall renew the license.

History: Laws 1981, ch. 39, § 41; 1998, ch. 79, § 5; repealed and reenacted by Laws 2015, ch. 86, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 2015, ch. 86, § 2 repealed and reenacted 60-6B-5 NMSA 1978, effective June 19, 2015.

Temporary provisions. — Laws 2015, ch. 86, § 3 provided:

A. License renewal fees due on August 1, 2015 shall include an additional one-third of the annual license fee for the period from July 1, 2015 through October 31, 2015. All restaurant, club, wholesaler and manufacturer licensees shall be issued temporary licenses prior to June 30, 2015 that shall expire on October 31, 2015 unless renewed. New restaurant or club licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

B. License renewal fees due on December 1, 2015 shall include an additional two-thirds of the annual license fee for the period of time from July 1, 2015 through February 28, 2016. All licensees that are required to file a renewal application and pay the renewal fee on December 1, 2015 shall be issued temporary licenses prior to June 30, 2015 that expire on February 28, 2016 unless renewed. Public service licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

The 1998 amendment, effective May 20, 1998, inserted "except nonresident licenses and common carrier registrations", and deleted "and regulations" following "the rules" in the first sentence; inserted the second sentence; and substituted "renewal period" for "year" at the end of the third sentence.

License not renewed as a matter of law. — Where the licensee timely applied for a license, met all requirements for renewal of the license, the license had not been suspended or revoked, no taxes were due, and there were no outstanding citations and where the state failed to renew the license before it expired on June 30, the license was not renewed by operation of law. Santillo v. N.M. Dept. of Public Safety, 2007-NMCA-159, 143 N.M. 84, 173 P.3d 6, cert. denied, 2007-NMCERT-011, 143 N.M. 155, 173 P.3d 762.

License of person convicted of felony. — The director of the department of alcoholic beverage control (now alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

60-6B-6. Corporate licensees; limited partnership licensees; reporting.

A. A corporation that holds a license issued under the Liquor Control Act [60-3A-1 NMSA 1978] shall notify the director within thirty days after the occurrence of any change in the officers, directors or holders of more than ten percent of the voting stock of the corporation, giving the names and addresses of the new officers, directors or stockholders. A corporate licensee shall also notify the director immediately of a change of agent by filing a new power of attorney. The director shall by regulation define what corporate changes, including but not limited to transfer of stock, merger and consolidation, constitute transfers of ownership of corporate licenses and shall, upon making such a determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a corporate license shall not be deemed to occur where ultimate ownership of the corporation does not change.

B. A limited partnership that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change of general partners or of limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership.

The director shall by regulation define what limited partnership changes constitute transfers of ownership of limited partnership licenses and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee that is a limited partnership shall not be deemed to occur where ultimate ownership of the limited partnership does not change.

C. A legal entity that is not a corporation or limited partnership and that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the trustees, partners, owners or members of more than a ten percent interest in the entity, giving the names and addresses of the new trustees, partners or owners. The director shall by regulation define what entity changes constitute a transfer of ownership of such entity's license and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee shall not be deemed to occur where there is no change in the ultimate ownership of the legal entity.

History: Laws 1981, ch. 39, § 42; 1984, ch. 58, § 3; 2007, ch. 220, § 2.

ANNOTATIONS

Cross references. — For definition of "director", *see* 60-3A-3G NMSA 1978.

The 2007 amendment, effective June 15, 2007, provided in Subsections A, B and C that a transfer of ownership of a license shall not be deemed to occur where the ownership of the corporation, limited partnership or the ultimate ownership of the legal entity does not change.

60-6B-7. Cancellation of license for failure to engage in business.

A. Any license issued under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall be canceled if the licensee fails to commence operation of the licensed business within one hundred twenty days after the license is issued and to continuously operate during customary hours and days of operation for that type of business; provided, however, the director may extend that period for a length of time determined by the director.

B. If after the one-hundred-twenty-day period or additional extension period specified in Subsection A of this section the licensee ceases to operate the licensed business during customary hours and days for that type of business for more than ten days, he shall notify the director in writing within five days of the cessation.

C. The director may grant temporary suspensions in the operation of the licensed business upon receipt of the notice provided in Subsection B of this section. A temporary suspension shall be for a period determined appropriate by the director.

D. The license of any person failing to comply with any provision of this section shall be canceled after notice and hearing complying with the provisions of Section 60-6C-4 NMSA 1978.

History: Laws 1981, ch. 39, § 43; 1984, ch. 58, § 4; 1998, ch. 93, § 2.

ANNOTATIONS

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

The 1998 amendment, effective May 20, 1998, in Subsection A, substituted "that" for "such" and "for a length of time determined by the director" for "when construction or major renovation of a proposed licensed premises is planned by the licensee" near the end; inserted "or additional extension period" near the beginning of Subsection B; and rewrote the last sentence in Subsection C.

Determination of facts required prior to cancellation. — Before cancelling a license pursuant to this section, the chief of division (now director of alcohol and gaming division) must determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now director of alcohol and gaming division) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

When mandamus lies to compel cancellation. — Where the director has a clear and present legal duty to cancel the liquor license in question because of nonuse in compliance with this statute, he has no discretionary matters to consider, and mandamus will lie to compel action by the director. City of Santa Rosa v. Jaramillo, 85 N.M. 747, 517 P.2d 69 (1973).

Legislative intent. — The clear wording of this section indicates that the legislature intended that, except in rare instances, liquor licensees should keep the usual hours on the usual days that bars and package stores are customarily open. 1963-64 Op. Att'y Gen. No. 63-121.

Provisions of section are mandatory. 1975 Op. Att'y Gen. No. 75-32.

Meaning of "shall". — This section is mandatory and the word "shall" means "must." 1967 Op. Att'y Gen. No. 67-140.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Cancellation of Instruments § 6; 39 Am. Jur. 2d Intoxicating Liquors § 196.

48 C.J.S. Intoxicating Liquors § 175.

60-6B-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 257, § 5 repeals 60-6B-8 NMSA 1978, as enacted by Laws 1981, ch. 39, § 44, relating to death of licensee or dissolution or termination of the licensed business, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

60-6B-9. Discontinuance of business or death of licensee; judicial sales.

A. If a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee discontinues business for any reason or the licensee dies, the stock of alcoholic beverages owned at the time of the discontinuation of business or the death of the licensee may be sold in whole or in part to any other retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee or to a New Mexico wholesaler without the selling incurring criminal or civil liability under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. If the stock of alcoholic beverages is sold under execution or attachment or by order of a court, the stock shall be sold only to other New Mexico retailers, dispensers, canopy licensees, restaurant licensees, club licensees, governmental licensees or their lessees or to a New Mexico wholesaler.

History: Laws 1981, ch. 39, § 75.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 115.

48 C.J.S. Intoxicating Liquors § 115.

60-6B-10. Locations near church or school; restrictions on licensing.

No license shall be issued by the director for the sale of alcoholic beverages at a licensed premises where alcoholic beverages were not sold prior to July 1, 1981 that is

within three hundred feet of any church or school. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the director a notice of intention to apply for transfer of a license to the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a waiver from a local option district governing body for the proposed licensed premises. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall be the straight line distance from the property line of the licensed premises to the property line of the church or school. This provision shall not apply to any church that has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation.

History: Laws 1981, ch. 39, § 45; 1986, ch. 29, § 1; 1997, ch. 223, § 1.

ANNOTATIONS

Cross references. — For cultural properties review committee, see 18-6-4 NMSA 1978.

The 1997 amendment, effective June 20, 1998, deleted "before the effective date of the Liquor Control Act" at the end of the third sentence, deleted the former fourth and fifth sentences relating to a waiver being granted for licensed premises of at least fifteen stories in class A counties after the effective date of that act, and made minor stylistic changes.

The phrase "property line of the licensed premises" in Section 60-6B-10 NMSA 1978 refers to the outer boundary of the licensed premises themselves, that is, the premises actually used to sell, serve, or consume alcohol. City of Santa Fe v. Tomada, 2014-NMCA-022, cert. granted, 2014-NMCERT-001.

Measurement to the boundary of the licensed premises. — Where the straight-line distance from the actual licensed premises to the north boundary of the school grounds was 377.53 feet and the straight-line distance from the boundary of the real property on which the licensed premised was located to the school grounds was 155.05 feet, the location of the licensed premises did not violate the distance prohibition of Section 60-6B-10 NMSA 1978. City of Santa Fe v. Tomada, 2014-NMCA-022, cert. granted, 2014-NMCERT-001.

Section applies to transfer of license. — Although Section 60-6B-2 NMSA 1978 and this section refer only to a license "issued", the sections apply equally to the transfer of a license; therefore, the decision by the director of the alcohol and gaming division of the regulation and licensing deparment granting an application for transfer of a liquor license was reviewable by way of the statutory appeal provided in Subsection M (now

Q) of 60-6B-2 NMSA 1978. Regents of Univ. of N.M. v. Hughes, 114 N.M. 304, 838 P.2d 458 (1992).

Functional test to be used. — Courts should apply a functional test to decide whether property located within 300 feet of a proposed licensed premises is or is not a school; however, this does not mean that only the building or other structure used for educational purposes falls within the definition of "school" and that adjacent property, even if used for a parking lot, may not be considered as meeting the functional test: any such adjacent land used for school purposes, which may include the parking of vehicles used by students in attending classes or otherwise participating in educational or instructional activities, may fall within the definition of "school". Regents of Univ. of N.M. v. Hughes, 114 N.M. 304, 838 P.2d 458 (1992).

Standards for waiver must be defined and uniformly applied. — Any action taken by a home rule municipality to condition its consent to waive the distance requirement of this section must have uniform application to all persons requesting the waiver and must contain definable standards for the imposition of those conditions. 1980 Op. Att'y Gen. No. 80-23.

Waiver may not be conditioned on restriction of operations. — There is no express authority for a local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by this section, nor can such authority be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

To determine proximity of proposed liquor establishment to an established church or school, the measurement should be made between the limits of the real property of the church or school within which the ordinary and usual activities incident to such institutions are conducted and that portion of the structure in which alcoholic beverages are actually to be sold. 1974 Op. Att'y Gen. No. 74-18.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 139, 147 to 152, 156.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Measurement of distance for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

48 C.J.S. Intoxicating Liquors § 136.

60-6B-11. Locations near military installations; restrictions on licensing.

Except for licenses issued prior to July 1, 1981, the director shall not issue retailer's or dispenser's licenses where the licensed premises would be within one and one-half miles in any direction measured from the exterior boundaries of a United States military installation where United States military troops are domiciled. Provided, however, such licenses may be issued or transferred subject to the discretion of the director for operation in an area within the one-and-one-half-mile limitation if a portion of the area lies within the incorporated limits of any municipality, but no license shall be issued for or transferred to a location within two hundred yards of any entrance to the military installation.

History: Laws 1981, ch. 39, § 46.

ANNOTATIONS

Cross references. — As to prohibition of liquor sales within one mile of a national guard camp, see 20-9-3 NMSA 1978.

"Restricted area" surrounding army posts intended by legislature. — A construction of this section by which existing licenses, lying both within and outside the one-and-one-half-mile zone, could be renewed and transferred to within such zone, gives no effect or purpose to the section. 1957-58 Op. Att'y Gen. No. 57-259.

No new or additional licenses within restricted area. — It was the intent of the legislature that no new or additional liquor licenses were to be approved for areas extending one and one-half miles from the exterior boundary of a military installation or reservation where federal troops are stationed. 1959-60 Op. Att'y Gen. No. 59-58.

Meaning of "domiciled". — It must be concluded that the term "domiciled," as used in the statute, refers to the assigned or stationed status of the personnel on the post. Troops who are bivouacked on the range are domiciled thereon regardless of the length of their stay. 1959-60 Op. Att'y Gen. No. 59-58.

Measurement contemplated under section is in straight line from the nearest point on the boundary of the army post. 1943-44 Op. Att'y Gen. No. 44-4627.

Measurement contemplated from outermost reaches of reservation. — The legislation intended that the outermost reaches of a military reservation where troops are stationed must be looked to in determining and fixing the one-and-one-half-mile area restricted from selling of intoxicating beverages. 1959-60 Op. Att'y Gen. No. 59-58.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Measurement and computation of distances for purpose of statute or ordinance prohibiting license for sale of intoxicating liquor within given distance from certain institutions or property, 4 A.L.R.3d 1250.

48 C.J.S. Intoxicating Liquors § 136.

60-6B-12. Inter-local option district and inter-county transfers.

A. Dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law, subject to the approval of transferring locations of those liquor licenses by the governing body for that location; provided that the requirements of the Liquor Control Act [60-3A-1 NMSA 1978] and department regulations for the transfer of licenses are fulfilled; and provided further that:

(1) beginning in calendar year 1997, no more than ten dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year; and

(2) the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection H of Section 60-6B-2 NMSA 1978.

B. Transfer of location of a liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district. Notice of such election shall be published as provided in Section 3-8-35 NMSA 1978, and the election shall be held within sixty days after the date the petition is verified or it may be held in conjunction with a regular election of the governing body if such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that district, unless a petition is filed

requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

C. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises.

D. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; provided that they shall not be transferred to any location within ten miles of another licensed premises; and provided further that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled.

History: Laws 1981, ch. 39, § 113; 1984, ch. 58, § 5; 1985, ch. 183, § 1; 1991, ch. 257, § 3; 1997, ch. 55, § 1; 2015, ch. 114, § 1.

ANNOTATIONS

Cross references. — For definition of "department," see 60-3A-3F NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the Liquor Control Act by removing the restriction that the transfer of a dispenser’s license does not lower the number of dispensers’ and retailer’s licenses below that number allowed by law in the local option district from which a license will be transferred and removed the requirement that the dispenser’s or retailer’s license that is transferred must be operated or leased by the person who transfers the license for at least one year from the date of the approval of the transfer; in the catchline, after "district", added "and inter-county"; in the introductory paragraph of Subsection A, deleted "All", after "transferring locations of", deleted "such" and added "those", after "liquor licenses", deleted "of" and added "by", after "governing body for that location", deleted "and", after "provided", deleted "all" and added "that", and after "provided further", added "that"; deleted Paragraph (1) of Subsection A and redesignated former Paragraphs (2) and (3) as Paragraphs (1) and (2) of Subsection A; in Paragraph (1) of Subsection A, after the second occurrence of "year", added "and"; in Paragraph (2) of Subsection A, after "Subsection", deleted "E" and added "H", and after "NMSA 1978", deleted "and"; deleted Paragraph (4) of Subsection A; at the beginning of Subsection B, deleted "Transfers" and added "Transfer", and after "location of", deleted "each" and added "a"; and in Subsection D, after "currently located; provided", added "that".

The 1997 amendment, effective April 8, 1997, in Paragraph A(1), added "beginning in calendar year 1997," to the beginning of the paragraph and substituted "ten" for "five" preceding "dispenser's"; in Paragraph A(4), inserted "or leased" following "shall be

operated"; and in Subsection B, deleted "during the period of economic adjustment" at the end of the third sentence.

The 1991 amendment, effective June 14, 1991, deleted "Period of economic adjustment" at the beginning of the catchline; deleted former Subsections A to C and H, relating to the period of economic adjustment; redesignated former Subsections D to G as present Subsections A to D; in Subsection A, rewrote the introductory paragraph, added present Paragraph (2), redesignated former Paragraphs (2) and (3) as present Paragraphs (3) and (4) and deleted former Paragraph (4); in Subsection B, substituted "3-8-35" for "3-8-2" in the fourth sentence; substituted "transfer of licenses" for "issuance of new licenses" near the end of Subsection D; and made related changes and minor stylistic changes throughout the section.

Effective date of the Liquor Control Act. — The effective date of the Liquor Control Act, referred to in Subsection B, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

60-6B-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 55, § 2 repeals 60-6B-13 NMSA 1978, as enacted by Laws 1981, ch. 39, § 115, relating to prohibited acquisitions, effective April 8, 1997. For provisions of former section, see 1994 Replacement Pamphlet.

60-6B-14. Canopy license definition.

As used in the Liquor Control Act [60-3A-1 NMSA 1978], "canopy license" means a license which was initially issued prior to January 1, 1988 pursuant to Laws 1981, Chapter 39, Section 117 and which permits the licensee to dispense alcoholic beverages in the same manner as permitted by a dispenser's license, subject to the provisions of Section 60-6B-16 NMSA 1978.

History: 1978 Comp., § 60-6B-14, enacted by Laws 1988, ch. 12, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 12, § 2, repeals former 60-6B-14 NMSA 1978, as enacted by Laws 1981, ch. 39, § 116, and enacts the above section, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Compiler's notes. — Laws 1981, Chapter 39, Section 117, referred to in this section, was codified as the prior version of 60-6B-15 NMSA 1978, the provisions of which are in the 1987 Replacement Pamphlet.

60-6B-15. Purpose.

The legislature determines that the economic development of the state will be best served by not terminating the existing eighty-six canopy licenses but rather by replacing the canopy licenses with dispenser's licenses as provided in this act in order to increase state revenues, to avoid the loss of state and local tax and license fee revenues, to avoid the loss of many jobs and to help promote a stable business climate in the state.

History: 1978 Comp., § 60-6B-15, enacted by Laws 1988, ch. 12, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 12, § 3, repeals former 60-6B-15 NMSA 1978, regarding issuance of canopy licenses, as enacted by Laws 1981, ch. 39, § 117, and enacts the above section, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Meaning of "this act". — The term "this act", referred to in this section, means Laws 1988, Chapter 12, which appears as 60-6A-18 and 60-6B-14 to 60-6B-16 NMSA 1978.

60-6B-16. Special provisions for replacement of canopy licenses; transfer tax.

A. On July 1, 1988, notwithstanding the provisions of Section 60-6A-18 NMSA 1978, each canopy license, upon the payment to the department of a one-time transfer tax of five thousand dollars ($5,000) and the applicable annual license renewal fee, shall become a dispenser's license.

B. The location of a dispenser's license issued pursuant to this section may only be transferred within the local option district in which the replaced canopy license was located on January 1, 1988 subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of location as provided in this subsection, the license shall be operated by the person who transfers the location of the license for a period of at least one year from the date of approval of the transfer by the department.

C. Ownership of a dispenser's license issued pursuant to this section may be transferred in the same manner as provided for the transfer of ownership of dispenser's licenses issued under any former act to the Liquor Control Act [60-3A-1 NMSA 1978] subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of ownership as provided in this subsection, the location of the license shall not be transferred for a period of at least one year from the date of approval of the transfer of ownership by the department.

D. A dispenser's license issued pursuant to this section may be leased in the same manner as provided for the lease of dispenser's licenses issued under any former act to the Liquor Control Act subject to approval of the department and the limitations set forth in Subsection E of this section.

E. If the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 by a person who applies to the department to acquire ownership of the license after January 1, 1988 or if the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 pursuant to a lease agreement entered into after January 1, 1988, the license shall only entitle the licensee or his lessee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises. Sale of alcoholic beverages in unbroken packages for consumption off the licensed premises shall not be permitted after a transfer described in this subsection.

F. Any canopy license for which the transfer tax imposed by this section is not paid to the department by August 31, 1988 shall be subject to cancellation by the director as provided in Section 60-6B-5 NMSA 1978.

G. The department shall deposit all transfer taxes collected as provided in this section in the general fund.

History: 1978 Comp., § 60-6B-16, enacted by Laws 1988, ch. 12, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 12, § 4, repeals former 60-6B-16 NMSA 1978, as enacted by Laws 1981, ch. 39, § 118, and enacts the above section, effective May 19, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

60-6B-17, 60-6B-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1988, ch. 12, § 5 repeals 60-6B-17 and 60-6B-18 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 119 and 120, relating to renewal of canopy license fees and to dispenser's or retailer's licenses which had co-users, effective May 18, 1988. For provisions of former sections, see the 1987 Replacement Pamphlet.

60-6B-19. Retailers and dispensers; segregated sales; table wines excepted.

A. Except as provided in Subsection B of this section, the director shall by regulation develop procedures for segregated alcohol sales by every retailer or dispenser who sells alcoholic beverages in unbroken packages for consumption and not

for resale off the licensed premises and whose sales are less than sixty percent of their total sales, giving serious consideration in the regulation process to the potentially adverse impact of segregated sales on different sizes of the establishments of the retailer or dispenser.

B. There shall not be segregated sales of table wine by retailers or dispensers who sell alcoholic beverages in the manner described in Subsection A of this section.

C. For purposes of this section, "table wine" means wine containing fourteen percent or less alcohol by volume when bottled or packaged by the manufacturer, but may also include:

(1) wine that is sealed or capped by cork closure and aged two years or more;

(2) wine that contains more than fourteen percent alcohol by volume produced solely as a result of the natural fermentation process and not produced with the addition of wine spirits, brandy or alcohol; or

(3) vermouth and sherry.

History: Laws 1993, ch. 68, § 36; 2003, ch. 376, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added "table wines excepted" to the section heading; in present Subsection A, added the subsection designation and inserted "Except as provided in Subsection B of this section" and added Subsections B and C.

60-6B-20. Licensed production facilities; alternating proprietorship.

With the approval of the alcohol and tobacco tax and trade bureau of the United States department of the treasury, and subject to the provisions of the Liquor Control Act, an alternating proprietorship may be established so that the manufacturing facilities and equipment of a person who holds:

A. a craft distiller's license may be used by another person who holds a craft distiller's license to manufacture or produce spiritous liquors;

B. a winegrower's license may be used by another person who holds a winegrower's license to manufacture or produce wine; and

C. a small brewer's license may be used by another person who holds a small brewer's license to manufacture or produce beer.

History: Laws 2015, ch. 102, § 7.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 102, § 11 made Laws 2015, ch. 102, § 7 effective July 1, 2015.

60-6B-21. Licensed retailer cooperatives.

A. A person who holds a retailer's license or a person who holds a dispenser's license and who is allowed to sell alcoholic beverages in unbroken packages that are for consumption off premises and are not for resale may form a cooperative with one or more other persons who hold a retailer's or dispenser's license for the purposes of the advertisement or purchase of alcoholic beverages for retail sale.

B. The director shall promulgate rules to implement the provisions of this section, including the form for cooperative agreements.

History: Laws 2015, ch. 102, § 8.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 102, § 11 made Laws 2015, ch. 102, § 8 effective July 1, 2015.

ARTICLE 6C
Suspension and Revocation of Licenses

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 [60-3A-1 NMSA 1978] or any regulation or order promulgated pursuant to that act;

(2) been convicted of a felony pursuant to the provisions of the Criminal Code [30-1-1 NMSA 1978], the Liquor Control Act or federal law; or

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

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

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

(2) his agent has made any material false statement or concealed any material facts in his application for the license or permit granted him pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

C. Any licensee aggrieved by a revocation, suspension or fine proposed to be imposed by the director pursuant to this section shall be entitled to the hearing procedures set forth in Chapter 60, Article 6C NMSA 1978 before the revocation, suspension or fine shall be effective.

D. Any charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the department of public safety and local law enforcement agencies whose jurisdictions include the licensed establishment.

History: Laws 1981, ch. 39, § 97; 1993, ch. 68, § 11; 1998 (1st S.S.), ch. 16, § 1.

ANNOTATIONS

Cross references. — For cancellation of license for nonuse, failure to engage in business, *see* 60-6B-7 NMSA 1978.

The 1998 (1st S.S.) amendment, effective August 2, 1998, deleted former Subsection C, relating to penalties for selling, serving or delivering alcoholic beverages to an intoxicated person or a minor through a drive-up window, redesignated the subsequent subsections accordingly, and made a minor stylistic change in present Subsection C.

The 1993 amendment, effective July 1, 1993, inserted "or administrative fine" in the catchline; rewrote the introductory paragraph of Subsection A which read "A liquor control hearing officer may suspend or revoke the license or fine the licensee, or both when he finds that any licensee has"; rewrote Paragraph (2) of Subsection A which read "made any material false statement in his application for the license granted him under the provisions of the Liquor Control Act"; deleted "suffered or" at the beginning of Paragraph (3) of Subsection A; added current Subsections B to D; redesignated former Subsection B as Subsection E; substituted "department of public safety" for "state police" and "jurisdictions" for "jurisdiction" in Subsection E; and made a minor stylistic change.

Criminal conviction is not a condition precedent to the imposition of a fine. — The criminal conviction of a server under Section 60-7B-1 NMSA 1978 is not a condition precedent to the imposition of a civil fine on the licensee pursuant to Subsection A of Section 60-6C-1 NMSA 1978. Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't, 2012-NMCA-046, 277 P.3d 490.

Where, in a sting operation, the licensee's employee sold beer to a minor; a hearing officer found that the licensee violated Section 60-7B-1 NMSA 1978 and imposed a fine on the licensee; and the district attorney dismissed charges filed against the employee after the employee completed a pre-prosecution program, the criminal conviction of the employee was not a condition precedent to the imposition of the fine under Subsection A of Section 60-6C-1 NMSA 1978. Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't, 2012-NMCA-046, 277 P.3d 490.

Superintendent has inherent power to cancel and revoke licenses. — The chief of the division (now director of alcohol and gaming division), having power to grant liquor licenses under the provisions of the Liquor Control Act has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes governing and limiting the issuance thereof. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Presumption that valid license originally issued. — This section, in setting up grounds for revocation of a license, obviously implies that a prior valid license had been issued and the grounds of revocation enumerated in the statute relate to misconduct of one kind or another on the part of the licensee. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Mistake of facts in issuing license ground for revocation. — A license issued under a mistake of facts necessary to authorize its issuance may be revoked; and the officer issuing it is not estopped by his conduct in issuing it to revoke or cancel it. Such a proceeding does not come under the statute authorizing a revocation of a license because of misconduct of the holder. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Sale of liquor on Sunday. — Making a sale of intoxicating liquor on Sunday was grounds for revocation of dispenser's license. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Revocation needs evidential support. — Action of chief of division (now director of alcohol and gaming division) in revoking a license on the ground that it was issued illegally must be supported by some evidence of probative value, or else the decision of the liquor authority must be set aside. Baca v. Chaffin, 57 N.M. 17, 253 P.2d 309 (1953).

As sale of liquor during prohibited hours. — Where proprietor permits his employees to sell liquor during prohibited hours, he would be liable under the statute for the

violation and his license would be subject to revocation. 1945-46 Op. Att'y Gen. No. 45-4680.

Failure to pay wholesaler not grounds for revocation. — No retailer, dispenser or club licensee subjects himself to a suspension or revocation of his license by failing to pay his bills to a licensed wholesaler within 30 days from the date of delivery. 1957-58 Op. Att'y Gen. No. 58-153.

Premises remaining public nuisance. — A hearing officer may revoke a liquor license after hearing where the licensee permits his premises to remain a public nuisance after written notice from the director. 1987 Op. Att'y Gen. No. 87-15.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.

Showing as to diversion or other misconduct which will support revocation of liquor permit, 76 A.L.R. 1245.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Revocation of license for violation of regulation forbidding employee or entertainer from drinking or mingling with patrons at bar or tavern, or soliciting drinks from them, 99 A.L.R.2d 1216.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license, 51 A.L.R.3d 1130.

48 C.J.S. Intoxicating Liquors § 175.

60-6C-2. Hearings; location; open to public; hearing officer.

All hearings held pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensed premises that are the subject matter of the hearing are located. All such hearings shall be open to the public.

History: Laws 1981, ch. 39, § 98; 1987, c. 255, § 1; 1993, ch. 68, § 12.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, rewrote the first sentence.

Liquor control hearing officer presides only at hearings that result from formal charges looking toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now director of alcohol and gaming division). 1963-64 Op. Att'y Gen. No. 63-103.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 206.

Right to hearing before revocation or suspension of liquor license, 35 A.L.R.2d 1067.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 68, § 57 repeals 60-6C-3 NMSA 1978, as enacted by Laws 1981, ch. 39, § 99, relating to the liquor control hearing officer effective June 18, 1993. For provisions of former section see 1992 Replacement Pamphlet.

60-6C-4. Administrative proceedings; complaints; investigation; order to show cause; service; hearings.

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], unless the complaint is deficient on its face, the director shall request that the department of public safety investigate the complaint.

B. The department of public safety shall investigate the complaint and make a written report to the director.

C. If the director believes from the report that probable cause exists for filing charges against the licensee for the revocation or suspension of his license or permit or for fining him, or for both, he or his designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. After charges have been filed, the director shall issue a signed order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the

charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

E. The director shall keep the original of the charge and the order to show cause on file in his office.

F. The director shall appoint a hearing officer no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why his license should not be revoked or suspended or why the licensee should not be fined, or both.

G. The director shall have a copy of the charge and a copy of the order to show cause sent to the licensee or the licensee's resident agent at the agent's last known address by certified mail at least fourteen days before the date set for the hearing on the order to show cause.

H. At any hearing on an order to show cause, the director shall cause a record of hearing to be made, which shall record:

(1) the style of the proceedings;

(2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;

(3) the place, date and time of the hearing and all continuances or recesses of the hearing;

(4) the appearance or nonappearance of the licensee;

(5) if the licensee appears with an attorney, the name and address of the attorney;

(6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;

(7) the findings of fact and law as to whether or not the licensee has violated the Liquor Control Act [60-3A-1 NMSA 1978] as set out in the charge; and

(8) the decision of the director.

I. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the director shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license revoked or suspended or the licensee fined, or both, on all the grounds alleged in the charge, and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings.

J. If the licensee admits guilt on all grounds set out in the charge, the director shall order the revocation or suspension of the license or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of his order of revocation or suspension of the license or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

K. If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the director or the hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the director shall allow the licensee or his attorney to cross-examine all witnesses;

(2) the licensee shall be allowed to present testimony and evidence he may have in denial or in mitigation of the grounds set out in the charge;

(3) the department shall have the right to cross-examine the licensee or any witness testifying in his favor;

(4) the department shall present any evidence or testimony in rebuttal of that produced by the licensee;

(5) the director or the hearing officer shall make a finding on each ground alleged and a finding of the guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any ground alleged and proved, the director shall make his order of revocation or suspension of the license or fine of the licensee, or both; and

(7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

L. No admission of guilt, admission against interest or transcript of testimony made or given in any hearing pursuant to this section shall be received or used in any criminal proceedings wherein the licensee is a defendant; provided, however, if the licensee commits perjury in a hearing, the evidence shall be admissible in a perjury trial if otherwise competent and relevant.

M. The director shall adopt reasonable regulations setting forth uniform standards of penalties concerning fines and suspensions imposed by the director.

History: Laws 1981, ch. 39, § 100; 1993, ch. 68, § 13.

ANNOTATIONS

Cross references. — For service of process, see Rule 1-004 NMRA.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

Offer of proof. — In administrative proceedings, where a party's proffered evidence is denied on the ground of relevance, the party has a right to make an offer of proof to show on appeal what the content of the evidence was as well as testimony in regard to the evidence that would bear on relevance. ERICA, Inc. v. N.M. Regulation & Licensing Dept., 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

Purpose of proceeding. — The object of an administrative proceeding to revoke a liquor license is not intended as a punishment of the licensee. The purpose is to ensure so far as possible the decent and orderly conduct of a business affecting the public health, morals, safety and welfare. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Proceeding in nature of civil action. — A proceeding before the chief of division of liquor control (now director of alcohol and gaming division) to revoke a liquor license is not a criminal proceeding; rather it is an administrative proceeding in the nature of a civil action. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958); Lake v. Garcia, 91 N.M. 608, 577 P.2d 1254 (1978).

Section requires the director to sign order to show cause issued to licensee. Absent the director's signature, the process is void. Any order issued pursuant to defective process is null and void for lack of jurisdiction. Lasley v. Baca, 95 N.M. 791, 626 P.2d 1288 (1981).

Revocation proceedings are not governed by rules of criminal prosecutions. In such proceedings the offense need not be established beyond a reasonable doubt. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Certain constitutional defenses not available. — The constitutional defenses of unreasonable search and seizure and self-incrimination are not available in revocation proceedings. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Testimony of entrapped witnesses competent. — In proceedings before the chief of division of liquor control (now director of alcohol and gaming division), even assuming that the action of the state police officers constituted entrapment, this fact alone does not render witnesses' testimony unsubstantial, incompetent, irrelevant or incredible. The mere circumstance, standing alone, that the state's witnesses were engaged in a species of entrapment does not render their testimony unworthy of belief. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now director of alcohol and gaming division) of his duties to make a

determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Determination of facts required prior to cancellation. — Before cancelling a license pursuant to this duty, the chief of division (now director of alcohol and gaming division) must, of necessity, determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

When order suspending license fatally defective. — Order suspending liquor license was fatally defective in that the record did not contain a copy of the charge and a copy of the order to show cause, as required by this section. Jumbo, Inc. v. State ex rel. Branch, 81 N.M. 223, 465 P.2d 280 (1970).

Liquor control hearing officer presides only at hearings that result from formal charges looking toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now director of alcohol and gaming division). 1963-64 Op. Att'y Gen. No. 63-103.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 206.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged, 5 A.L.R.4th 1128.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-5. Administration of oaths; production of documents; witnesses.

The director shall have the power to administer oaths and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing held under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] by the issuance and service of subpoenas and subpoenas duces tecum. The hearing officer shall have authority to rule upon offers of proof and receive relevant evidence, take, allow or cause depositions to be taken, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests or similar matters and reopen the hearing for the taking of additional evidence at any time prior to the taking of an appeal.

History: Laws 1981, ch. 39, § 101; 1993, ch. 329, § 5.

ANNOTATIONS

Cross references. — For witnesses' fees, see 38-6-4 NMSA 1978.

For subpoena for production of documentary evidence, see Rule 1-045 NMRA.

The 1993 amendment, effective June 18, 1993, substituted "director" for "liquor control hearing officer" in the first sentence and deleted the former second sentence, which read: "All witnesses subpoenaed shall be paid attendance fees and mileage in like amount and manner as if appearing in a criminal proceeding in a district court of this state."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 205.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-6. No injunction or mandamus permitted; appeal.

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee" includes a person issued a server permit pursuant to the Alcohol Server Education Article of the Liquor Control Act [Chapter 60, Article 6E NMSA 1978].

History: Laws 1981, ch. 39, § 102; 1987, ch. 255, § 2; 1993, ch. 329, § 6; 1998, ch. 55, § 72; 1999, ch. 265, § 75; 1999, ch. 277, § 1.

ANNOTATIONS

Cross references. — For writ of mandamus, see 44-2-1 NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For Rules of Appellate Procedure, see 12-101 NMRA et seq.

1999 amendments. — Laws 1999, ch. 265, § 75, effective July 1, 1999, substituting "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A, was approved April 8, 1999. However, Laws 1999, ch. 277, § 1, effective July 1, 1999, also amending this section by substituting "39-3-1.1 NMSA 1978" for "12-8A-1 NMSA 1978" in Subsection A, and adding Subsection C, was approved later on April 8, 1999. The section is set out as amended by Laws 1999, ch. 277, § 1. See 12-1-8 NMSA 1978.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, added the last sentence in Subsection B.

Effect of new evidence appeal. — Any new evidence admitted must relate itself to whether the chief of the division of liquor control (now director of alcohol and gaming division) acted arbitrarily, capriciously or fraudulently, since the proceeding under this section is not de novo. Chiordi v. Jernigan, 46 N.M. 396, 129 P.2d 640 (1942)(decided under former law).

Where district court did not have jurisdiction to entertain appeal by city for the transfer of a liquor license by director of the department of alcoholic beverage control (now director of alcohol and gaming division) since no statute allows an appeal from the action of director (superintendent) in transferring a liquor license. City of Truth or Consequences v. State, Dep't of ABC, 84 N.M. 589, 506 P.2d 333 (1973).

Supreme court decides if order sustained by substantial evidence. — Upon review, the supreme court must determine whether the order or findings of the chief of division of liquor control (now director of alcohol and gaming division) were sustained by substantial, competent, relevant and credible evidence. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 207.

48 C.J.S. Intoxicating Liquors § 178.

60-6C-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 68, § 57 repeals 60-6C-7 NMSA 1978, as enacted by Laws 1981, ch. 39, § 103 relating to summary suspensions, effective June 18, 1993. For provisions of former section see 1992 Replacement Pamphlet.

60-6C-8. Restriction on license after revocation.

If a license is revoked under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the licensee shall not be issued or be the transferee of a license within two years of the date of the revocation.

History: Laws 1981, ch. 39, § 104.

ANNOTATIONS

Effect of setting aside order on appeal. — Where the liquor chief (now director of alcohol and gaming division) has suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case the district court's judgment should be reversed. State v. Romero, 49 N.M. 127, 158 P.2d 850 (1944).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 188.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-9. Compromising liability.

The director is authorized to compromise the penalty for any violations of the Liquor Control Act [60-3A-1 NMSA 1978] or of any department regulation or order when he deems it is in the best interest of the state.

History: Laws 1981, ch. 39, § 105.

ARTICLE 6D
Alcohol Server Education Article

(Repealed by Laws 1999, ch. 277, § 15 and recompiled.)

60-6D-1 to 60-6D-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 277, § 15 repeals 60-6D-1 to 60-6D-8 NMSA 1978, as enacted by Laws 1993, ch. 68, §§ 28 to 35 and as amended by Laws 1994, ch. 41, §§ 1 and 2, relating to alcohol server education, effective July 1, 1999. For provisions of former sections, see 1998 Replacement Pamphlet.

Laws 1999, ch. 277, §§ 2 through 13 enacted a new Alcohol Server Education Article of the Liquor Control Act and assigned those provisions as 60-6D-11 through 60-6D-22 NMSA 1978. These sections have been recompiled as 60-6E-1 through 60-6E-12 NMSA 1978 for clarity.

ARTICLE 6E
Alcohol Server Education

60-6E-1. Article designation; alcohol server education.

Chapter 60, Article 6E NMSA 1978 may be cited as the "Alcohol Server Education Article of the Liquor Control Act".

History: 1978 Comp., § 60-6D-11, enacted by Laws 1999, ch. 277, § 2; recompiled as 1978 Comp., § 60-6E-1; 2013, ch. 213, § 1.

ANNOTATIONS

Recompilations. — Laws 1999, ch. 277, §§ 2 through 13 enacted a new Alcohol Server Education Article of the Liquor Control Act and assigned those provisions as 60-6D-11 through 60-6D-22 NMSA 1978. These sections have been recompiled as 60-6E-1 through 60-6E-12 NMSA 1978 for clarity.

The 2013 amendment, effective June 14, 2013, changed the NMSA article of the Alcohol Server Education Article of the Liquor Control Act; and after "Article", changed "6D" to "6E".

60-6E-2. Purpose.

The purpose of Chapter 60, Article 6D [6E] NMSA 1978 is to:

A. enhance the professionalism of persons employed in the alcoholic beverage service industry;

B. establish a program for servers, licensees and their lessees that includes the study of:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(4) methods of identifying false drivers' licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(5) prevention of fetal alcohol syndrome;

C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and

D. reduce the frequency of alcohol-related birth defects.

History: 1978 Comp., § 60-6D-12, enacted by Laws 1999, ch. 277, § 3; recompiled as 1978 Comp., § 60-6E-2.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-3. Definitions.

As used in Chapter 60, Article 6D [6E] NMSA 1978:

A. "director" means the director of the division;

B. "division" means the alcohol and gaming division of the regulation and licensing department;

C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] to sell, serve or dispense alcoholic beverages for consumption and not for resale;

D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;

E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;

F. "server" means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol. "Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale or service of alcohol; and

G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages.

History: 1978 Comp., § 60-6D-13, enacted by Laws 1999, ch. 277, § 4; recompiled as 1978 Comp., § 60-6E-3.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-4. Server training required; alcohol service or sales.

No person shall be employed as a server on a licensed premises unless that person obtains within thirty days of employment alcohol server training pursuant to the provisions of Chapter 60, Article 6E NMSA 1978.

History: 1978 Comp., § 60-6D-4, enacted by Laws 1999, ch. 277, § 5, recompiled as 1978 Comp., § 60-6E-4; Laws 2000, ch. 46, § 1.

ANNOTATIONS

The 2000 amendment, effective March 6, 2000, substituted "training" for "permits" in the section heading, substituted "obtains within thirty days of employment alcohol server training" for "has obtained a server permit", and substituted "Article 6E" for "Article 6D."

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-5. Programs required; approval by director; content of program; surety bond.

A. The director shall have the authority to approve programs offered by providers.

B. The program curriculum shall include the following subjects:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) the effect alcohol has on a person when used in combination with legal or illegal drugs;

(3) state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(4) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(6) the incidence of alcohol-related birth defects.

C. The director shall require each provider to post a surety bond in the amount of five thousand dollars ($5,000). The director may, in the director's discretion, allow a provider to submit other evidence of financial responsibility satisfactory to the director in lieu of posting a surety bond in the amount of five thousand dollars ($5,000).

History: 1978 Comp., § 60-6D-15, enacted by Laws 1999, ch. 277, § 6; recompiled as 1978 Comp., § 60-6E-5.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-6. Server permits; failure to produce proof.

A. Every licensee shall maintain on the licensed premises copies of the server permits of the licensee, his lessee, if any, and each server then employed by the

licensee or lessee at all times and make copies available to the director and to the agents or employees of the department of public safety upon request.

B. Failure to produce a copy of a server permit is prima facie evidence that a server permit has not been issued and shall subject the licensee to fines and penalties as determined by rule adopted by the director.

History: 1978 Comp., § 60-6D-16, enacted by Laws 1999, ch. 277, § 7; recompiled as 1978 Comp., § 60-6E-6.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-7. Server permits; issuance; ownership; fees.

A. The director shall issue a server permit to each applicant who obtains a certificate of program completion and provides such other information as may be required by the director. The director may, in the director's discretion, issue temporary server permits if circumstances warrant such issuance.

B. Server permits shall not be issued to graduates of programs that are not approved by the director.

C. A server permit is the property of the server to whom it is issued.

D. The director may charge a fee for the issuance of the server permit.

E. Server permits shall be valid for a period of three years from the date the server permit was issued.

F. A certificate of completion of an alcohol server education program issued pursuant to previous law shall remain valid until the date of its expiration.

History: 1978 Comp., § 60-6D-17, enacted by Laws 1999, ch. 277, § 8; recompiled as 1978 Comp., § 60-6E-7; 2013, ch. 213, § 2.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the frequency for alcohol server training from every five years to every three years; and in Subsection E, after "for a period of", deleted "five" and added "three".

60-6E-8. Server permit; suspension; revocation; administrative fines; penalties.

In addition to any other penalties available, the following penalties may be imposed for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or rules of the division:

A. The director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars ($500), or both, when he finds that the server is guilty of a first offense of selling, serving or dispensing an alcoholic beverage to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

B. The director shall suspend a server's server permit for a period of one year when he finds that the server is guilty of a second offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incident giving rise to his first offense;

C. The director shall permanently revoke a server's server permit when he finds that the server is guilty of a third offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to his first and second offenses.

D. No person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises during the period of suspension or revocation.

E. No person whose server permit is suspended may serve alcoholic beverages on or after the date of suspension unless the person obtains a new server permit in accordance with the provisions of Article 6D [6E] of Chapter 60.

F. Nothing in this act shall be interpreted to waive any license holder's liability that may arise pursuant to the provisions of this act.

History: 1978 Comp., § 60-6D-18, enacted by Laws 1999, ch. 277, § 9; recompiled as 1978 Comp., § 60-6E-8.

ANNOTATIONS

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

Meaning of "this act". — The term "this act", referred to in Subsection F, refers to Laws 1999, ch. 277, presently compiled as 60-6E-1 to 60-6E-12 NMSA 1978.

60-6E-9. Alcohol server education; required for license renewal.

A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, his lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served or dispensed.

History: 1978 Comp., § 60-6D-19, enacted by Laws 1999, ch. 277, § 10; recompiled as 1978 Comp., § 60-6E-9.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-10. Administrative proceedings; hearings.

A. Hearings for the suspension or revocation of any server's server permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

B. The director may suspend or revoke a server permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978.

History: 1978 Comp., § 60-6D-20, enacted by Laws 1999, ch. 277, § 11; recompiled as 1978 Comp., § 60-6E-10.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-11. Advisory committee created; members; meetings.

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The membership of the committee shall consist of:

(1) the director;

(2) the secretary of public safety or his designee;

(3) the secretary of health or his designee;

(4) the chief of the traffic safety bureau of the state highway and transportation department or his designee;

(5) three representatives from the retail liquor industry;

(6) a representative from the wholesale liquor industry;

(7) a representative from the insurance industry; and

(8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chair of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum.

History: 1978 Comp., § 60-6D-21, enacted by Laws 1999, ch. 277, § 12; recompiled as 1978 Comp., § 60-6E-11.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-12. Advisory committee; duties.

The alcohol server education advisory committee shall assist the division with development of:

A. standards, course requirements and materials for the program;

B. procedures attendant to the program;

C. certification standards for providers and instructors; and

D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee.

History: 1978 Comp., § 60-6D-22, enacted by Laws 1999, ch. 277, § 13; recompiled as 1978 Comp., § 60-6E-12.

ANNOTATIONS

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

ARTICLE 7
State Licenses

(Repealed by Laws 1981, ch. 39, § 128.)

60-7-1 to 60-7-33. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-7-1 to 60-7-33 NMSA 1978, relating to the issuance of licenses, effective July 1, 1981. For present provisions, see 60-6A-1 to 60-6A-20, 60-6B-1 to 60-6B-18 NMSA 1978.

ARTICLE 7A
Offenses

60-7A-1. Hours and days of business; Sunday sales; Christmas day sales; Sunday sales for consumption off the licensed premises; elections.

A. Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels, alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

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

(2) on Tuesdays through Saturdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and E of this section and Section 60-7A-2 NMSA 1978.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on Mondays through Saturdays from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section.

C. A dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars ($100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays, subject to approval obtained pursuant to the process set forth in Subsection E of this section. Alcoholic beverages may be sold, served and consumed from 11:00 a.m. until midnight

as set forth in the licensee's Sunday sales permit, except as otherwise provided for a restaurant licensee in Section 60-6A-4 NMSA 1978. The Sunday sales permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection G of this section shall be called "Sunday sales".

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

E. Sunday sales pursuant to the provisions of Subsection C of this section are permitted in a local option district that voted to permit them. If in that election a majority of the voters in a local option district voted "no" on the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?", Sunday sales are unlawful in that local option district upon certification of the election returns unless the provisions of Subsection J of this section apply. The question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

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

F. On and after July 1, 2002, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees; provided that the licensees have current, valid food service establishment permits, may sell, serve or allow the consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of

signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code [Chapter 1 NMSA 1978] or for special municipal elections in a municipality under the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

G. Notwithstanding the provisions of Subsection E of this section, any Indian nation, tribe or pueblo whose lands are wholly situated within the state that has, by statute, ordinance or resolution, elected to permit the sale, possession or consumption of alcoholic beverages on lands within the territorial boundaries of the Indian nation, tribe or pueblo may, by statute, ordinance or resolution of the governing body of the Indian nation, tribe or pueblo, permit Sunday sales by the drink on the licensed premises of licensees on lands within the territorial boundaries of the Indian nation, tribe or pueblo; provided that a certified copy of such enactment is filed with the office of the director and with the secretary of state.

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

I. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body and that petition is signed by at least ten percent of the number of registered voters of the local option district and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date that the petition is verified, or it may be held in conjunction with a regular election of the governing body,

if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the election votes not to allow the Sunday package sales, then those Sunday package sales shall be prohibited commencing the first Sunday after the results of the election are certified. Following the election, the question of allowing the Sunday package sales shall not be submitted again to the voters within two years of the date of the last election on the question.

J. Sunday sales of alcoholic beverages shall be permitted at resorts and at horse racetracks statewide pursuant to the provisions of Section 60-7A-2 NMSA 1978.

History: Laws 1981, ch. 39, § 47; 1984, ch. 58, § 6; 1987, ch. 321, § 1; 1989, ch. 331, § 1; 1989, ch. 332, § 1; 1991, ch. 255, § 1; 1992, ch. 14, § 2; 1993, ch. 68, § 14; 1995, ch. 34, § 1; 1998 (1st S.S.), ch. 16, § 2; 1999, ch. 101, § 1; 2002, ch. 104, § 1; 2013, ch. 209, § 1.

ANNOTATIONS

Cross references. — For definitions of director and local option district, *see* 60-3A-3 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the hours of consumption of alcoholic beverages on Sunday; in Subsection A, in the introductory sentence, added "Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels"; in Paragraph (2) of Subsection A, after "on", deleted "other weekdays" and added "Tuesdays through Saturdays"; in Paragraph (3) of Subsection A, after "Section 60-7A-2 NMSA 1978", deleted "provided, however, that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels"; in Subsection B, after "7:00 a.m. until", deleted "12:00 a.m. on the following day" and added "midnight"; in Subsection C, in the first sentence, after "premises on Sundays", deleted "from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection E of this section" and added the remainder of the sentence, added the second sentence, and in the third sentence, after "The", added "Sunday sales"; in Subsection G, after "Indian", added "nation" in two places and after "boundaries of the", added "Indian nation" in two places; and in Subsection H, in the first sentence, after "licensed premises on Sundays from" deleted "12:00" and after "Sunday, from", deleted "12:00".

The 2002 amendment, effective July 1, 2002, inserted "and Section 60-7A-2 NMSA 1978" in Subsection A(3); rewrote Subsection E, removing reference to the 1984 general election; in Subsection F, substituted "2002" for "1989" and inserted the proviso

in the first sentence, and substituted "alcoholic beverages by the drink" for "beer and wine with meals" throughout the subsection; and added Subsection J.

The 1999 amendment, effective July 1, 1999, deleted Subsection D, which related to limitations on the sale of alcoholic beverages during voting hours on election days; redesignated the subsequent subsections accordingly; and updated subsection references.

The 1998 amendment deleted former Subsection G, relating to local elections on the question of drive-up liquor sales, redesignated the subsequent subsections accordingly, substituted "Sunday package sales" for "Sunday sales" in three places in Subsection J, and corrected internal references and made minor stylistic changes throughout the section. Laws 1998 (1st S.S.), ch. 16 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on August 2, 1998, 90 days after adjournment of the legislature.

The 1995 amendment, effective July 1, 1995, inserted "Sunday sales for consumption off the licensed premises" in the section heading, substituted "Subsection F" for "Subsection E" near the beginning of Subsection I, and added Subsections J and K.

The 1993 amendment, effective July 1, 1993, substituted "and consumed" for "delivered or consumed" in the introductory paragraph of Subsection A; substituted "Subsections D, E and H" for "Subsections C and F" in Paragraph (2) of Subsection A; substituted "Subsections C and F" for "Subsections B and F" in Paragraph (3) of Subsection A; added current Subsection B; redesignated former Subsections B to H as Subsections C to I; substituted "Subsections F and I" and "Subsection F" for "Subsections E and H" and "Subsection C" in the first sentence of Subsection C; and inserted "or Subsection I of this section" in the last sentence of Subsection C.

The 1992 amendment, effective March 3, 1992, substituted "Christmas day sales; elections" for "election" in the section catchline; substituted "Subsections E and H" for "Subsection E" in the first sentence of Subsection B; inserted "that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978" in Subsection D and added "except as provided pursuant to Subsection G of this section" at the end of that subsection; deleted "of 1981" following "Liquor Control Act" in the third sentence of Subsection E; and added Subsections G and H.

The 1991 amendment, effective June 14, 1991, substituted "April 7, 1989" for "the effective date of this act" in Paragraph (1) in Subsection F and, in the last paragraph in Subsection F, substituted "1985 and 1986" for "1984 through 1986" and made a minor stylistic change.

Constitutionality. — Section 60-7A-1F NMSA 1978 is not prohibited special legislation; does not create a classification in violation of equal protection; and does not violate the constitution because the subject of the law is not set forth in its title, Thompson v. Mckinley Cnty., 112 N.M. 425, 816 P.2d 494 (1991).

Duty of care. — Defendants, who sold alcohol to an Indian casino knowing that the casino planned to sell alcohol continuously over a twenty-four-hour period, did not owe a duty to plaintiffs, who were injured as a result of an accident caused by a drunk driver who was served alcohol while intoxicated at the casino. Chavez v. Desert Eagle Distrib. Co. of N.M., 2007-NMCA-018, 141 N.M. 116, 151 P.3d 77, overruled by Rodriguez v. Del Sol Shopping Ctr. Assoc., 2014-NMSC-014.

Constitutionality. — This section is a proper exercise of legislative power and does not violate equal protection of the laws, under U.S. Const., amend. XIV, § 1 and N.M. Const., art. II, § 18, nor the prohibitions of the furtherance and establishment of religion clause of U.S. Const., amend. I and N.M. Const., art. II, § 11. Pruey v. Dep't of ABC, 104 N.M. 10, 715 P.2d 458 (1986).

Sale of liquor on Sunday is grounds for revocation of dispenser's license. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958)(decided under former law).

Election on Sunday sales mandatory. — Because of the express authorization for the continuation of Sunday sales as permitted under any former law until the question is reconsidered at the next general election, it is clear that the legislature fully intended that such reconsideration take place. The election on Sunday sales shall thus be a mandatory one. 1981 Op. Att'y Gen. No. 81-09.

A governmental licensee may engage in Sunday sales of alcoholic beverages. 1987 Op. Att'y Gen. No. 87-28.

Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 336.

Validity, construction, and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

48 C.J.S. Intoxicating Liquors § 256.

60-7A-2. Sunday sales at racetracks and resorts.

A. Notwithstanding other provisions of the Liquor Control Act [60-3A-1 NMSA 1978], it is lawful for a dispenser:

(1) whose licensed premises are located on a horse racetrack licensed by the state racing commission, to sell, serve or permit the consumption of alcoholic beverages by the drink on Sunday during the racing season between the hours of 12:00 noon and 11:00 p.m.; or

(2) whose licensed premises are within a resort, to sell, serve or permit the consumption of alcoholic beverages by the drink on Sunday after midnight of the previous day until 2:00 a.m. and then from 12:00 noon until midnight.

B. As used in this section, "resort" means a lodging establishment or complex, open to the public, offering at least one hundred guest rooms or at least one hundred recreational vehicle parking or camping spaces and where meals are regularly furnished to the public. The establishment or complex shall:

(1) offer at least two of the following recreational activities:

(a) nine or eighteen holes of golf;

(b) tennis;

(c) water park facilities;

(d) horseback riding;

(e) snow skiing;

(f) water-skiing;

(g) fishing;

(h) hunting;

(i) boating;

(j) trap or skeet shooting; or

(k) swimming; or

(2) be adjacent to or within a national park, national monument, national forest, state park or state monument.

History: Laws 1981, ch. 39, § 48; 2002, ch. 104, § 2.

ANNOTATIONS

The 2002 amendment, effective July 1, 2002, inserted "and resorts" in the section heading; in Subsection A, substituted "horse racetrack" for "public horseracing track" in Paragraph (1) and added Paragraph (2); and added Subsection B.

60-7A-3. Transportation into state without permit; exportation of alcoholic beverages without permit; importation for private use; reciprocal shipping; when unlawful.

A. Except as provided in Subsections E and F of this section, it is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a registered common carrier to knowingly deliver a shipment of alcoholic beverages from another state to a person in this state without receiving at the time of delivery a permit issued by the department covering the quantity and class of alcoholic beverages to be delivered and requiring the shipment be transported from the shipper designated in the permit to the designated consignee and from the designated point of origin to the destination designated in the permit.

B. Except as provided in Subsections D through F of this section, it is a violation of the Liquor Control Act for a person other than a registered common carrier to knowingly transport from another state and deliver in this state alcoholic beverages, unless the person has in the person's possession on entering New Mexico a permit from the department for the quantity and class of alcoholic beverages to be delivered, designating the name of the shipper and consignee and the point of origin and destination of the alcoholic beverages.

C. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for a person to transport out of state alcoholic beverages on which the excise tax has not been paid, unless the shipment is accompanied by a permit issued by the department for the exact quantity and class transported, showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic beverages.

D. An individual not a minor may transport into or out of the state a reasonable amount of alcoholic beverages for the exclusive purpose of the individual's private use or consumption, and nothing in the Liquor Control Act limits or applies to such private actions.

E. An individual or licensee, except for a person holding a winery license, in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege may ship for personal use and not for resale not more than two cases of wine, each case containing no more than nine liters, per month to an individual not a minor in this state. Delivery of a shipment pursuant to this subsection shall not be deemed to constitute a sale in this state and nothing in the Liquor Control Act limits or applies to such shipments. The shipping container of wine sent into or out of this state under this subsection shall be labeled clearly to indicate that the package cannot be delivered to a minor or to an intoxicated person.

F. The holder of a direct wine shipment permit issued pursuant to Section 60-6A-11.1 NMSA 1978 may ship no more than two nine-liter cases of wine per month to a person living in New Mexico who is twenty-one years of age or older for the person's personal consumption and not for resale.

G. As used in this section, "in this state" means within the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 49; 1987, ch. 96, § 1; 2011, ch. 109, § 2.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added Subsection F to permit the shipment of limited quantities of wine by permit holders to New Mexico residents.

60-7A-4. Sale, shipment and delivery unlawful.

A. It is unlawful for any person on his own behalf or as the agent of another person, except a licensed New Mexico wholesaler or manufacturer or the agent of either, to directly or indirectly sell or offer for sale for shipment into the state or ship into the state, except as provided in Section 60-7A-3 NMSA 1978, any alcoholic beverages unless such person or his principals has secured a nonresident license as provided in Section 60-7A-7 NMSA 1978.

B. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] to deliver any alcoholic beverages transported into the state unless the delivery is made in accordance with Section 60-7A-3 NMSA 1978.

C. As used in this section, "into the state of New Mexico" means into the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 50; 1987, ch. 96, § 2.

ANNOTATIONS

Section does not prevent bringing liquor into state for personal consumption. State v. Martinez, 48 N.M. 232, 149 P.2d 124 (1944).

Only licensed nonresident suppliers shall be permitted to import alcoholic beverages into New Mexico. Such importations may be made only to licensed New Mexico wholesalers or distilleries, and further, such importations shall be permitted only when approved by the division of liquor control (now director of alcohol and gaming division). 1957-58 Op. Att'y Gen. No. 57-198.

Wholesaler's license required by one storing liquor in warehouse. — If a person uses a warehouse in New Mexico solely for the purpose of storing liquor, all of which is

to be transported out of the state, such person must be licensed by the division of liquor control (now director of alcohol and gaming division), such person must obtain a wholesaler's license. 1961-62 Op. Att'y Gen. No. 62-110.

Wholesaler's license required to deliver alcoholic beverages to military reservations. — All deliveries of alcoholic beverages to post exchanges and open messes located on and within the confines of ceded military reservations in New Mexico must be made by licensed New Mexico wholesalers or distributors. 1957-58 Op. Att'y Gen. No. 57-198.

Transportation permit required to ship beer to military base. — Transportation of beer or other alcoholic liquors to a post exchange or NCO club or officers' club on a ceded military reservation requires a transportation permit. 1953-54 Op. Att'y Gen. No. 53-5825.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 123.

48 C.J.S. Intoxicating Liquors §§ 234, 238.

60-7A-4.1. Unlawful sale of alcoholic beverages; criminal penalty; forfeiture.

A. It is unlawful for any person to sell or attempt to sell alcoholic beverages at any place other than a licensed premises or as otherwise provided by the Liquor Control Act [60-3A-1 NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony.

C. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages or money which is the fruit or instrumentality of the crime is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: 1978 Comp., § 60-7A-4.1, enacted by Laws 1985, ch. 179, § 1; 1989, ch. 254, § 1; 1993, ch. 68, § 15; 2002, ch. 4, § 19.

ANNOTATIONS

The 2002 amendment, effective July 1, 2002, in Subsection C, after "crime", deleted "may be seized and upon conviction, in the discretion of the court, be forfeited and disposed of under the procedures set forth in Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, inserted "criminal" in the catchline; inserted "upon conviction" and "and disposed of" in Subsection C; and deleted the former second sentence of Subsection C, pertaining to taking custody of forfeited property.

60-7A-4.2. Record of sales; administrative penalties.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person licensed pursuant to the provisions of that act and any employee, agent or lessee of that person to fail to maintain a record of sales of distilled spirits, wine and beer in quantities of twenty gallons or more to a single purchaser. The record shall contain the following information:

(1) the date of the sale;

(2) the name and address of the purchaser;

(3) a description of the quantity and type of liquor sold; and

(4) when a full case of distilled spirits is included in the sale, the serial number of the case.

B. Any person who violates the provisions of Subsection A of this section by failing to maintain a record of sales may be assessed an administrative penalty by the director not to exceed one thousand dollars ($1,000).

C. Any person who violates the provisions of Subsection A of this section by failing to maintain, with the intent to defraud, a record of sales may be assessed an administrative penalty by the director not to exceed ten thousand dollars ($10,000).

History: 1978 Comp., § 60-7A-4.2, enacted by Laws 1993, ch. 68, § 16.

60-7A-5. Manufacture, sale or possession for sale when not permitted by Liquor Control Act; criminal penalty; forfeiture.

A. It is unlawful for any person to manufacture for the purpose of sale, possess for the purpose of sale, offer for sale or sell any alcoholic beverages in the state except under the terms and conditions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or sale of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or sale of alcoholic beverages is subject to forfeiture, and the provisions of

the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: Laws 1981, ch. 39, § 51; 1993, ch. 68, § 17; 2002, ch. 4, § 20.

ANNOTATIONS

The 2002 amendment, effective July 1, 2002, in Subsection C, after "beverages", deleted "may be seized and, upon conviction, in the discretion of the court, forfeited and disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, inserted "criminal" in the catchline; designated the former provision as Subsection A; and added Subsections B and C.

Illegal sales in dry area punishable. — Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be sold within these areas without punishment. State v. Bryant, 53 N.M. 229, 205 P.2d 213 (1949).

Violator entitled to trial by jury. — At the time of the adoption of the constitution and immediately prior thereto a person charged with selling alcoholic liquor without a license had the right to a trial by jury. State v. Jackson, 78 N.M. 29, 427 P.2d 46 (Ct. App. 1967).

The defendant charged with selling liquor without a license upon his demand should be accorded a trial by jury. State v. Jackson, 78 N.M. 29, 427 P.2d 46 (Ct. App. 1967).

Conviction not sustained where insufficient evidence in record regarding possession. — Where search revealed one pint of whiskey in defendant's bedroom and 11 fifths of whiskey in three brands found on the floor of the living room behind window drapes, and defendant's locality was within a local "dry" area and defendant had no license to sell liquor, this was insufficient evidence concerning defendant's possession for the purpose of sale and a conviction cannot be sustained. State v. Easterwood, 68 N.M. 464, 362 P.2d 997 (1961).

Illegal sale of alcohol not nuisance. — Where there is no statute which declares the illegal sale of alcoholic beverages to be a nuisance, the legislature intended that something more than the sale of alcoholic liquor must be shown before such act could be restrained as a public nuisance. State v. Davis, 65 N.M. 128, 333 P.2d 613 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 261.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality of statute prohibiting the manufacture of intoxicating liquor, 3 A.L.R. 285.

Test of intoxicating character of liquor, 4 A.L.R. 1137, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Right of one charged with unlawful sale of intoxicating liquor to be informed before trial of name or identity of purchaser, 5 A.L.R. 409.

What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 A.L.R. 225.

Forfeiture of property for unlawful use before trial of individual offender, 3 A.L.R.2d 738.

Operation and effect, in dry territory, of general statute making sale or possession for sale of intoxicating liquor without a license an offense, 8 A.L.R.2d 750.

State's power to regulate price of intoxicating liquors, 14 A.L.R.2d 699.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors §§ 250, 251.

60-7A-6. Possession of liquor manufactured or shipped in violation of law; fourth degree felony; penalty; forfeiture.

A. It is unlawful for any person to have in his possession with the intent to sell or resell any alcoholic beverages which to that person's knowledge have been manufactured or transported into this state in violation of the laws of this state.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or transportation of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or transportation of alcoholic beverages is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: Laws 1981, ch. 39, § 52; 1993, ch. 68, § 18; 2002, ch. 4, § 21.

ANNOTATIONS

The 2002 amendment, effective July 1, 2002, in Subsection C, after "beverages", deleted "may be seized and, upon conviction, in the discretion of the court, forfeited or disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, added "Fourth Degree Felony - Penalty - Forfeiture" at the end of the catchline; designated the former undesignated provision as Subsection A; in Subsection A, substituted "unlawful" for "a violation of the Liquor Control Act" and inserted "with intent to sell or resell"; and added Subsections B and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 250.

60-7A-7. Manufacture of spirituous liquors; felony.

It is a felony for any person other than a licensed distiller or rectifier to manufacture any spirituous liquors in the state.

History: Laws 1981, ch. 39, § 53.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 248.

60-7A-8. Sales to wholesalers.

Unless he has a wholesaler's license, no New Mexico manufacturer shall sell or offer for sale any alcoholic beverages manufactured within this state to any person in New Mexico other than wholesalers licensed under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

History: Laws 1981, ch. 39, § 59.

ANNOTATIONS

Effect of one wholesaler dominating market. — Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. Levers v. Anderson, 153 F.2d 1008 (10th Cir.), cert. denied, 328 U.S. 866, 66 S. Ct. 1376, 90 L. Ed. 1636 (1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 287.

48 C.J.S. Intoxicating Liquors § 129.

60-7A-9. Credit extension by wholesalers.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any wholesaler to extend credit or to agree to extend credit for the sale of alcoholic beverages to any retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for any period more than thirty calendar days from the date of the invoice required under the provisions of Section 60-8A-3 NMSA 1978. A violation of this section does not bar recovery by the wholesaler for the total indebtedness of the retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee.

History: Laws 1981, ch. 39, § 71; 1985, ch. 39, § 1.

ANNOTATIONS

Failure to collect invoices. — Where the liquor wholesaler did not promptly bring an action to recover the amount due on invoices that had remained unpaid for more than thirty days, but continued to deliver more liquor to the retailer without receiving immediate payment, the wholesaler extended credit to the retailer in violation of this section. N.M. Beverage Co. v. Blything, 102 N.M. 533, 697 P.2d 952 (Ct. App. 1985).

Credit extended during initial 30 days. — Credit sales made within the initial 30-day period before the retailer falls behind in payments on his account are not declared violations of this section, and 60-8A-5 NMSA 1978 does not bar a wholesaler from bringing an action to collect debts arising from such credit sales. Pucci Distrib. Co. v. Stephens, 106 N.M. 228, 741 P.2d 831 (1987).

Time period for credit sales. — Since 15 days is a reasonable amount of time for a wholesale liquor distributor to determine what bills are past due from purchasers, any credit sales of liquor made to debtor by the wholesale liquor distributors within the first 45 days from the date of the first unpaid invoice are in conformance with the requirements of this section and are collectable, while any credit sales made after this forty-five day period demonstrate an implicit agreement to extend credit and, thus, are in violation of this section and uncollectable. Sholer v. Bank of Albuquerque (In re Gallegos), 68 B.R. 584 (Bankr. D.N.M. 1986) (decided under former Section 60-10-8 NMSA 1978).

Conduct violative of section. — Where, from a review of the invoices submitted, it is obvious that wholesale liquor distributors were extending credit long after the debtor had been in arrears in excess of 30 days, such implied agreement to extend credit is conduct prohibited by this section. Sholer v. Bank of Albuquerque (In re Gallegos), 68 B.R. 584 (Bankr. D.N.M. 1986) (decided under former Section 60-10-8 NMSA 1978).

To violate this section, a liquor wholesaler must continue to make credit sales to a liquor retailer knowing at the time that the retailer is more than 30 calendar days behind in its

credit payments to the wholesaler. Gavin Maloof & Co. v. Sw. Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

Wholesaler may collect despite violation. — The purpose of the 1985 amendment was to eliminate the forfeiture and allow the wholesaler to collect its debt even though there may be a violation of this section. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by former Section 60-6B-3E NMSA 1978 were prior to a bank's perfected security interest even if there was a violation of this section. D & M, Inc. v. United N.M. Bank, 114 B.R. 274 (Bankr. D.N.M. 1990).

C.O.D. sales allowable. — When a credit sale is not paid for within 30 days, a liquor wholesaler may cut off credit and continue to do business with the delinquent retailer on a C.O.D. basis while the wholesaler attempts to collect the past due accounts. Gavin Maloof & Co. v. Sw. Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 121.

Construction and effect of liquor regulation forbidding or restricting sales on credit or other than for cash, 17 A.L.R.3d 396.

48 C.J.S. Intoxicating Liquors § 243.

60-7A-10. Wholesalers prohibited from owning retailer's or dispenser's establishment.

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a wholesaler, directly or indirectly or through an affiliate, to own, either in whole or in part, a business operated under a retailer's or dispenser's license.

B. This section shall not prevent a wholesaler from owning a dispenser's license directly or indirectly or through an affiliate and operating a business itself or through an affiliate or a lessee under a dispenser's license if:

(1) the wholesaler directly or indirectly operates or controls an interest in an establishment or complex maintaining a minimum of one hundred sleeping rooms and having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public; and

(2) the sale of alcoholic beverages under the dispenser's license is restricted to their consumption on the licensed premises.

History: Laws 1981, ch. 39, § 74; 1991, ch. 5, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, designated the former section as Subsection A, adding the exception at the beginning thereof, and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 121.

48 C.J.S. Intoxicating Liquors § 197.

60-7A-11. Offenses by retailers.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any retailer to:

A. allow or permit any alcoholic beverages to be consumed on his licensed premises;

B. maintain or keep in close proximity to the licensed premises any place for the consumption of alcoholic beverages purchased from him;

C. sell any alcoholic beverages at any place other than his licensed premises;

D. sell, possess for the purpose of sale or to have, possess or keep on his licensed premises alcoholic beverages not contained in the unopened, original package;

E. buy or receive any alcoholic beverages from any person other than a duly licensed New Mexico wholesaler, or wine wholesaler for the purpose of or with the intent of reselling the alcoholic beverages; or

F. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided, that this subsection shall not prevent a retailer from owning stock in any corporation which wholesales, manufactures or bottles alcoholic beverages when he owns the stock for investment purposes only.

History: Laws 1981, ch. 39, § 77; 1988, ch. 60, § 6.

ANNOTATIONS

Meaning of "package". — In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Delivery of purchase permitted. — When a sale takes place on the licensed premises of a retailer or dispenser, the beverage so purchased may be delivered by the retailer or independent carrier to any location designated by the purchaser. 1957-58 Op. Att'y Gen. No. 58-15.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 237.

60-7A-12. Offenses by dispensers, canopy licensees, restaurant licensees, governmental licensees or their lessees and clubs.

It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose or with the intent of reselling the alcoholic beverages from any person unless the person is duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell; possess for the purpose of sale; or bottle bulk wine for sale other than by the drink for immediate consumption on its licensed premises;

C. directly, indirectly or through subterfuge, own, operate or control any interest in a wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent:

(1) a dispenser from owning an interest in a legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978; or

(2) a small brewer or winegrower licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act from holding an interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant or a dispenser's license and a small brewer and winegrower limited wholesaler's license issued pursuant to the Liquor Control Act;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except its licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not received alcohol server training within thirty days of employment; or

F. employ or engage a person to sell, serve or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked.

History: Laws 1981, ch. 39, § 78; 1991, ch. 5, § 2; 1999, ch. 277, § 14; 2000, ch. 46, § 2; 2015, ch. 113, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, allowed small brewers and winegrowers licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act to hold a restaurant or dispenser's license and a small brewer and winegrower limited wholesaler's license; in Subsection A, after "reselling the", deleted "same" and added "alcoholic beverages", and after "from any person", deleted "other than one", and added "unless the person is"; in Subsection B, after "bottle", deleted "any"; and after "consumption on", deleted "his" and added "its"; in Subsection C, after "indirectly or through", deleted "any", after "interest in", deleted "any" and added "a", and after "shall not prevent", designated the remainder of Subsection C as Paragraph (1) of Subsection C; in Paragraph (1) of Subsection C, after "an interest in", deleted "any" and added "a", and after "NMSA 1978", added "or"; added Paragraph (2) of Subsection C; and in Subsection D, after "location or place except", deleted "his" and added "its".

The 2000 amendment, effective March 6, 2000, substituted "received alcohol server training within thirty days of employment" for "been issued a server permit" in Subsection E.

The 1999 amendment, effective July 1, 1999, added Subsections E and F.

The 1991 amendment, effective June 14, 1991, rewrote Subsection C, which read "do any of the things which a retailer is prohibited from doing pursuant to Subsection F of Section 77 of the Liquor Control Act", and made a stylistic change in Subsection D.

Dram-shop statutes within province of legislature. — Whether legislation in the nature of the so-called dram-shop or civil damage statutes should be included as a part of New Mexico's liquor control acts is within the province of the legislature. Hall v. Budagher, 76 N.M. 591, 417 P.2d 71 (1966), rev'd on other grounds, Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982).

Intent to sell required for offense. — When there is no intent or attempt to sell alcoholic liquors directly from an off-premises storage location, there is no offense. 1980 Op. Att'y Gen. No. 80-34.

Section does not prohibit storage of alcoholic liquors at unlicensed location. 1980 Op. Att'y Gen. No. 80-34.

"Possess for the purpose of sale" is intended to cover the situation where if there is no actual sale, there could be one. 1980 Op. Att'y Gen. No. 80-34.

60-7A-13. Sales by clubs.

A. Any club licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall only have the right to sell alcoholic beverages by the drink and wine by the bottle for consumption on the premises.

B. Except as otherwise provided in this section, it is unlawful and grounds for suspension or revocation of its license for a club to:

(1) solicit by advertising or any other means public patronage of its alcoholic beverage facilities. In the event the club solicits public patronage of its other facilities, alcoholic beverages shall not be sold, served or consumed on the premises while the other facilities are being used by or operated for the benefit of the general public, unless the alcoholic beverage facilities are separate from the other facilities and the general public is not permitted to enter any part of the facilities where alcoholic beverages are being sold, served or consumed; or

(2) serve, sell or permit the consumption of alcoholic beverages to persons other than members and their bona fide guests.

C. A club licensed pursuant to the provisions of the Liquor Control Act may allow its facilities, including its licensed premises, to be used, for activities other than its own, no more than two times in a calendar year for fundraising events held by other nonprofit organizations.

D. For the purposes of this section:

(1) "bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility; and

(2) "member" includes the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues or a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club.

History: Laws 1981, ch. 39, § 79; 1987, ch. 13, § 1; 1999, ch. 114, § 1.

ANNOTATIONS

The 1999 amendment, effective April 1, 1999, in Subsection B, inserted "Except as otherwise provided in this section" at the beginning, inserted Subsection C, and redesignated former Subsection C as Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 129.

48 C.J.S. Intoxicating Liquors § 197.

60-7A-14. Filling bottles; misrepresentation of alcoholic beverages.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any licensee to:

A. pour into any empty or partially empty bottle which contains or has contained any alcoholic beverage, alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter on the bottle;

B. have, allow or permit upon the licensed premises any bottle containing alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter appearing on the bottle;

C. expressly or impliedly misrepresent the kind, class, brand, proof or age of any alcoholic beverages served by the drink; or

D. pour into any empty or partially empty alcoholic beverage bottle, alcoholic beverages of the same kind, class, brand, proof or age as that represented by the label, indicia, legend and descriptive matter appearing on the bottle.

History: Laws 1981, ch. 39, § 80.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors § 201.

60-7A-15. Public nuisance.

A. Any premises used for the unlawful purpose of sale, manufacture, storage, possession or consumption of alcoholic beverages in violation of the Liquor Control Act [60-3A-1 NMSA 1978] is a public nuisance.

B. The district attorney in the county in which the nuisance exists is authorized to maintain an action to abate and temporarily and permanently enjoin the nuisance. The district attorney shall not be required to post bond.

C. Upon final judgment, the court shall enjoin the owner, lessee, tenant or occupant from maintaining or assisting in maintaining the nuisance, and shall order the premises to be closed until bond is furnished with sufficient surety in such sum as the court in its discretion shall be order and judgment provide, conditioned that the premises will not be maintained as a public nuisance.

History: Laws 1981, ch. 39, § 92.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 77, 441, 449.

Constitutionality of statute relating to injunctions against crime or abatement of nuisance arising from violation of liquor law, 49 A.L.R. 635.

Public dances or dance halls as nuisances, 44 A.L.R.2d 1381.

48 C.J.S. Intoxicating Liquors §§ 248, 405, 407, 408.

60-7A-16. Sale to intoxicated persons.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding in procurement, knows or has reason to know that he is selling, serving, procuring or aiding in procurement of alcoholic beverages for a person that is intoxicated.

History: Laws 1981, ch. 39, § 93; 1993, ch. 68, § 19.

ANNOTATIONS

Cross references. — For tort liability for alcoholic liquor sales or service, *see* 41-11-1 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted the language beginning "if the person selling" for "knowing that the person buying or receiving service of alcoholic beverages is intoxicated" at the end of the section.

This section must not be read to impose a duty on the tavernkeeper to the intoxicated patron. Trujillo v. Trujillo, 104 N.M. 379, 721 P.2d 1310 (Ct. App.), cert. denied, 104 N.M. 289, 720 P.2d 708 (1986), overruled by Mendoza v. Tamaya Enters., 2010-NMCA-74, 148 N.M. 534, 238 P.3d 903.

Liability for serving intoxicated person. — A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to an intoxicated person, the breach of which is found to be the proximate cause of injuries to a third party. The imposition of this new liability will be applied prospectively. Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982).

Lessor of liquor license can be held liable under the terms of this section if a violation is proved. Williams v. Ashbaugh, 120 N.M. 731, 906 P.2d 263 (Ct. App. 1986), aff'd, 106 N.M. 598, 747 P.2d 244 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 140.

Entrapment to comment offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528, 62 A.L.R.4th 16.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts, 98 A.L.R.3d 1230.

Tavernkeeper's liability to patron for third person's assault, 43 A.L.R.4th 281.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

48 C.J.S. Intoxicating Liquors § 258.

60-7A-17. Prostitution; loitering; promoting.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a licensee to knowingly:

(1) allow prostitution on the licensed premises;

(2) allow or permit the loitering of or solicitation by known prostitutes on the licensed premises; or

(3) procure a prostitute for a patron, solicit a patron for a prostitute or solicit for a house of prostitution.

B. No municipality shall enact any ordinance or resolution inconsistent with the provisions of Subsection A of this section.

History: Laws 1981, ch. 39, § 94.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.

Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1.

48 C.J.S. Intoxicating Liquors § 257.

60-7A-18. Hours for public dances.

A dispenser who in connection with his licensed establishment maintains dancing facilities for use by his patrons shall be allowed to keep such facilities open and permit dancing on the licensed premises during the same hours as he is allowed by law to sell alcoholic beverages.

History: Laws 1981, ch. 39, § 95.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 52.

60-7A-19. Commercial gambling on licensed premises.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, a person who violates Subsection A of this section may have the person's license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. As used in this section:

(1) "commercial gambling" means:

(a) participating in the earnings of or operating a gambling place;

(b) receiving, recording or forwarding bets or offers to bet;

(c) possessing facilities with the intent to receive, record or forward bets or offers to bet;

(d) for gain, becoming a custodian of anything of value bet or offered to be bet;

(e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or

(f) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game; and

(2) "commercial gambling" does not mean:

(a) activities authorized pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978];

(b) the conduct of activities pursuant to Subsection B of Section 30-19-6 NMSA 1978 on the licensed premises of the holder of a club license; and

(c) gaming authorized pursuant to the Gaming Control Act [60-2E-1 NMSA 1978] on the premises of a gaming operator licensee licensed pursuant to that act.

History: Laws 1981, ch. 39, § 96; 1997, ch. 190, § 68; 2011, ch. 176, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, permitted games of chance regulated by the New Mexico Bingo and Raffle Act to be conducted on the licensed premises of clubs.

The 1997 amendment, effective June 20, 1997, in Subsection C, redesignated former Paragraphs (1) to (6) as Subparagraphs (1)(a) to (f), added Paragraph (2), and made minor stylistic changes throughout.

60-7A-20. False complaints; misdemeanor.

Any person who lodges or intentionally causes or conspires to cause a complaint to be lodged knowing the complaint to be unfounded in actual fact, he [sic] shall, upon conviction thereof, be guilty of a misdemeanor.

History: Laws 1981, ch. 39, § 106.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

60-7A-21. Possession or display of United States license.

Possession or display of a license from the United States to sell alcoholic beverages in New Mexico by a person not licensed under the Liquor Control Act [60-3A-1 NMSA

1978] to sell alcoholic beverages or issuance of such a license by the district director of the internal revenue service shall be prima facie evidence that the person possessing or displaying the license, or to whom it was issued, is engaged in the business of selling alcoholic beverages, at the place for which it was issued or where it is displayed, in violation of the laws of New Mexico, and a certified copy of the records of the district director of the internal revenue service showing the issuance of the license or the payment of the tax therefor shall be admissible as evidence in any prosecution.

History: Laws 1981, ch. 39, § 107.

ANNOTATIONS

Defendant bears burden of proof. — Ownership of a license would cast upon the defendant in any case brought under the terms of this statute the burden of going forward with the evidence to prove that the defendant did not fall within the provisions of the statute, namely, with operating a club for profit. 1955-56 Op. Att'y Gen. No. 55-6203.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 380.

48 C.J.S. Intoxicating Liquors § 110.

60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments; selling or delivering alcoholic beverages from a drive-up window.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act for any person not a licensee to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

C. It is a violation of the Liquor Control Act for any licensee to sell or deliver alcoholic beverages from a drive-up window.

History: Laws 1981, ch. 39, § 108; 1991, ch. 257, § 4; 1998 (1st S.S.), ch. 16, § 3.

ANNOTATIONS

The 1998 amendment added "; selling or delivering alcoholic beverages from a drive-up window" to the end of the section heading, and rewrote former Subsection C, relating to grandfather provisions for drive-up liquor sales. Laws 1998 (1st S.S.), ch. 16 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on August 2, 1998, 90 days after adjournment of the legislature.

The 1991 amendment, effective June 14, 1991, deleted "during the ten-year period of economic adjustment" preceding "licensed premises" and made a minor stylistic change in Subsection C.

Knowingly permitting consumption constitutes corpus delicti of offense. — The corpus delicti of the offense charged is knowingly permitting the consumption of intoxicating liquor by appellant in his cafe without a license to do so. State v. Carter, 58 N.M. 713, 275 P.2d 847 (1954).

Space for dancing and tables part of "establishment". — Space reserved for dancing and tables in connection with a liquor dispensing unit is a part of the licensed "establishment." 1939-40 Op. Att'y Gen. No. 39-3180.

Serving liquor in bowling alleys permitted. — There is no prohibition against issuing an alcoholic beverage license to a bowling alley, thus permitting the serving of liquor on the premises. 1955-56 Op. Att'y Gen. No. 55-6278.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 307.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquors, 4 A.L.R.2d 1216.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place, 39 A.L.R.4th 668.

48 C.J.S. Intoxicating Liquors § 253.

60-7A-23. Possession of wine as prima facie evidence.

In any proceedings under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the possession of more than one thousand two hundred liters of wine by any person who is not a public warehouseman, registered carrier or licensee shall be prima facie evidence that the person has manufactured the wine for the purpose of sale and possesses the wine for the purpose of sale in violation of the Liquor Control Act.

History: Laws 1981, ch. 39, § 109.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 408.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality, construction and effect of statute making possession of intoxicating liquor evidence of violation of law, 31 A.L.R. 1222.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation, 37 A.L.R. 1386.

48 C.J.S. Intoxicating Liquors § 346.

60-7A-24. Obstruction of the administration of the Liquor Control Act; criminal penalty; sentencing.

A. Any person who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any licensee who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act is guilty of violating the Liquor Control Act and shall be punished by fine, suspension or revocation under the procedures of the Liquor Control Act.

History: Laws 1981, ch. 39, § 110; 1993, ch. 68, § 20.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, rewrote the catchline; added "and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978" at the end of Subsection A; and made a minor stylistic change in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 165.

48 C.J.S. Intoxicating Liquors § 214.

60-7A-25. Criminal penalties.

A. A person who violates any provision of the Liquor Control Act [60-3A-1 NMSA 1978] or any rule or regulation promulgated by the department that is not declared by the Liquor Control Act to be a felony is guilty of a misdemeanor and, upon conviction

thereof, the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person convicted of a violation of the Liquor Control Act which is declared by the Liquor Control Act to be a fourth degree felony shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1981, ch. 39, § 111; 1991, ch. 119, § 1; 1993, ch. 68, § 21.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "Criminal" in the catchline; deleted "petty" preceding "misdemeanor" in Subsection A; deleted the former second sentence of Subsection A, pertaining to the penalty upon conviction of a corporation; and rewrote Subsection B.

The 1991 amendment, effective June 14, 1991, in the first sentence of Subsection A, substituted "A person who violates" for "A violation of", "is guilty of a petty misdemeanor" for "shall be a misdemeanor" and "sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "punished by a fine of not more than three hundred dollars ($300) or by confinement in jail not more than seven months or by both such fine and imprisonment"; and, in the second sentence of Subsection A, substituted "a violation of any provision of the Liquor Control Act [60-3A-1 NMSA 1978] it shall be a misdemeanor and the corporation shall be sentenced pursuant to the provisions of Section 31-20-1 NMSA 1978" for "such a violation, it shall be punished by a fine of not more than one thousand dollars ($1,000)".

Illegal sales in dry area punishable. — Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be sold within these areas without punishment. State v. Bryant, 53 N.M. 229, 205 P.2d 213 (1949).

Adult's custody no defense if not within statutory exemptions. — When minor was in custody of an adult who does not hold such legal relationship to the minor to come with exemptions of the statute, the fact of the adult's custody is no defense. State v. Sifford, 51 N.M. 430, 187 P.2d 540 (1947).

Revocation of license of felon. — The director of the department of alcoholic beverage control (director of the alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

When licensee not criminally liable for acts of his employees. — A liquor licensee would not be criminally liable for acts of agent or employee committed contrary to express instructions. 1959-60 Op. Att'y Gen. No. 59-24.

Law reviews. — For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 431.

Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

48 C.J.S. Intoxicating Liquors § 286.

ARTICLE 7B
Regulation of Sales and Service to Minors

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 [Chapter 60, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978] 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 be served with alcoholic beverages.

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

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

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

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

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

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

F. In addition to the penalties provided in Section 60-6C-1 NMSA 1978, a violation of the provisions of Subsection A of this section is:

(1) a fourth degree felony for an offender, other than a server certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to Section 31-18-15 NMSA 1978;

(2) a misdemeanor for a first violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(3) a fourth degree felony for a second or subsequent violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

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

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

(b) ordered by the sentencing court to perform thirty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor;

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

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

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

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

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

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

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

(c) have the offender's driver's license suspended for a period of two years or until the offender reaches twenty-one years of age, whichever period of time is greater.

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

History: 1978 Comp., § 60-7B-1, enacted by Laws 1993, ch. 68, § 22; 1998, ch. 80, § 1; 1998, ch. 101, § 1; 2004, ch. 43, § 1; 2013, ch. 213, § 3.

ANNOTATIONS

Cross references. — For age of majority, *see* 28-6-1 NMSA 1978.

For tort liability for alcoholic liquor sales or service, *see* 41-11-1 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 68, § 22 repealed former 60-7B-1 NMSA 1978, as enacted by Laws 1981, ch. 39, § 81, and enacted a new section, effective July 1, 1993.

The 2013 amendment, effective June 14, 2013, reduced the penalty for serving alcoholic beverages to minors; changed the knowledge requirement for providing alcohol to minors; in Subsection F, in the introductory sentence, after "of this section is", deleted "a fourth degree felony and the offender"; added Paragraphs (1) and (2) of Subsection F; and in Paragraph (3) of Subsection F, at the beginning of the sentence, added "a fourth degree felony for a second or subsequent violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978".

The 2004 amendments, effective July 1, 2004, amended Subsection B to include "adult spouse" in Paragraph (1) and to add Paragraph (2), amended Subsection D to clarify the language, and amended Subsections F and G to delete the different penalties for the first, second and third or subsequent offense and amended Subsection H to provide that a violation of Subsection A or D is a fourth degree felony.

1998 amendments. — Laws 1998, ch. 80, § 1, amending this section, effective July 1, 1998, by substituting "a" for "any" and deleting "any" throughout the section, inserting "including a person" preceding "licensed pursuant", and substituting "an" for "any" in Subsection A; adding Subsection B and redesignating the remaining subsections accordingly; substituting "other than" for "except" and "another" for "any other" in Subsection D; and substituting "accept" for "accepts" in Paragraph F(1), and making minor stylistic changes throughout the section, was approved March 9, 1998. However, Laws 1998, ch. 101, § 1, also amending this section, effective July 1, 1998, by substituting "a" for "any" and deleting "any" throughout the section, inserting "including a person" preceding "licensed pursuant", and substituting "an" for "any" in Subsection A; adding Subsection B and redesignating the remaining subsections accordingly; substituting "other than" for "except" and "another" for "any other" in Subsection D; deleting former Subsection E, relating to violation of this section by a minor; adding Subsections F, G and H; and making minor stylistic changes throughout the section, but not giving effect to the first 1998 amendment, was approved March 10, 1998. This section is set out as amended by Laws 1998, ch. 101, § 1. See 12-1-8 NMSA 1978.

Criminal conviction is not a condition precedent to the imposition of a fine. — The criminal conviction of a server under Section 60-7B-1 NMSA 1978 is not a condition precedent to the imposition of a civil fine on the licensee pursuant to Subsection A of Section 60-6C-1NMSA 1978. Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't, 2012-NMCA-046, 277 P.3d 490.

Where, in a sting operation, the licensee's employee sold beer to a minor; a hearing officer found that the licensee violated Section 60-7B-1 NMSA 1978 and imposed a fine on the licensee; and the district attorney dismissed charges filed against the employee after the employee completed a pre-prosecution program, the criminal conviction of the employee was not a condition precedent to the imposition of the fine under Subsection A of Section 60-6C-1 NMSA 1978. Town & Country Food Stores, Inc. v. N. M.. Regulation & Licensing Dep't, 2012-NMCA-046, 277 P.3d 490.

Section forbids all deliveries to minors. — This section forbids any delivery of alcoholic liquors to a minor not accompanied by parent, guardian or person "in loco parentis," even where person so delivering alcoholic liquors knows that same are intended for use by an adult. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Delivery made in person or through agent. — The accused, to be guilty of delivering liquor to a minor, need not hand it over in person, but would be guilty if the handing over was done by an agent or servant, at the express direction of the principal or master. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Liability for serving minor. — A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to a minor, the breach of which is found to be the proximate cause of injuries to a third party. MRC Props., Inc. v. Gries, 98 N.M. 710, 652 P.2d 732 (1982).

It shall not be negligence per se to violate this section. Trujillo v. Trujillo, 104 N.M. 379, 721 P.2d 1310 (Ct. App.), cert. denied, 104 N.M. 289, 720 P.2d 708 (1986), overruled by Mendoza v. Tamaya Enters., 2010-NMCA-74, 148 N.M. 534, 238 P.3d 903.

Section applies to unlicensed persons as well as licensed dealers. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Contents of information charging defendant with offense. — Information charging that defendant delivered alcoholic liquor to a minor, contrary to provision of this section, was not fatally defective in failing to set out that such minor was not accompanied by a parent, guardian or other person having custody. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Charge of defendant in the information with contributing to delinquency of a minor by selling alcoholic liquors to him was adequate. State v. Sena, 54 N.M. 213, 219 P.2d 287 (1950).

Probable cause for arrest for possession of alcohol. — Probable cause to believe that a child wrongfully possessed or consumed alcohol sufficient to justify an arrest and warrantless search was not shown by the fact that the child's friend smelled of alcohol, or by the child's admission that he consumed a beer outside the officer's presence. State v. Tywayne H., 1997-NMCA-015, 123 N.M. 42, 933 P.2d 251, cert. denied, 123 N.M. 83, 934 P.2d 277.

Right to jury trial is privilege which may be waived, and if a right to jury trial existed in this case, where appellant was charged with giving alcoholic beverages to minors, appellant, by proceeding without demand or objection to trial before the court without a jury, waived the privilege granted by the constitution. State v. Marrujo, 79 N.M. 363, 443 P.2d 856 (1968).

Conviction may be based upon uncorroborated evidence of minor. — State v. Hunter, 37 N.M. 382, 24 P.2d 251 (1933).

Adult's custody no defense if not within statutory exemptions. — Where minor was in custody of an adult who does not hold such legal relationship to the minor as to come within exemptions of the statute, the fact of adult's custody is no defense. State v. Sifford, 51 N.M. 430, 187 P.2d 540 (1947).

Breach of section as tort liability. — An allegation of a breach of the duty under this section which caused injury to plaintiffs states a claim for relief. Walker v. Key, 101 N.M. 631, 686 P.2d 973 (Ct. App. 1984) (decided under former Section 60-7B-1.1 NMSA 1978).

Minor cannot legally bring alcoholic beverages into state. — A minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the state of New Mexico. 1961-62 Op. Att'y Gen. No. 62-21.

Sale of liquor to minor wife accompanied by adult spouse authorized. — Liquor may be sold to a minor wife when she is accompanied by her adult spouse. 1943-44 Op. Att'y Gen. No. 44-4462.

Minor police officer may receive or possess liquor. — This section does not prohibit a police officer who is under the age of 21 years and in the lawful performance of his duties from receiving or possessing liquor. 1975 Op. Att'y Gen. No. 75-59.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M. L. Rev. 331 (1976).

For note, "Children's Law: Investigating Detention of Juveniles in New Mexico: Providing Greater Protection than Miranda Rights for Children in the Area of Police Questioning – State of New Mexico v. Javier M.," see 32 N.M. L. Rev. 353 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 141.

Criminal offense of selling liquor to minor (or person under specified age) as affected by ignorance or mistake regarding purchaser's age, 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift, 14 A.L.R.3d 1186.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor, 89 A.L.R.3d 1256.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 A.L.R.4th 81.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

48 C.J.S. Intoxicating Liquors § 259.

60-7B-1.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128 repealed 60-7B-1.1 NMSA 1978, as enacted by Laws 1939, ch. 236, § 1202 and as amended by Laws 1975, ch. 152, § 1, relating to selling or giving liquor to minors, effective July 1, 1981.

Compiler's notes. — This section was enacted by Laws 1939, ch. 236, § 1202 and was repealed by Laws 1981, ch. 39, § 128. It was subsequently amended by Laws 1981, ch. 252, § 1. An amended act alters, modifies or adds to a prior law. Since there is no prior law to be amended, this section has not been published. The subject matter of this section is fully covered by 60-7B-1 NMSA 1978 which was repealed and reenacted by Laws 1993, ch. 68, § 22.

60-7B-2. Documentary evidence of age and identity.

Evidence of the age and identity of the person may be shown by any document which contains a picture of the person issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle operator's license or an identification card issued to a member of the armed forces.

History: Laws 1981, ch. 39, § 82; 1985, ch. 184, § 1.

60-7B-3, 60-7B-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 184, § 5 repealed 60-7B-3 and 60-7B-4 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 83 and 84, relating to department-issued identity cards, effective June 14, 1985.

60-7B-5. Refusal to sell or serve alcoholic beverages to person unable to produce identity card.

Any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person shall refuse to sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that he is twenty-one years of age or over.

History: Laws 1981, ch. 39, § 85; 1985, ch. 184, § 2; 1993, ch. 68, § 23.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of

that person shall" for "Any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee and its lessee may".

60-7B-6. Demanding and seeing identity card before furnishing alcoholic beverages.

In any criminal prosecution or in any proceedings for the suspension or revocation of a license, or in any proceeding for violation of a municipal or county ordinance prohibiting the gift, sale or service of alcoholic beverages to minors, proof that the accused licensee in good faith demanded and was shown an identity card before furnishing any alcoholic beverages to a minor shall be a defense to the prosecution or proceedings.

History: Laws 1981, ch. 39, § 86; 1985, ch. 184, § 3.

ANNOTATIONS

The good faith defense is not limited to identification that is fraudulent. ERICA, Inc. v. N.M. Regulation & Licensing Dept., 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

Driver's license lacked legend that licensee is under twenty-one. — The good faith defense is not precluded as a matter of law where a liquor store employee relies on the absence of the printed legend on the driver's license of a minor indicating that the licensee is under twenty-one, which is required by Section 66-5-47 NMSA 1978, to determine whether the licensee is a minor, even though the birth date of the licensee on the driver's license shows that the licensee is under twenty-one. ERICA, Inc. v. N.M. Regulation & Licensing Dept., 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

60-7B-7. Presenting false evidence of age or identity.

A minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 87; 1985, ch. 184, § 4; 1991, ch. 119, § 2; 1993, ch. 68, § 24.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person" for "licensee".

The 1991 amendment, effective June 14, 1991, substituted "that" for "which" and "petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-8. Delivery of identity card to minor for use in obtaining alcoholic beverages.

Any person who gives, loans, sells or delivers an identity card to a minor with the knowledge that the minor intends to use the identity card for the purpose of procuring or attempting to procure any alcoholic beverages is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 88; 1991, ch. 119, § 3.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-9. Penalty.

Unless otherwise provided for in Article 7B of Chapter 60, any violation of Sections 60-7B-1 through 60-7B-8 NMSA 1978 by a minor is a petty misdemeanor, and the minor shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 89; 1991, ch. 119, § 4.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted the present provisions for the former provisions, which read "Any violations of Sections 81 through 88 of the Liquor Control Act by a minor is punishable upon conviction by a fine of not less than one hundred dollars ($100), no part of which shall be suspended or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment".

60-7B-10. Minors in licensed premises; regulations.

A. Any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act.

B. A minor shall not enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors, except as

authorized by regulation or as necessitated by an emergency. A person who violates the provisions of this subsection is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. The director of the alcohol and gaming division of the regulation and licensing department shall adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present. The director shall require that signs issued by the division be posted by licensees to inform the public, including minors, of the areas in licensed premises that are open to minors. The regulations may allow minors in those areas of licensed premises where:

(1) the consumption of alcoholic beverages is the primary activity, when a minor is accompanied by a parent, adult spouse or legal guardian; or

(2) there is no consumption of alcoholic beverages.

History: Laws 1981, ch. 39, § 90; 1991, ch. 119, § 5; 1993, ch. 68, § 25; 1994, ch. 50, § 1.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, added "regulations" at the end of the section heading; substituted "any area of a licensed premises that is prohibited to the use of minors" for "the licensed premises without lawful business" in Subsection A; in Subsection B, added the first sentence and substituted "A person who violates the provisions of this subsection" for "Any minor who enters and remains in the licensed premises without lawful business" in the second sentence; and rewrote Subsection C, which formerly defined "lawful business".

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person" for "retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee" in Subsection A and added Subsection C.

The 1991 amendment, effective June 14, 1991, in Subsection B, substituted "petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100), no part of which shall be suspended".

Minor police officer permitted in licensed premises. — This section does not prohibit liquor licensees or their agents from permitting a police officer who is under 21 years of age and in the lawful performance of his duties to be in attendance in the licensed premises of a liquor establishment. 1975 Op. Att'y Gen. No. 75-59.

60-7B-11. Employment of minors.

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages.

B. A person holding a dispenser's, restaurant or club license may employ persons nineteen years of age or older to sell or serve alcoholic beverages in an establishment that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, except that a person under the age of 21 years of age shall not be employed as a bartender.

History: Laws 1981, ch. 39, § 91; 1993, ch. 68, § 26; 1999, ch. 119, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection A, added "Except as provided in Subsection B of this section" and substituted "is" for "shall be," and added Subsection B.

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person" for "retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee".

Minor over 16 years of age, may be employed as entertainer in a night club provided he is accompanied by an adult who is his parent, guardian, spouse or an adult person in whose custody he has been committed at the time by some court. 1955-56 Op. Att'y Gen. No. 55-6105.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 308.

48 C.J.S. Intoxicating Liquors § 231.

60-7B-12. Beer kegs; labeling; notice.

A. Every keg which is sold by a retailer shall be labeled by the retailer in a manner prescribed by the superintendent of regulation and licensing with the name and address of the retailer and a control number assigned to that keg by the retailer. Retailers shall record the name and address and date of birth of the purchaser, the control number and the date of purchase for every keg sold on the notice form required by Subsection B of this section.

B. The superintendent of regulation and licensing shall prescribe a suitable notice form which shall include the pertinent provisions of Chapter 60, Article 7B NMSA 1978

and the penalty for violating the provisions of Chapter 60, Article 7B NMSA 1978. The notice form shall also contain a place for the name, address and driver's license number or other suitable identification for the person purchasing the keg. Every person who buys a keg at retail shall sign the form acknowledging that they have read the form. The signed forms shall be kept by the retailer until the keg is returned to that retailer, or six months, whichever is less, and shall be made available to law enforcement officials upon request.

C. As used in this section "keg" means a package of beer containing more than six gallons of beer at the time it is sold.

History: Laws 1989, ch. 140, § 1.

60-7B-13. Stocking alcoholic beverages in wet bars in hotel guest rooms prohibited; room service.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for the proprietor or manager of a hotel to stock alcoholic beverages in a wet bar located in any guest room or sleeping room in the hotel unless the alcoholic beverages are contained in a locked compartment, the key to which may be made available to a guest after he has produced evidence of his age and identity by any document that contains a picture of the guest issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle driver's license or an identification card issued to a member of the armed forces.

B. Nothing in this section shall be construed to prevent:

(1) the consumption of alcoholic beverages by any person in a hotel guest room or sleeping room; or

(2) the sale or delivery of alcoholic beverages through room service to persons in hotel guest rooms or sleeping rooms; provided any employee of a hotel proprietor or manager delivering alcoholic beverages to a sleeping room may require that an identity card showing proof of age be shown to assure that alcoholic beverages are not sold, delivered or served to a minor in violation of the Liquor Control Act.

C. As used in this section, "wet bar" means a refrigerator, ice chest, cabinet, cupboard, pantry or similar container or storage area that is customarily used to store alcoholic or nonalcoholic beverages for consumption.

History: Laws 1993, ch. 68, § 27.

ARTICLE 8
Revocation and Suspension of Licenses

(Repealed by Laws 1981, ch. 39, § 128.)

60-8-1 to 60-8-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-8-1 to 60-8-11 NMSA 1978, relating to the revocation and suspension of licenses, effective July 1, 1981. For present provisions, see 60-6B-7, 60-6C-1 to 60-6C-9, 60-7A-20 NMSA 1978.

ARTICLE 8A
Trade Practices

60-8A-1. Unfair competition; exclusive outlet; tied house; consignment sales.

It is unlawful for an importer, manufacturer, nonresident licensee or any kind or class of wholesaler, directly or indirectly, or through an affiliate:

A. to require by agreement or otherwise that a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of alcoholic beverages in the state purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons;

B. to induce through any of the following means, a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of any kind or class of alcoholic beverages to purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons:

(1) by acquiring or holding, after the expiration of an existing license, an interest in a license with respect to the premises of the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee;

(2) by acquiring an interest in real or personal property owned, occupied or used by a wholesaler, retailer, dispenser, restaurant licensee or club licensee in the conduct of the buying wholesaler's, retailer's, dispenser's, canopy licensee's, restaurant licensee's, club licensee's or governmental licensee's or its lessee's business, subject to exceptions that the director may prescribe, having due regard for the free flow of commerce, the purposes of this subsection and established trade customs not contrary to the public interest;

(3) by furnishing, giving, renting, lending or selling to a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee equipment, fixtures, signs, supplies, money, services or other thing of value, subject to exceptions that the director may by regulation prescribe, having due regard for public health and welfare, the quantity and value of the articles involved and established trade customs not contrary to the public interest and the purposes of this subsection;

(4) by paying or crediting the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for advertising, display or distribution services;

(5) by requiring a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee to take and dispose of a certain quota or combination of alcoholic beverages; or

(6) by commercial bribery by offering or giving a bonus, premium or compensation to an officer, employee, agent or representative of a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee; or

C. to sell, offer for sale or contract to sell to a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee alcoholic beverages of any kind or class on consignment or under a conditional sale or on a basis other than a bona fide sale; provided that this subsection shall not apply to transactions involving solely the bona fide return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, including a return of alcoholic beverages that are at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee's employees or customers.

History: Laws 1981, ch. 39, § 60; 2015, ch. 102, § 9.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, exempted alcoholic beverage transactions involving the return of certain alcoholic beverages for ordinary commercial reasons arising after the alcoholic beverages have been sold, from the prohibition of an importer, manufacturer, nonresident licensee or any kind or class of wholesaler to sell alcoholic beverages under a conditional sale or on a basis other than a bona fide sale; in the introductory sentence of the section, after "unlawful for", deleted "any" and added "an"; in Subsection A, after "otherwise that", deleted "any" and added "a", and after "purchase alcoholic beverages from", deleted "such" and added "that"; in the introductory paragraph of Subsection B, after "following means,", deleted "any" and added "a", and after "purchase alcoholic beverages from", deleted "such" and added "that"; in Paragraph (1) of Subsection B, after "expiration of", deleted "any" and added

"an", after "existing license,", deleted "any" and added "an", and after "interest in", deleted "any" and added "a"; in Paragraph (2) of Subsection B, after "acquiring", deleted "any" and added "an", after "interest in", deleted "any", after "occupied or used by", deleted "any" and added "a"; after "subject to", deleted "such", after "exceptions", deleted "as" and added "that", after the director", deleted "shall" and added "may", and after "due regard", deleted "to" and added "for"; in Paragraph (3) of Subsection B, after "selling to", deleted "any" and added "a", after "licensee or its lessee", deleted "any", after "subject to", deleted "such", after "exceptions", deleted "as" and added "that", and after "director", deleted "shall" and added "may"; in Paragraph (4) of Subsection B, after "lessee for", deleted "any"; in Paragraph (5) of Subsection B, after "requiring", deleted "any" and added "a"; in Paragraph (6) of Subsection B, after "representative of", deleted "any" and added "a"; in Subsection C, after "contract to sell to", deleted "any" and added "a", after "licensee or its lessee", deleted "any", after "conditional sale or on", deleted "any" and added "a", after "bona fide return of", deleted "merchandise" and added "alcoholic beverages", after "reasons arising after the", deleted "merchandise has" and added "alcoholic beverages have", after "been sold,", added "including a return of alcoholic beverages that are at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee’s employees or customers".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 187.

48 C.J.S. Intoxicating Liquors § 35.

60-8A-2. Territorial designation for distribution of beer; agreement.

Every brewer, whether located within or without New Mexico, may designate territorial limits in the state within which the brand or brands of beer manufactured by the manufacturer may be sold by wholesalers of beer to licensees. A wholesaler of beer may enter into written agreement with the manufacturer of the brand of beer to be sold by the wholesaler which sets forth the territorial limits within which the wholesaler may distribute the beer. A copy of the agreement and any amendments shall be filed with the department by the wholesaler.

History: Laws 1981, ch. 39, § 61.

60-8A-3. Invoices.

Whenever a New Mexico wholesaler delivers any item of alcoholic beverages to a New Mexico retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee, the delivery shall be accompanied by an invoice which accurately and clearly shows the date of the sale and the quantity of each item of merchandise delivered. The retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee receiving the alcoholic beverages shall retain the invoice for a period of two years. The invoices shall be open for

inspection and examination by any employee of the department or the taxation and revenue department during all usual business hours.

History: Laws 1981, ch. 39, § 70.

ANNOTATIONS

"Invoice" construed. — Document, which was labeled as an invoice, listing various types of beer along with the quantity, unit price, total price, and a discount, was an "invoice" within the meaning of this section. Pucci Distrib. Co. v. Nellos, 110 N.M. 374, 796 P.2d 595 (1990).

Licensee must observe obligations of each license owned. — A person owning more than one license must still exercise the rights and observe the obligations granted by each license independently of the other licenses. 1980 Op. Att'y Gen. No. 80-34.

A licensee holding more than one dispenser or retailer license may not purchase all the alcoholic liquors needed by his multiple operations under the privilege of only one license, store them unsegregated in a common facility, and then distribute them from the common facility, as needed, to the different licensed operations. 1980 Op. Att'y Gen. No. 80-34.

Law reviews. — For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 205.

60-8A-4. Returns.

A. The return or repossession of any stock of alcoholic beverages to or by any licensed New Mexico wholesaler shall not be construed as a sale within the meaning of any provision of the Liquor Control Act [60-3A-1 NMSA 1978].

B. The provisions of Subsection A of this section shall apply in case of the return or repossession of any alcoholic beverages to or by a nonresident licensee by or from any New Mexico wholesaler.

History: Laws 1981, ch. 39, § 73.

60-8A-5. Debts for merchandise sold in violation of law unenforceable; no garnishment on sales by retailers and dispensers.

No action shall be maintained or a garnishment or attachment be issued to collect any debt for merchandise sold, served or delivered in violation of the Liquor Control Act

[60-3A-1 NMSA 1978]. No writ of garnishment shall issue where the debt or obligation or the cause of action in the original suit or the garnishment action is founded upon the sale or purchase of alcoholic beverages by or from a retailer or dispenser as defined in Section 3 [60-3A-3 NMSA 1978] of that act.

History: Laws 1981, ch. 39, § 76.

ANNOTATIONS

Writ of garnishment. — Laws 1909, ch. 62, § 1, relating to writs of garnishment and grounds for garnishment, was repealed by Laws 1969, ch. 139, § 2.

Application of section. — This section applies not only to illegal credit sales by retailers to consumers, but sanction of disallowing actions to recover debt also applies to violations of the tied-house laws. N.M. Beverage Co. v. Blything, 102 N.M. 533, 697 P.2d 952 (1985).

Law reviews. — For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 213.

60-8A-6. Primary American source of supply.

For the purpose of tax revenue control, no holder of a nonresident license or resident broker license may solicit, accept or fill an order for distilled spirits or wine from a holder of any type of wholesaler's license unless the nonresident licensee or resident broker is the primary American source of supply for the brand of distilled spirits or wine that is ordered. As used in this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler or the exclusive agent of any of those. To be the "primary American source of supply," the nonresident licensee or resident broker must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

History: Laws 1981, ch. 39, § 122.

60-8A-7. Franchises; definitions.

As used in Sections 60-8A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either expressed or implied, whether written or oral, between a supplier and wholesaler, wherein:

(1) a commercial relationship of definite duration or continuing indefinite duration is involved; and

(2) the wholesaler is granted the right to buy and to offer, sell and distribute within this state or any designated area thereof such of the supplier's brand of packaged alcoholic beverages as may be agreed upon;

B. "good cause":

(1) includes failure by the wholesaler to substantially comply with the essential and reasonable provisions of a contract, agreement or understanding with a supplier;

(2) includes use of bad faith on the part of the wholesaler in carrying out the terms of the franchise; and

(3) does not include failure or refusal on the part of the wholesaler to engage in any trade practice, conduct or activity that may result in a violation of any federal law or regulation or any law or regulation of this state;

C. "supplier" means a person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, importer, broker, agent or its successors or assigns that distributes any or all of its brands of alcoholic beverages through licensed wholesalers in this state. "Supplier" does not include successors or assigns for spirituous liquors or wines;

D. "termination" includes any substantial alteration or modification of the provisions of the franchise; and

E. "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing in the trade as evidenced by all surrounding circumstances.

History: Laws 1981, ch. 39, § 54; 1987, ch. 263, § 1; 2003, ch. 100, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, in Subsection C, substituted "agent or its successors or assigns that" for "or agent which" following "importer, broker" and added the last sentence.

60-8A-8. Franchises; violations.

A. The purpose of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 is to provide an equal bargaining position between the parties and to protect the health, safety and welfare of the citizens by ensuring that there is an orderly and fair distribution of alcoholic beverages in the state.

B. It is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier, directly or through any officer, agent or employee, to fail to act in good faith in performing or complying with any terms, provisions or conditions of the franchise, or in terminating, canceling or not renewing a franchise with a wholesaler, unless such termination, cancellation or failure to renew is done in good faith and for good cause. Good cause shall not include supplier mergers or acquisitions or consolidation of brands with one wholesaler.

C. If more than one franchise for the same brand or brands of alcoholic beverages is originally granted to different wholesalers in this state, it is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for any supplier to discriminate in any of the terms, provisions and conditions of the franchise between the wholesalers. It is not the purpose of this section to allow suppliers to unilaterally and without good cause or in violation of the contract change the terms of an existing franchise or exclusive distribution agreement by authorizing the transfer of brands to another wholesaler in violation of this act [60-8A-7 to 60-8A-11 NMSA 1978].

History: Laws 1981, ch. 39, § 55; 1993, ch. 57, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, added present Subsection A and redesignated former Subsections A and B as present Subsections B and C; substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54 through 58 of the Liquor Control Act" in Subsections B and C; added the second sentences in Subsections B and C; and inserted "originally" near the beginning of the first sentence in Subsection C.

Evidence warranting appointment of second distributor. — The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of Section 60-8A-7 NMSA 1978, defining "good faith").

Section not given retroactive effect. — This section was not to be applied retroactively to reach an agreement made before the act became effective, even where the termination of such agreement occurred afterwards. Sw. Distrib. Co. v. Olympia Brewing Co., 90 N.M. 502, 565 P.2d 1019 (1977).

Choice of law. — Kentucky law and not the New Mexico Alcoholic Beverage Franchise Act applied to distributorship contracts, where the contracts bore a reasonable relation

to the state of Kentucky and the choice of law provision therein did not violate some fundamental principle of justice. United Wholesale Liquor Co. v. Brown-Forman Distillers Corp., 108 N.M. 467, 775 P.2d 233 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of state franchising statute, 67 A.L.R.3d 1299.

60-8A-9. Franchises; recovery of damages; injunction; remedies independent.

A. Any wholesaler may bring an action against a supplier for violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 in any court of competent jurisdiction, and may recover damages, together with the costs of the action, including reasonable attorneys' fees.

B. Any wholesaler may bring an action against a supplier in any court of competent jurisdiction for injunctive relief against termination, cancellation or failure to renew a franchise in violation of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978.

C. The remedies provided in this section are independent of and supplemental to any other remedy available to the wholesaler in law or equity.

D. It is the intent of the legislature that the Liquor Control Act [60-3A-1 NMSA 1978] control contractual relations between suppliers and wholesalers in the state. Any contract provision which has the effect of circumventing the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, whether a "choice of law" provision, or other provision, shall be deemed null and void and not applicable to franchises between suppliers and wholesalers in the state.

E. In any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, if it is determined that the supplier terminated a franchise without good cause or not in good faith, such supplier shall be responsible to any wholesaler so aggrieved in damages in an amount not less than three times the annual gross profits derived by such wholesaler from the sale of any and all brands under such franchise.

History: Laws 1981, ch. 39, § 56; 1993, ch. 57, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54 through 58 of the Liquor Control Act" in Subsections A and B and added Subsections D and E.

60-8A-10. Franchises; actions; defense.

In any action brought by a wholesaler against a supplier for termination, cancellation or failure to renew a franchise in violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978, it is a complete defense for the supplier to prove that the termination, cancellation or failure to renew was done in good faith and for good cause. It shall not be a defense to any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier to claim that the laws of another state control over those provisions or in any way make the cited provisions not applicable.

History: Laws 1981, ch. 39, § 57; 1993, ch. 57, § 3.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54 through 58 of the Liquor Control Act" and added the second sentence.

Evidence warranting appointment of second distributor. — The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of Section 60-8A-7 NMSA 1978, defining "good faith").

60-8A-11. Franchises; time limit for bringing of action.

Any action brought pursuant to Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act shall be forever barred unless commenced within one year after the cause of action has accrued.

History: Laws 1981, ch. 39, § 58.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 449.

60-8A-12. Filing of schedules required.

A. No brand of spirituous liquors shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a price and discount schedule is filed with the director and is then in effect.

B. Such schedule shall be filed by the owner of the brand who is the holder of a nonresident license issued by the department.

History: Laws 1981, ch. 39, § 62; 1985, ch. 5, § 1.

ANNOTATIONS

Former Discrimination in Selling Act constitutional. — The 1967 New Mexico Discrimination in Selling Act, former Sections 60-12-1 through 60-12-10 NMSA 1978, similar to present Sections 60-8A-12 through 60-8A-19 NMSA 1978, was constitutional. U.S. Brewers Ass'n v. Rodriguez, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 237.

Price regulation, 14 A.L.R.2d 699.

48 C.J.S. Intoxicating Liquors § 191.

60-8A-13. Selling to wholesalers at prices different than shown in schedule.

A brand of spirituous liquors shall not be sold to wholesalers except at the price and discounts shown on the schedule unless prior written permission of the director is granted for reasons not inconsistent with the purposes of Sections 60-8A-12 through 60-8A-19 NMSA 1978.

History: Laws 1981, ch. 39, § 63; 1985, ch. 5, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.

48 C.J.S. Intoxicating Liquors § 212.

60-8A-14. Form of schedule.

The schedule of prices and discounts shall be in writing, duly verified and filed in the number of copies, form and at such time as required by the director. It shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents and age and proof where stated on the label; the number of bottles contained in each case; the bottle and case price to wholesalers, which shall be individual for each item; the discounts for quantity, if any; and the discounts for time of payment, if any.

History: Laws 1981, ch. 39, § 64.

60-8A-15. Filing of affirmation.

The owner of a brand of spirituous liquors shall file as part of the schedule a verified affirmation that the price to New Mexico wholesalers is no greater than the lowest price at which the item of spirituous liquors is sold by the brand owner or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section, "related person" means any person:

A. in any business in which the brand owner has an interest, direct or indirect, by stock or other security ownership, as lender or lienor or by interlocking director or officer;

B. in the exclusive, principal or substantial business of selling a brand of spirituous liquors purchased from the brand owner; or

C. who has an exclusive franchise or contract to sell the brand of spirituous liquors.

History: Laws 1981, ch. 39, § 65; 1985, ch. 5, § 3.

ANNOTATIONS

Constitutionality. — This section is neither arbitrary nor discriminatory and does not violate due process or equal protection and is, therefore, constitutional. U.S. Brewers Ass'n v. Director of N.M. Dep't of ABC, 100 N.M. 216, 668 P.2d 1093 (1983), appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

This section violates the Commerce Clause of the United States Constitution even though it regulates all brand owners of intoxicating liquors evenhandedly, arguably promotes the state's legitimate interest in assuring the lowest possible price, for its residents, and allows brand owners to change out-of-state prices for a product once the price and discount schedule mandated by Section 60-8A-12 NMSA 1978 is filed, because its practical effect is to control prices in other states. Brown-Forman Corp. v. N.M. Dep't of ABC, 672 F. Supp. 1383 (D.N.M. 1987).

60-8A-16. Failure to file; schedule deemed invalid.

If an affirmation with respect to any item of spirituous liquors is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquors, and the item shall not be sold to or purchased by any wholesaler during the period covered by the schedule.

History: Laws 1981, ch. 39, § 66; 1985, ch. 5, § 4.

60-8A-17. Determination of lowest price.

In determining the lowest price for which any item of spirituous liquors was sold in any other state or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under the schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing the item in the other state or in the District of Columbia. Nothing contained in Sections 60-8A-12 through 60-8A-19 NMSA 1978 shall prevent differentials in price which make only due allowance for differences in state taxes and fees and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, the liter of spirituous liquors.

History: Laws 1981, ch. 39, § 67; 1985, ch. 5, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 265.

Validity of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail, 96 A.L.R.3d 639.

60-8A-18. Violation; penalty.

Any person who knowingly makes a false statement in any affirmation made and filed pursuant to Sections 62 through 69 [60-8A-12 to 60-8A-19 NMSA 1978] of the Liquor Control Act shall be liable for suspension of any license issued by the department for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

History: Laws 1981, ch. 39, § 68.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 431.

48 C.J.S. Intoxicating Liquors § 286.

60-8A-19. Authority to refuse affirmations.

Upon finding that a person has violated the Liquor Control Act [60-3A-1 NMSA 1978] and after appeal or, in the event no appeal is taken, upon the expiration of the time

during which an appeal could have been taken, the director may refuse to accept any affirmation required to be filed by such person for a period not to exceed three months.

History: Laws 1981, ch. 39, § 69.

ANNOTATIONS

Veto of severability clause unconstitutional. — The governor's veto of Laws 1981, ch. 39, § 129, the severability clause of the Liquor Control Act, was unconstitutional under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

ARTICLE 9
Trade Practices

(Repealed by Laws 1981, ch. 39, § 128.)

60-9-1 to 60-9-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-9-1 to 60-9-12 NMSA 1978, relating to trade practices, effective July 1, 1981. For present provisions, see 60-8A-1 to 60-8A-11.

ARTICLE 10
Offenses and Penalties

60-10-1 to 60-10-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-10-1 to 60-10-15 NMSA 1978, relating to offenses, effective July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

60-10-16. Recompiled.

ANNOTATIONS

Recompilations. — Former 60-10-16 NMSA 1978, relating to selling or giving liquor to minors and possession by minors has been recompiled as 60-7B-1.1 NMSA 1978.

60-10-17 to 60-10-40. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-10-17 to 60-10-40 NMSA 1978, relating to offenses and penalties, effective July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

ARTICLE 11
Miscellaneous Provisions

(Repealed by Laws 1981, ch. 39, § 128.)

60-11-1 to 60-11-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-11-1 to 60-11-4 NMSA 1978, relating to miscellaneous provisions of the Liquor Control Act, effective July 1, 1981. For present provisions, see 60-3A-5, 60-8A-5 NMSA 1978.

ARTICLE 12
Discrimination in Selling Act

(Repealed by Laws 1981, ch. 39, § 128.)

60-12-1 to 60-12-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-12-1 to 60-12-10 NMSA 1978, the "Discrimination in Selling Act," effective July 1, 1981. For present provisions, see 60-8A-12 to 60-8A-19 NMSA 1978.

ARTICLE 13
Construction Industries Licensing

60-13-1. Short title.

Chapter 60, Article 13 NMSA 1978 may be cited as the "Construction Industries Licensing Act".

History: 1953 Comp., § 67-35-1, enacted by Laws 1967, ch. 199, § 1; 1989, ch. 6, § 1.

ANNOTATIONS

Cross references. — For exemption of construction industries committee from authority of superintendent of regulation and licensing, see 9-16-12 NMSA 1978.

For excavation damage to pipelines and underground utility lines, see 62-14-1 NMSA 1978 et seq.

For prohibition against removal or alteration of identification marks from construction equipment, see 70-2-36 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "Chapter 60, Article 13 NMSA 1978" for "this act".

Compiler's notes. — This section was not enacted as part of the Construction Industries Licensing Act but has been compiled here for the convenience of the user.

Licensing boards not contravention of state constitution. — Former act to create boards for the licensing of contractors, and vest them with administrative powers, did not contravene N.M. Const., art. VI, § 13, vesting original jurisdiction of all matters and causes in the district courts. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

Purpose of the act is to provide a comprehensive method for the licensing and control of contractors in order to protect the public from either irresponsible or incompetent contractors. In re Romero, 535 F.2d 618 (10th Cir. 1976).

Phrase "not otherwise exempt by law" in Section 3-38-1 NMSA 1978, allowing licensing and regulation of certain businesses, refers to the exemptions from licensing and regulation created by the Construction Industries Licensing Act, those created by the Private Investigators' Act (now Private Investigations Act, Chapter 61, Article 27B NMSA 1978) and possibly to other statutory exemptions. 1969 Op. Att'y Gen. No. 69-72.

This act does not apply to state agencies insofar as licensing is concerned. 1971 Op. Att'y Gen. No. 71-55.

Employment of former legislative member. — A member of the legislature who resigns his position as a member of such legislature may not be legally employed by the construction industries commission (now replaced by the construction industries division). 1968 Op. Att'y Gen. No. 68-121.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits § 1 et seq.; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done - modern cases, 44 A.L.R.4th 271.

Products liability: roofs and roofing materials, 3 A.L.R.5th 851.

Municipal liability for negligent performance of building inspector's duties, 24 A.L.R.5th 200.

53 C.J.S. Licenses § 34.

60-13-1.1. Purpose of the act.

The purpose of the Construction Industries Licensing Act [60-13-1 NMSA 1978] is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work. To effect this purpose, it is the intent of the legislature that:

A. examination, licensing and certification of the occupations and trades within the jurisdiction of the Construction Industries Licensing Act be such as to ensure or encourage the highest quality of performance and to require compliance with approved codes and standards and be, to the maximum extent possible, uniform in application, procedure and enforcement;

B. there be eliminated the wasteful and inefficient administrative practices of dual licensing, duplication of inspection, nonuniform classification and examination of closely related trades or occupational activities and jurisdictional conflicts; and

C. contractors be required to furnish and maintain evidence of responsibility.

History: 1953 Comp., § 67-35-4, enacted by Laws 1967, ch. 199, § 4; 1978 Comp., § 60-13-4, recompiled as § 60-13-1.1 by Laws 1989, ch. 6, § 2.

ANNOTATIONS

Statutory policy. — The policy of the CILA is best served by imposing proportional liability on general contractors who hire unlicensed independent contractors to do dangerous work requiring a license for foreseeable injuries those independent

contractors suffer due to their lack of qualifications. A general contractor who negligently hires an unqualified independent contractor to perform dangerous work may be liable for injuries to that same unqualified independent contractor. Tafoya v. Rael, 2008-NMSC-057, 145 N.M. 4, 193 P.3d 551.

Purpose of this act is to protect the public from incompetent and irresponsible builders, and in view of the severity of the sanctions and the forfeitures which could be involved, courts are reluctant to construe the act more broadly than necessary for achievement of its purpose; its provisions should not be transformed into an "unwarranted shield for the avoidance of a just obligation." Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

60-13-2. General definitions.

As used in the Construction Industries Licensing Act:

A. "division" means the construction industries division of the regulation and licensing department;

B. "trade bureau", "jurisdiction" and "trade bureau jurisdiction" mean the electrical bureau, the mechanical bureau, the general construction bureau or the liquefied petroleum gas bureau of the division;

C. "jurisdictional conflict" means a conflict between or among trade bureaus as to the exercise of jurisdiction over an occupation or trade for which a license is required under the provisions of the Construction Industries Licensing Act;

D. "person" includes an individual, firm, partnership, corporation, association or other organization, or any combination thereof;

E. "qualifying party" means an individual who submits to the examination for a license to be issued under the Construction Industries Licensing Act and who is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with that act;

F. "certificate of qualification" means a certificate issued by the division to a qualifying party;

G. "journeyman" means an individual who is properly certified by the electrical bureau or the mechanical bureau, as required by law, to engage in or work at the certified trade;

H. "apprentice" means an individual who is engaged, as the individual's principal occupation, in learning and assisting in a trade;

I. "wages" means compensation paid to an individual by an employer from which taxes are required to be withheld by federal and state law;

J. "public use" means the use or occupancy of a structure, facility or manufactured commercial unit to which the general public, as distinguished from residents or employees, has access;

K. "bid" means a written or oral offer to contract;

L. "building" means a structure built for use or occupancy by persons or property, including manufactured commercial units and modular homes or premanufactured homes designed to be placed on permanent foundations whether mounted on skids or permanent foundations or whether constructed on or off the site of location;

M. "inspection agency" means a firm, partnership, corporation, association or any combination thereof approved in accordance with regulations as having the personnel and equipment available to adequately inspect for the proper construction of manufactured commercial units, modular homes or premanufactured homes;

N. "director" means the administrative head of the division;

O. "chief" means the administrative head of a trade bureau;

P. "commission" means the construction industries commission;

Q. "manufactured commercial unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width that is constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for use as an office or other commercial purpose and that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, but that does not include any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes. "Manufactured commercial unit" does not include modular or premanufactured homes, built to a nationally recognized standard adopted by the commission and designed to be permanently affixed to real property;

R. "code" means a body or compilation of provisions or standards adopted by the commission that govern contracting or some aspect of contracting; that provide for safety and protection of life and health; and that are published by a nationally recognized standards association;

S. "inspector" means a person certified by the division and certified by one or more trade bureaus to conduct inspections of permitted work to ensure that all work performed by a contractor or the homeowner complies with the applicable code;

T. "statewide inspector's certificate" means a certificate that enables an inspector to conduct inspections in one or more trade bureau jurisdictions for the state or any county, municipality or other political subdivision that has a certified building official in its employ; and

U. "certified building official" means an employee of any county, municipality or other political subdivision who has a broad knowledge of the construction industry, holds a current nationally recognized code organization certified building official certificate and has:

(1) been a practicing inspector or practicing contractor for at least five years; or

(2) held a management position in a construction-related company or construction organization for at least five of the past ten years.

History: 1953 Comp., § 67-35-2, enacted by Laws 1967, ch. 199, § 2; 1969, ch. 224, § 1; 1972, ch. 11, § 1; 1973, ch. 259, § 6; 1975, ch. 331, § 15; 1977, ch. 245, § 166; 1983, ch. 105, § 1; 1988, ch. 102, § 2; 1989, ch. 6, § 3; 2003, ch. 264, § 1; 2013, ch. 142, § 1; 2013, ch. 153, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, added definitions; in Subsection B, after "'trade bureau'", deleted "means" and added "'jurisdiction' and 'trade bureau jurisdiction' mean"; and added Subsections S through U.

Compiler's notes. — Laws 2013, ch. 142, § 1, effective June 14, 2013, and Laws 2013, ch. 153, § 1, effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 1. *See* 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "but not limited to" following "occupancy by persons or property, including" near the beginning of Subsection L; substituted "a nationally recognized standard adopted by the commission and" for "Uniform Building Code standards" following "built to" near the end of Subsection Q; in Subsection R, substituted "adopted by the commission that" for "which" following "provisions or standards" near the beginning, substituted "and that are published" for "which are approved" following "life and health;" near the middle, and deleted "and which standards are in general use in the United States or in a clearly defined region of the United States. The term 'code' includes the Uniform Building Code, the National Electrical Code, the Uniform Plumbing and Mechanical Code, the LP Gas Code and any other codes adopted by the commission" at the end.

60-13-3. Definition; contractor.

As used in the Construction Industries Licensing Act [60-13-1 NMSA 1978], "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, bridle path, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer

and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative that constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company that installs, alters or repairs its facilities, including plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property; provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act; and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring that are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time that, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the work being casual, minor or inconsequential, such as handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978], that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars ($7,200) compensation a year;

(15) any person, firm or corporation that installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company that constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals;

(17) any weatherization project not exceeding two thousand dollars ($2,000) that has been approved and is administered by a federal or state agency; or

(18) a person who performs work consisting of short-term depreciable improvements to commercial property to provide needed repairs and maintenance for items not covered by building codes adopted by the construction industry commission if the total amount paid the person for the work on a single undertaking, including materials, services and wages of those who work for him, does not exceed the sum of five thousand dollars ($5,000).

History: 1953 Comp., § 67-35-3, enacted by Laws 1978, ch. 66, § 1; 1979, ch. 46, § 1; 1979, ch. 49, § 1; 1986, ch. 107, § 1; 1987, ch. 283, § 1; 1989, ch. 6, § 4; 1997, ch. 181, § 2; 1997, ch. 235, § 1; 1999, ch. 130, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 66, § 1, repealed former 67-35-3, 1953 Comp. (former 60-13-3 NMSA 1978), as amended by Laws 1977, ch. 377, § 1, relating to definition of "contractor," and enacted a new 67-35-3, 1953 Comp.

The 1999 amendment, effective June 18, 1999, added Paragraph D(18); deleted "but not limited to" preceding "constructing" in Subsection A, preceding "plumbing fixtures" in

Paragraph D(8), and preceding "handyman repairs" in Paragraph D(14); and made minor stylistic changes throughout the section.

The 1997 amendments. — Laws 1997, ch. 181, § 2, amending this section effective July 1, 1997 by adding a new Paragraph D(17) relating to persons performing needed repairs or maintenance to commercial property when the total amount paid for a single undertaking does not exceed $5,000, was approved April 10, 1997. However, Laws 1997, ch. 235, § 1, amending this section by adding new Paragraph D(17) relating to weatherization projects not exceeding $2,000, but not giving effect to the changes made by the first 1997 amendment, was approved April 11, 1997. This section was set out as amended by Laws 1997, ch. 235, § 1. See 12-1-8 NMSA 1978.

Contractor must have a license. — An individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act is required to have a contractor's license when performing the specific acts described in the Construction Industries Licensing Act, regardless of whether the individual can be classified as an employee of a licensed contractor under the common law control test. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, reversing 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Common law control test does not apply. — The common law control test for determining whether an individual is an employee does not apply to determine whether an individual is required to have a license under the Construction Industries Licensing Act. An unlicensed contractor's classification as an employee of a licensed contractor under the common law control test does not exempt the unlicensed contractor from the licensing requirements of the Construction Industries Licensing Act. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, reversing 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Former Contractors' License Law of 1939 was not unconstitutional as a denial of due process since the legislature could enact laws in the exercise of its police powers, provided only that the exercise was not so unreasonable as to amount to confiscation of property or a denial of the right to engage in a particular trade, occupation or profession. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Filing requirement does not bar eligibility for exemption. — The filing requirement in this section is directory, not mandatory, and as such does not to constitute a bar to the plaintiff's eligibility for the intended exemption. Stokes v. Tatman, 111 N.M. 188, 803 P.2d 673 (1990).

"Contractor" status requires control of installation. — The ordering and delivering of materials or the mere arranging for their installation does not bring suppliers of materials into the realm of the definition of "contractor" under subsection A where they

are not, and their contracts do not place them, in control of the installation. Verchinski v. Klein, 105 N.M. 336, 732 P.2d 863 (1987).

"Contractor" status requires control of employees. — Where an employee leasing contractor that provided construction workers to the general contractor and the general contractor supervised and controlled the workers on the construction site, the employee leasing contractor did not act in the capacity of a contractor. Eastland Fin. Servs. v. Mendoza, 2002-NMCA-035, 132 N.M. 24, 43 P.3d 375.

Contractor when promise to mine and move copper ore. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-2, 1953 Comp. (now repealed). Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Contractor when no hourly wage, time slips, or employee tax forms. — Defendant was not an employee of the person for whom he had contracted to construct a trailer park, and was therefore required to obtain a contractor's license, where he never received an hourly wage, did not submit time slips or employee tax forms, and the evidence was uncontroverted that the work performed fell within the requirements of Subsection A. Mascarenas v. Jaramillo, 111 N.M. 410, 806 P.2d 59 (1991).

Contracts for "incidental" work exempted under former law. — Failure to reemploy the word "incidental" in the 1945 amendment did not leave the former Contractors' License Act applicable to contracts for work which was only "incidental" to the occupations or pursuits named as being exempted from the act. B. & R. Drilling Co. v. Gardner, 55 N.M. 118, 227 P.2d 627 (1951).

Test as to independent contractor or employee. — The principal test to determine whether one is an independent contractor or an employee is whether the employer has any control over the manner in which the details of the work are to be accomplished. Mere suggestions by the employer or the "directing control essential to coordinate the several parts of a larger undertaking" does not affect the relationship. It is the right to control, not the exercise of it, that furnishes the test. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mech. & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Independent contractor for assessment work. — Where plaintiff, an expert miner, who was working his adjoining claims was hired to watch defendant's claim and to do defendant's assessment work to consist of 70 feet of tunnel for an agreed price per foot, the details of the work to be left entirely to plaintiff, plaintiff was acting as an independent contractor in the assessment work. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mech. & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Removal of structures included. — Although the removal of structures is not specifically included within the items named, the section provides that contracting includes the altering of buildings, and altering has some meaning other than constructing, repairing, installing or demolishing; otherwise, all of the words would not have been used in the section. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Neither the asserted contract for removal of a structure from plaintiff's land nor the removal process itself involves building or improving the structures (Subsection D(11)), or building, installations, repairs or alterations on a farm or ranch owned, occupied or operated by plaintiff (Subsection D(12)). Therefore, these exclusions do not exclude the asserted contract of removal from the meaning of "constructing." Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

No license required for contract to drill well. — A contract for drilling a well to supply water for agricultural purposes fell within the exceptions to which the former Contractors' License Act of 1939 did not apply. B. & R. Drilling Co. v. Gardner, 55 N.M. 118, 227 P.2d 627 (1951).

No license requirement for cleaning activity. — Where construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of this section. Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

License required in partnership's name. — Contractors' License Law, 67-16-2, 1953 Comp. (now repealed), and the rules and regulations issued pursuant thereto, compelled partnerships to be licensed to hold a license in the partnership name. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

Necessary to establish that license required. — Defendant, seeking to invoke 67-16-14, 1953 Comp. (now repealed), prohibiting an unlicensed contractor from maintaining an action, must establish that plaintiff was in fact required to be licensed. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

Effect of knowledge of other party's lack of license. — Formerly the fact that defendants in an action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with former licensing statute. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Standing to attack constitutionality under former law. — Duly licensed contractors operating unmolested under the former act creating the license board (now abolished) were not in position to question constitutionality of the act where no proceeding was pending, contemplated or threatened by the board to revoke their licenses and no other

action was contemplated by the board which would affect them adversely. Brockman v. Contractors Licensing Bd., 48 N.M. 304, 150 P.2d 125 (1944).

Highway contractors are included within definition of term "contractor" as used in the former Contractors' License Law. 1961-62 Op. Att'y Gen. No. 61-69.

Hourly worker not necessarily exempt. — The fact that a person undertakes to do work for another at an hourly rate does not necessarily by that fact alone exempt him from the definition of "contractor" under former law. 1955-56 Op. Att'y Gen. No. 55-6332.

Construction for own use on own land not included. — Under former version of this section (67-16-2, 1953 Comp.), a person constructing billboards for his own use on his own land did not need to be licensed as a contractor, as such person did not "undertake" to construct, alter, repair, add to or improve anything within the meaning of that section. "Undertakes" as used in the statutory definition of "contractor," necessarily meant "undertakes with another," and did not include work done by a person alone for his own uses. 1966 Op. Att'y Gen. No. 66-24.

Bowling alley, related fixtures subject to regulation. — Bowling alleys and fixtures related thereto, as in the installation of a bar, are fabricated into a building under a performance contract and for a lump sum and are not considered to be personalty; therefore, the operation in question is subject to regulation under the former act. 1957-58 Op. Att'y Gen. No. 58-155.

Mere moving of completed structure is not included under laws applied to contractors' licensing. 1953-54 Op. Att'y Gen. No. 53-5653.

When completion and moving of house included. — In the event a house had been wholly constructed elsewhere and moved to the site, the person so moving and setting the house upon the site was not within the provisions of the Contractors' Licensing Law (now repealed). In the event the prefabrication took place in sections and the house or structure was completed on the site, then the persons completing it, if all the other provisions of the law were applicable were under the former law pertaining to the contractors' licensing board (now abolished). 1953-54 Op. Att'y Gen. No. 53-5653.

Sale of prefabricated structure not included. — In view of the rule requiring strict interpretation of licensing statutes, a person who sells prefabricated structures is in no way included in the terms and provisions of the former Contractors' Licensing Law, whether he sells the structure delivered on the building site or whether the structure is sold F.O.B. manufacturer's plant. 1953-54 Op. Att'y Gen. No. 53-5653.

Installation of turbine water well pump. — A person who installs a turbine water well pump need not obtain a contractor's license. 1988 Op. Att'y Gen. No. 88-28.

Prospect and contract miners not subject to act. — Generally speaking, the term "project" is not specifically applicable to prospect or development mining operations, but more recognizable as used in commercial or domestic realty terminology; accordingly, under former law, prospect and contract miners were not subject to this act. 1957-58 Op. Att'y Gen. No. 57-105.

Agency or political subdivision of state not covered under former law. — Under former 67-16-3, 1953 Comp. of the Contractors' License Law, an agency or political subdivision of the state was not required to have a contractor's license for any classification as set forth in the rules and regulations of that law. That section confined the necessity for securing licenses to "any person, firm, co-partnership, corporation, association or other organization, or any combination thereof." Neither the state, its agencies or political subdivisions were mentioned in this list of business entities. Furthermore, the state could not be included in any of such business entities because the state was a body politic and not an association, society or corporation. Thus, the contractors' license board (now abolished) had no authority to license a water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is a "contractor" within statutes requiring the licensing of, or imposing a license tax upon, a "contractor" without specifying the kinds of contractors involved, 19 A.L.R.3d 1407.

53 C.J.S. Licenses § 34.

60-13-3.1. Employer and employee relationship; independent contractor; improper reporting; penalty; license sanctions.

A. Except as provided in Subsection D of this section, for purposes of the employer and employee relationship within those construction industries subject to the Construction Industries Licensing Act, a contractor who is an employer shall consider a person providing labor or services to the contractor for compensation to be an employee of the contractor and not an independent contractor unless the following standards indicative of an independent contractor are met:

(1) the person providing labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) the person providing labor or services is responsible for obtaining business registrations or licenses required by state law or local ordinance for the person to provide the labor or services;

(3) the person providing labor or services furnishes the tools or equipment necessary to provide the labor or services;

(4) the person providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) payment for labor or services is made upon completion of the performance of specific portions of a project or is made on the basis of a periodic retainer; and

(6) the person providing labor or services represents to the public that the labor or services are to be provided by an independently established business. A person is engaged in an independently established business when four or more of the following circumstances exist:

(a) labor or services are primarily performed at a location separate from the person's residence or in a specific portion of the residence that is set aside for performing labor or services;

(b) commercial advertising or business cards are purchased by the person, or the person is a member of a trade or professional association;

(c) telephone or email listings used for the labor or services are different from the person's personal listings;

(d) labor or services are performed only pursuant to a written contract;

(e) labor or services are performed for two or more persons within a period of one year; or

(f) the person assumes financial responsibility for errors and omissions in labor or services as evidenced by insurance, performance bonds and warranties relating to the labor or services being provided.

B. The labor department shall administer and enforce the provisions of Subsection A of this section, including coordination with the construction industries division of the regulation and licensing department.

C. A contractor who intentionally and willfully reports to a state agency or other client that an employee is an independent contractor or who, for the purposes of a program administered by a state agency, intentionally and willfully treats or otherwise lists an employee as an independent contractor when the employee's status does not meet the standards indicative of an independent contractor as identified in Subsection A of this section is guilty of a misdemeanor and shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for a definite term not to exceed six months or both. For the purposes of this subsection, "state agency" means an administration, board, commission, department or division of this state.

D. Conviction of a contractor for violating Subsection C of this section shall be grounds for the construction industries commission to take action to suspend, revoke or

refuse to renew a license issued to that contractor by the construction industries division of the regulation and licensing department.

E. Subsections A, B and C of this section shall not be construed to affect or apply to a common law or statutory action providing for recovery in torts and shall not be construed to affect or change the common law interpretation of independent contractor status as it relates to tort liability.

History: Laws 2005, ch. 94, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

Compiler's notes. — This section was not enacted as part of the Construction Industries Licensing Act but has been compiled here for the convenience of the user.

Contractor must have a license. — The classification of an individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act and as an employee under Section 60-13-3.1 NMSA 1978 does not exempt the individual from the licensing requirements of the Construction Industries Licensing Act. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

60-13-4. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 6, § 2 recompiles 60-13-4 NMSA 1978, relating to purpose of the Construction Industries Licensing Act, as 60-13-1.1 NMSA 1978, effective July 1, 1989.

60-13-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-5 NMSA 1978, as enacted by Laws 1974, ch. 78, § 33, relating to criminal offender's character evaluation, effective July 1, 1989.

60-13-6. Construction industries commission created; membership; duties.

A. There is created within the division the "construction industries commission". The commission shall be composed of nine voting members who shall serve at the pleasure of the governor. Members shall be appointed by the governor, with the advice and consent of the senate, as follows:

(1) one member who is a representative of the residential construction industry of this state;

(2) one member who is a licensed electrical contractor;

(3) one member who is a licensed mechanical contractor;

(4) one member who is a licensed and practicing architect;

(5) one member who is a practicing general contractor;

(6) one member who is a representative of the liquefied petroleum gas industry;

(7) one member who is a resident of the state, who is not a licensed contractor or certified journeyman and who shall represent the people of New Mexico;

(8) one member who is a representative of the subcontracting industry of the state; and

(9) one member who is a representative of organized labor.

Members shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

C. The commission shall annually elect a chair and vice chair from its membership. The director shall serve as the executive secretary of the commission.

D. The commission shall meet bimonthly or at the call of the chair.

E. The commission shall establish policy for the division. It shall advise on, review, coordinate and approve or disapprove all rules, standards, codes and licensing requirements that are subject to the approval of the commission under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act [70-5-2 NMSA 1978] so as to ensure that uniform codes and standards are promulgated and conflicting provisions are avoided. However, the commission shall not enact a bylaw, order, building code, policy or rule requiring the installation of a residential fire protection

sprinkler system in detached one- and two-family dwellings and multiple single-family dwellings, such as townhouses that are not more than three stories above grade plane in height and that have a separate means of egress and their accessory structures. The commission shall:

(1) revoke or suspend, for cause, any license or certificate of qualification issued under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act; and

(2) define and establish all license classifications. The licensee shall be limited in bidding and contracting as provided in Subsection B of Section 60-13-12 NMSA 1978. A licensee, subsequent to the issuance of a license, may make application for additional classification and be licensed in more than one classification if the licensee meets the prescribed qualification for the additional classification.

History: 1953 Comp., § 67-35-4.2, enacted by Laws 1977, ch. 245, § 168; 1983, ch. 105, § 2; 1989, ch. 6, § 5; 2011, ch. 169, § 1.

ANNOTATIONS

Cross references. — For termination of commission, see 60-13-58 NMSA 1978.

The 2011 amendment, effective June 17, 2011, exempted residential fire protection sprinkler systems from regulation by the commission.

60-13-7. Construction industries division; director; appointment and qualifications.

The superintendent of regulation and licensing shall appoint the director of the division, who shall be a person who meets at least one of the following qualifications:

A. is or has been an active practicing construction contractor for at least five years;

B. is or has been an employee in an administrative position of a construction company for at least five of the past ten years;

C. has been employed by the construction industries division for at least five years and is knowledgeable in the administration of the law governing the construction industries division; or

D. is or has been actively engaged for at least five of the past ten years in an administrative position of an organization which requires that person to have a broad knowledge of the construction industry.

History: 1953 Comp., § 67-35-4.3, enacted by Laws 1977, ch. 245, § 169; 1989, ch. 6, § 6.

ANNOTATIONS

Cross references. — For termination of division, see 60-13-58 NMSA 1978.

For appointment of director, see 9-16-7 NMSA 1978.

60-13-8. Division; employees; equipment and supplies.

A. The division shall employ personnel, procure equipment and supplies and assemble records as necessary to carry out the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978].

B. Any person employed or placed under contract by the division or by any county or municipality for the purpose of carrying out the provisions of the Construction Industries Licensing Act who holds any contractor's license or certificate of competence issued by the division, shall, as a condition of employment surrender the contractor's license or certificate of competence to the division to be held in inactive status. The division shall place the license or certificate on hold effective from the date the employment or contract begins until the date the employment or contract terminates. The license or certificate shall remain in effect after the hold period for the same number of days as it would have remained in effect but for the hold.

History: 1953 Comp., § 67-35-12, enacted by Laws 1967, ch. 199, § 12; 1977, ch. 245, § 170; 1987, ch. 283, § 2.

ANNOTATIONS

Building inspector. — City building inspector who inspected building held to have qualified immunity for equal protection claim, but issue raised as to whether inspector had qualified immunity for fourth amendment and first amendment claims. Mimics, Inc. v. Village of Angel Fire, 277 F. Supp. 2d 1131 (D.N.M. 2003), aff'd in part, rev'd in part, Mimics, Inc. v. Vill. of Angel Fire, 394 F.3d 836 (10th Cir. 2005).

60-13-8.1. Construction industries division publications revolving fund created; appropriation.

The "construction industries division publications revolving fund" is created. All money collected by the division from the sale of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act [this article] and regulations adopted pursuant to that act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Money in the fund shall be used only for printing and maintenance of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act. Disbursements from the fund shall be made by warrants signed by the secretary of finance and administration, based upon vouchers

signed by the director and only in accordance with a budget approved by the department of finance and administration. Money in the fund shall not revert at the end of the fiscal year.

History: Laws 1997, ch. 181, § 9.

ANNOTATIONS

60-13-9. Division; duties.

The division shall:

A. approve and adopt examinations on codes and standards, business knowledge, division rules and regulations and on the Construction Industries Licensing Act recommended by the commission for all classifications of contractor's licenses;

B. issue, under the director's signature, contractor's licenses and certificates of qualification in accordance with the provisions of the Construction Industries Licensing Act;

C. submit a list of all contractor's licenses, statewide inspector's certificates and certificates of qualification issued by the division to the commission for review and approval;

D. resolve jurisdictional conflicts by assigning specific responsibility to the appropriate bureau for preparing examinations and for certifying and inspecting each occupation, trade or activity covered by the Construction Industries Licensing Act;

E. establish and collect fees authorized to be collected by the division pursuant to the Construction Industries Licensing Act;

F. adopt all building codes and minimum standards as recommended by the trade bureaus and approved by the commission so that the public welfare is protected, uniformity is promoted and conflicting provisions are avoided;

G. with approval of the superintendent of regulation and licensing, employ such personnel as the division deems necessary for the exclusive purpose of investigating violations of the Construction Industries Licensing Act, enforcing Sections 60-13-12 and 60-13-38 NMSA 1978 and instituting legal action in the name of the division to accomplish the provisions of Section 60-13-52 NMSA 1978;

H. approve, disapprove or revise the recommended budget of each trade bureau and submit the budgets of those bureaus, along with its own budget, to the regulation and licensing department;

I. approve, disapprove or revise and submit to the regulation and licensing department all requests of the trade bureaus for emergency budget transfers;

J. make an annual report to the superintendent of regulation and licensing and develop a policy manual concerning the operations of the division and the trade bureaus. The report shall also contain the division's recommendations for legislation it deems necessary to improve the licensing and technical practices of the construction and LP gas industries and to protect persons, property and agencies of the state and its political subdivisions;

K. adopt, subject to commission approval, rules and regulations necessary to carry out the provisions of the Construction Industries Licensing Act and the LPG and CNG Act [Chapter 70, Article 5 NMSA 1978];

L. maintain a complete record of all applications; all licenses issued, renewed, canceled, revoked and suspended; and all fines and penalties imposed by the division or commission and may make that information available to certified code jurisdictions;

M. furnish, upon payment of a reasonable fee established by the division, a certified copy of any license issued or of the record of the official revocation or suspension thereof. Such certified copy shall be prima facie evidence of the facts stated therein; and

N. publish a list of contractors, with their addresses and classifications, licensed by the division. The list shall be furnished without charge to such public officials, public bodies or public works and building departments as the division deems advisable. The list shall be published annually, and supplements shall be provided as the division deems necessary. Copies of the list and supplements shall be furnished to any person upon request and payment of a reasonable fee established by the division.

History: 1953 Comp., § 67-35-13, enacted by Laws 1978, ch. 73, § 1; 1983, ch. 105, § 3; 1985, ch. 70, § 1; 1989, ch. 6, § 7; 2013, ch. 142, § 2; 2013, ch. 153, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 73, § 1, repealed former 67-35-13, 1953 Comp. (former 60-13-9 NMSA 1978), as amended by Laws 1977, ch. 377, § 2, relating to duties, and enacted a new 67-35-13, 1953 Comp.

Cross references. — For the superintendent of regulation and licensing, see 9-16-5 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required the division to submit a list of statewide inspector’s certificates; in Subsection C, after "contractor’s licenses", added "statewide inspector’s certificates"; and in Subsection K, after "LPG", added "and CNG".

Compiler’s notes. — Laws 2013, ch. 142, § 2, effective June 14, 2013, and Laws 2013, ch. 153, § 2, effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 2. *See* 12-1-8 NMSA 1978.

Conversion of individual units in apartment building to condominium would not require new building codes be applied to the same buildings, if the apartment building met all applicable building codes when constructed. In that case, the sale of the building as residential condominium units would not require the construction industries commission (now construction industries division) to enforce the most current building code which may incorporate more stringent requirements. 1978 Op. Att'y Gen. No. 78-18.

60-13-10. Additional division duties; flood or mudslide areas; standards.

In addition to the division's other duties, on or before January 1, 1976 the division shall, with the approval of the commission, issue regulations prescribing standards for the installation or use of electrical wiring, the installation of fixtures, plumbing, consumers' gas pipe and appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings, improvements, modular homes, premanufactured homes and manufactured commercial units intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. Such regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to Regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

History: 1953 Comp., § 67-35-13.1, enacted by Laws 1975, ch. 14, § 3; 1975, ch. 331, § 17; 1977, ch. 245, § 172; 1983, ch. 105, § 4; 1989, ch. 6, § 8.

ANNOTATIONS

Compiler's notes. — Federal Regulation 1910, referred to in the second sentence, appears as 44 C.F.R. § 60.1 et seq.

60-13-10.1. Division; additional duties; alcohol fuel plant construction code; rules and regulations.

A. In addition to the division's other duties, on or before January 1, 1982 it shall, with the approval of the commission and after public hearing, adopt an alcohol fuel plant construction code. The code shall set forth reasonable standards and requirements for the construction, alteration or repair of buildings and other structures to be used for the manufacture or distillation of alcohol fuel. In adopting the code, the division shall give due regard to the purpose for which the plant is to be used and to the physical, climatic and other conditions peculiar to New Mexico.

B. Upon the adoption of the code, the commission shall make rules and regulations pertaining to the issuance of a permit prior to any construction, installation, alteration, repair or addition to or within any building or structure proposed for the use of manufacturing or distillation of alcohol fuel. The commission shall also set a reasonable fee for the issuance of a permit.

C. No permit shall be required of any person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installation, repairs or alterations on a farm or ranch owned, occupied or operated by him to any building or structure for the use of manufacturing or distillation of alcohol fuel.

History: 1978 Comp., § 60-13-10.1, enacted by Laws 1981, ch. 245, § 1; 1989, ch. 6, § 9.

60-13-10.2. Division and commission; standards to accommodate solar collectors.

As provided in the Solar Collector Standards Act [71-6-4 through 71-6-10 NMSA 1978], the division and commission shall promulgate rules to establish a uniform procedure for the issuance of permits for the construction and installation of solar collectors and to identify the trade bureau having jurisdiction over the construction and installation of solar collectors.

History: Laws 2007, ch. 38, § 6; 2013, ch. 142, § 2; 2013, ch. 86, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, authorized the division and commission to issue rules to establish uniform procedures for issuance of permits; after "the division and commission shall", deleted "jointly with the energy, minerals and natural resources department"; and after "promulgate", deleted "rules, standards or codes that establish requirements for new construction that will accommodate the installation of solar collectors to or in the new construction after the construction is otherwise complete" and added the remainder of the sentence.

60-13-11. Division or commission; powers.

The division or the commission may:

A. sue and be sued, issue subpoenas and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing;

B. administer oaths;

C. adopt and use a seal for authentication of its records, processes and proceedings;

D. compel minimum code compliance in all certified code jurisdictions and political subdivisions; and

E. investigate code violations in any code jurisdictions in New Mexico.

History: 1953 Comp., § 67-35-14, enacted by Laws 1967, ch. 199, § 14; 1977, ch. 245, § 173; 1989, ch. 6, § 10.

ANNOTATIONS

Enforcement of state building code. — The construction industries division of the regulation and licensing department has the authority to refuse to provide inspection services or certify local inspectors in municipalities that fail to adopt a building code that provides for minimum requirements of the state Uniform Building Code. The construction industries division has the authority to issue a stop work or similar order on a construction project authorized by a local jurisdiction that has adopted a building code that, while the code meets minimum standards set by the CID, differs from the building code adopted by CID. 2011 Op. Att'y Gen. No. 11-06.

Use of appropriated funds under former law. — The contractors' license board (now abolished) may not spend money from the appropriated funds for the construction of a block wall contingent upon the board's failure to exercise the right of option to purchase said property. 1957-58 Op. Att'y Gen. No. 58-117.

The contractors' license board (now abolished) may not contract to spend appropriated funds budgeted for maintenance of buildings and structures, for improvement or permanent changes to be made upon its leased premises. 1957-58 Op. Att'y Gen. No. 58-117.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

60-13-12. Contractor's license required.

A. No person shall act as a contractor without a license issued by the division classified to cover the type of work to be undertaken.

B. No bid on a contract shall be submitted unless the contractor has a valid license issued by the division to bid and perform the type of work to be undertaken; provided this subsection shall not prohibit a licensed contractor from bidding or contracting work involving the use of two or more trades, crafts or classifications if the performance of the work in the trades, crafts or classifications other than the one in which he is licensed is incidental or supplemental to the performance of the work in the trades, crafts or classifications for which he is licensed; and further provided that work coming under the jurisdiction of the mechanical bureau or the electrical bureau of the division must be performed by a contractor licensed to perform that work.

C. Any contractor may bid on a New Mexico highway project involving the expenditure of federal funds prior to making application to the division for a license. The contractor, if he has not previously been issued a license, shall upon becoming the apparent successful bidder apply to the division for a license. The director shall issue a license to the contractor in accordance with the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978].

History: 1953 Comp., § 67-35-15, enacted by Laws 1967, ch. 199, § 15; 1969, ch. 224, § 5; 1977, ch. 245, § 174; 1983, ch. 105, § 5; 1989, ch. 6, § 11.

ANNOTATIONS

Contractor must have a license. — An individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act is required to have a contractor's license when performing the specific acts described in the Construction Industries Licensing Act, regardless of whether the individual can be classified as an employee of a licensed contractor under the common law control test. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Common law control test does not apply. — The common law control test for determining whether an individual is an employee does not apply to determine whether an individual is required to have a license under the Construction Industries Licensing Act. An unlicensed contractor's classification as an employee of a licensed contractor under the common law control test does not exempt the unlicensed contractor from the licensing requirements of the Construction Industries Licensing Act. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Construction work performed by an employee contractor. — Where a licensed general contractor employed an unlicensed individual to stucco defendants' home; the general contractor did not pay the individual a salary, but on a contract-to-contract basis; the general contractor did not withhold taxes from the individual's compensation; the individual had tax identification numbers and paid the individual's own taxes; and the individual performed the work under the complete direction and control of the general contractor, the individual was a contractor under the Construction Industries Licensing Act and was required to possess a contractor's license to perform the work. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Purpose. — The purpose of the former Contractors' License Law was to require licensing of those engaged in the contracting business to protect the public from

unqualified contractors. Cancienne, Inc. v. Sw. Cmty. Inns, Inc., 80 N.M. 512, 458 P.2d 587 (1969).

Licensed contractors only. — Reading the Procurement Code, Section 13-1-28 NMSA 1978 et seq., and the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978, together, it is clear that the legislature intended (1) that public contracts should be awarded only to licensed contractors and (2) that purchasing authorities should be relieved from the necessity of making an independent investigation into the qualifications and fiscal responsibility of a contractor who is not licensed at the time of bidding. Thus, the doctrine of substantial compliance does not apply to the requirement of Section 60-13-12B NMSA 1978 that a contractor have a valid license when submitting a bid on a public contract. BC&L Pavement Servs., Inc. v. Higgins, 2002-NMCA-087, 132 N.M. 490, 51 P.3d 533.

Transfer of license between contractor and subcontractor prohibited. — This article requires both a contractor and subcontractor to be licensed and prohibits transferring a license or certificate of qualification to another. State v. Jenkins, 108 N.M. 669, 777 P.2d 908 (Ct. App. 1989).

Having an electrical contractor's license did not exempt party from requirements of the former Contractors' License Law. An action is barred under 67-16-14, 1953 Comp. (now repealed), because of the lack of a contractor's license. Chavas v. Esper, 76 N.M. 666, 417 P.2d 802 (1966).

License required in partnership name. — Former Contractors' License Law (67-16-1, 1953 Comp. et seq.) (now repealed), and the rules and regulations issued pursuant thereto, compel partnerships required to be licensed to hold a license in the partnership name. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

The admission of a person as a partner with a licensed contractor required the issuance of a new contractor's license to the partnership under former law. Nickels v. Walker, 74 N.M. 545, 395 P.2d 679 (1964).

Type of work to be covered by license. — No person shall engage in business of a contractor unless the construction industries commission (division) has issued him a license which covers the type of work to be undertaken. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

Work done within ambit of party's license. — Defendant's contention that plaintiff's action was barred by 67-16-6 and 67-16-17 1953 Comp. (now repealed), for failure of plaintiff to have contractor's license to perform the work he did was without merit, as plaintiff had a contractor's license which authorized him to do excavating, trenching, welding, water supply, sewage, including disposal and gas lines and the work done involved the cutting and threading of steel braces and welding said braces to steel plates, which fell within that part of plaintiff's contractor's license which authorized

plaintiff to contract welding work. Dunson Contractors v. Koury, 76 N.M. 723, 418 P.2d 66 (1966).

Contractor when promise to mine and move copper ore. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-3, 1953 Comp. (now repealed). Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Employee, not independent contractor, when performance controlled. — Where plaintiff was hired by defendant for drilling purposes, and where defendant retained at all times right of control of performance of the work as well as right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor and was not barred from recovery under 67-16-3 and 67-16-14, 1953 Comp. (now repealed), for failure to obtain a contractor's license. Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960).

Agent not personally liable for principal. — This act does not alter the general rule that an agent is not liable on a contract the agent enters into on behalf of a disclosed principal, even if the principal does not possess a contractor's license and the agent does. Kreischer v. Armijo, 118 N.M. 671, 884 P.2d 827 (Ct. App. 1994).

License required maintenance of contract breach action. — Where the work performed was fabricating materials or supplies or using the same in the performance of contracting work and electrical installation, a contractor's license was required under former Contractors' License Law and therefore plaintiff could not maintain an action for breach of contract. Cancienne, Inc. v. Sw. Cmty. Inns, Inc., 80 N.M. 512, 458 P.2d 587 (1969).

Establishment of necessity for license required before action barred. — Defendant, seeking to prohibit an unlicensed contractor from maintaining an action, was required to establish that plaintiff was required by 67-16-2, 1953 Comp. (now repealed), to be licensed. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

No quantum meruit recovery where license required. — One who has shown himself to be required to have contractor's license cannot recover under quantum meruit in absence of such license. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mech. & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Allegation of contractor's license treated as tried with parties' consent. — Where appellants made no objection to evidence of contractor's license and raised neither the jurisdiction nor the limitation question at trial, and requested no findings on either question, requirement of allegation of contractor's license was matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot

object to appellate court treating issue tried with consent of the parties as though it had been raised by pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

Evidence as to license. — Evidence of certain receipts and decals issued by licensing authority to plaintiff, along with plaintiff's own testimony that he was licensed, constitutes acceptable evidence, especially when it is joined with testimony from an official of the New Mexico construction industries commission (division), the agency which now licenses contractors, that plaintiff had been licensed at all pertinent times. Kennedy v. Lynch, 85 N.M. 479, 513 P.2d 1261 (1973).

"Best evidence rule" not applicable to proof of license. — It is plaintiff's licensed status which must be proved and not contents of particular document; therefore, "best evidence rule" or Rule 1002, N.M.R. Evid. (now see Rule 11-1002), does not apply. Kennedy v. Lynch, 85 N.M. 479, 513 P.2d 1261 (1973).

Same person shall not be designated as supervisor in more than one electrical contractor's license. 1961-62 Op. Att'y Gen. No. 62-77.

Use of unlicensed persons for plumbing and irrigating systems. — Under former law, the New Mexico school for the deaf could employ unlicensed persons for making installation of plumbing in the buildings of a dairy farm located in an unpopulated area; also, an irrigating system could be installed without regard to the licensing requirements of 67-22-2, 1953 Comp., and connections could be made to water tanks, troughs, etc., by licensed plumbers. 1959-60 Op. Att'y Gen. No. 59-61.

Municipality's licensing and regulating rights taken away. — Right of a municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Prior contractors', etc., licenses supplanted. — The Construction Industries Licensing Act provides for issuance of a contractor's license which supplants all prior contractors', plumbers' and electricians' licenses. 1969 Op. Att'y Gen. No. 69-72.

Requirements of electrical contractor's license under former law. — When a business, regardless of the nature of its organization (partnership, corporation, etc.) is formed with the intention of entering into the electrical contracting business, it should obtain an electrical contractor's license by written application stating the name of the business designated as holder and the qualified person named as supervisor. The supervisor must be the master electrician. 1961-62 Op. Att'y Gen. No. 62-77.

Persons, etc., contracting on percentage basis covered by former law. — The contractors' license board (now abolished) could license persons, firms, partnerships and corporations that were contractors on a percentage basis and otherwise were within the coverage of 67-16-2, 1953 Comp. (now repealed). Agents and employees of

contractors needed no license, even though they were employed on a percentage basis. 1961-62 Op. Att'y Gen. No. 62-04.

Salesmen taking orders for remodeling on behalf of licensed building concerns were not required to be licensed by the contractors' license board (now abolished). 1961-62 Op. Att'y Gen. No. 62-04.

Special license not required for general contractor. — A general contractor for construction of homes and other buildings, but who was not specially licensed as a painter or decorator contractor, was not required by 67-16-17, 1953 Comp. (now repealed), to subcontract the painting and decorating, as his license as a general contractor enabled him to do the painting or hire help to do it for him. 1959-60 Op. Att'y Gen. No. 59-67.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits §§ 4, 16; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 63 to 75, 90 to 98, 129, 132, 133.

Requiring procurement of license by heating contractors, 33 A.L.R. 146.

Plumbers, provisions as to licensing, 36 A.L.R. 1342, 22 A.L.R.2d 816.

Municipal regulation of electricians and the installation of electrical work, 96 A.L.R. 1506.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Validity, construction and application of license regulations as to masons, plasterers, painters and paperhangers, 123 A.L.R. 471.

What constitutes plumbing or plumbing work within statute or ordinance requiring license for such work, 125 A.L.R. 718.

Validity of regulations as to plumbers and plumbing, 22 A.L.R.2d 816.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done - modern cases, 44 A.L.R.4th 271.

53 C.J.S. Licenses § 34.

60-13-13. Application for contractor's license.

A. Applications for a contractor's license or a certificate of qualification shall be submitted to the division on forms prescribed and furnished by the division and shall contain the information and be accompanied by the attachments required by regulation of the commission.

B. The application shall be accompanied by the prescribed fee.

History: 1953 Comp., § 67-35-16, enacted by Laws 1967, ch. 199, § 16; 1977, ch. 245, § 175; 1989, ch. 6, § 12.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

60-13-13.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-13.1 NMSA 1978, as enacted by Laws 1979, ch. 107, § 1, relating to supplemental licenses and fees for general building contractors, effective July 1, 1989.

60-13-13.2. Licensees; identical or similar names.

The division shall not accept an application, shall not issue a license and shall require a change in the name of a proposed license if the proposed name is identical to or in the opinion of the director so similar that it may cause confusion with a name on a pending application or an existing license. Any person aggrieved by the decision of the director may appeal the decision to the commission.

History: 1978 Comp., § 60-13-13.2, enacted by Laws 1983, ch. 105, § 6; 1989, ch. 6, § 13.

60-13-14. Division; license issuance; reports.

A. No license shall be issued by the division to any applicant unless the director is satisfied that the applicant is or has in his employ a qualifying party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of Subsection B of this section.

B. An applicant for a license shall:

(1) demonstrate proof of responsibility as provided in the Construction Industries Licensing Act [this article];

(2) comply with the provisions of Subsection D of this section if he has engaged illegally in the contracting business in New Mexico within one year prior to making application;

(3) demonstrate familiarity with the rules and regulations promulgated by the commission and division concerning the classification for which application is made;

(4) if a corporation, incorporated association, registered limited liability partnership or limited liability company, have complied with the laws of this state requiring qualification to do business in New Mexico and provide the name of its current registered agent and the current address of its registered office in New Mexico;

(5) if a person other than the persons described in Paragraph (4) of this subsection, provide a current physical location address and mailing address of the applicant's place of business;

(6) submit proof of registration with the taxation and revenue department and submit a current identification tax number;

(7) comply with any additional procedures, rules and regulations which are established by the commission relating to issuance of licenses; and

(8) have had four years, within the ten years immediately prior to application, of practical or related trade experience dealing specifically with the type of construction or its equivalent for which the applicant is applying for a license, except that the commission may by regulation provide for:

(a) reducing this requirement for a particular industry or craft where it is deemed excessive but the requirement shall not be less than two years; and

(b) a waiver of the work experience requirement of this paragraph when the qualifying party has been certified in New Mexico with the same license classification within the ten years immediately prior to application.

C. The division, with the consent of the commission, may enter into a reciprocal licensing agreement with any state having equivalent licensing requirements.

D. The director may issue a license to an applicant who at any time within one year prior to making application has acted as a contractor in New Mexico without a license as required by the Construction Industries Licensing Act [60-13-1 NMSA 1978] if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the nonlicensed contracted work in the discretion of the commission; or

(b) if the applicant has bid or offered a price on a construction project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount; and

(2) the director is satisfied that no incident of such contracting without a license:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant with the division.

E. An unlicensed contractor who has performed unlicensed work may settle the claims against him without becoming licensed if the claims arise from his first offense and he pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the contractor pursuant to the provisions of Subsection D or E of this section is twenty-five dollars ($25.00) or less, the fee may be waived.

G. The director shall report every incident of nonlicensed contracting work to the taxation and revenue department to assure that the contractor complies with tax requirements and pays all taxes due.

History: 1953 Comp., § 67-35-17, enacted by Laws 1967, ch. 199, § 17; 1969, ch. 224, § 6; 1977, ch. 245, § 176; 1977, ch. 377, § 3; 1978, ch. 73, § 2; 1983, ch. 105, § 7; 1985, ch. 18, § 1; 1989, ch. 6, § 14; 1997, ch. 181, § 3.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, rewrote Paragraphs B(4) and B(5); in Paragraph B(8) inserted "except that" and made stylistic changes, including insertion of the subparagraph designations; in Paragraph D(1), substituted "as follows" for "in an amount equal to five percent of the value of such nonlicensed contracting work" and added Subparagraphs (a) and (b); added Subsections E and F; and redesignated former Subsection E as Subsection G.

When foreign corporation considered to be "maintaining an office". — The hiring of an agent by a foreign corporation for the sole purpose of receiving and forwarding a summons and complaint to the home office of the corporation located in another state does not fall within any of the generally accepted definitions pertaining to maintaining of an office. An occasional or isolated act of this type by an agent of a foreign corporation is obviously not a part of the continuous, usual and ordinary business of the corporation which, in this case, would be building or construction. A foreign corporation must do

something in addition to merely designating a statutory agent for service in order to meet the requirement of "maintaining an office." 1961-62 Op. Att'y Gen. No. 62-90 (rendered under prior law).

Otherwise qualified alien may be issued license. 1959-60 Op. Att'y Gen. No. 60-162.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.

53 C.J.S. Licenses §§ 39, 40.

60-13-15. License issuance; commission review.

A. The commission shall review at its regular meetings all licenses issued by the division. The commission shall report to the superintendent of regulation and licensing and the attorney general any license issued to an applicant who fails to meet the requirements established by law and commission regulations for license issuance.

B. The signing of a license by the director for issuance by the division to an applicant who fails to meet the requirements established by law or committee regulations for issuance of licenses is a misdemeanor, and the director, if convicted by a court of law, shall be relieved of his duties and shall be subject to civil damages as provided in Section 30-23-7 NMSA 1978. Failure by the committee or any member of the committee to report the illegal issuance of a license is a petty misdemeanor and upon conviction shall result in termination of the appointment of the committee member so convicted.

History: 1953 Comp., § 67-35-17.1, enacted by Laws 1977, ch. 245, § 177; 1983, ch. 105, § 8; 1989, ch. 6, § 15.

60-13-16. Division; qualifying party; examination; certificate.

A. Except as otherwise provided in this section, no certificate of qualification shall be issued to an individual desiring to be a qualifying party until he has passed with a satisfactory score an examination approved and adopted by the division.

B. The examination shall consist of a test based on general business knowledge, rules and regulations of the division and the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978]. In addition, applicants for a GB, MM or EE classification or for any other classification that the commission determines to be appropriate shall take a test based on technical knowledge and familiarity with the prescribed codes and minimum standards of the particular classification for which certification is requested. The division shall provide examinations in both English and Spanish.

C. In lieu of the examination to determine knowledge of business and construction industries law provided in Subsection B of this section, an applicant may satisfy the business and law knowledge requirement by receiving a certificate of completion of a business and law course of study offered by an accredited education institute approved by the commission. The course and any preparation and instruction materials shall be available in both English and Spanish and shall be made available to the division, the commission or the designated agent of the division, upon request, for review.

D. If a contractor's license is subject to suspension by the commission and if the suspension is based on the requirement that the licensee employ a qualifying party and the employment of the qualifying party is terminated without fault of the licensee, a member of that trade who is experienced in the classification for which the certificate of qualification was issued and has been employed for five or more years by the licensed contractor shall be issued without examination a temporary certificate of qualification in the classification for which the contractor is licensed. The temporary qualifying party is required to pass the regular examination as set forth in Subsection B of this section within ninety days of issuance of a temporary certificate of qualification.

E. The certificate of qualification is not transferable.

F. A qualifying party whose certificate is revoked by the commission shall not reapply for a certificate for one year.

History: 1953 Comp., § 67-35-18, enacted by Laws 1967, ch. 199, § 18; 1969, ch. 224, § 7; 1971, ch. 214, § 1; 1977, ch. 245, § 178; 1983, ch. 105, § 9; 1985, ch. 70, § 2; 1989, ch. 6, § 16; 1997, ch. 181, § 4.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted the language beginning "offered by" for "which has been approved and certified under rules and regulations adopted by the division and approved by the commission" at the end of the first sentence and added the language beginning "and shall be" at the end of the second sentence in Subsection C; and made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 47; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.

53 C.J.S. Licenses § 40.

60-13-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-17 NMSA 1978, as amended by Laws 1977, ch. 245, § 179, relating to review before refusal to license, effective July 1, 1989.

60-13-18. Licenses; renewal.

A. Licenses issued by the division are not transferable.

B. Contractor's licenses shall expire two years after the issuance date or as determined by the division, but in no instance less than one year, and shall be renewable upon application to the division and payment of the prescribed renewal fee; provided that nothing in this subsection shall prohibit the division from establishing a staggered system of license expiration and a procedure for proration of fees for licenses issued for less than the two-year period or other period provided by the division pursuant to this subsection.

C. Licenses shall expire upon the date established by regulation of the commission, such regulation to provide for a staggered system of license expiration and for proration of fees for licenses issued for less than a full year. Thereafter, such licenses shall be issued for a period of two years or as otherwise provided by the division pursuant to Subsection B of this section. Licenses shall be subject to renewal upon application to the division and payment of the prescribed renewal fee.

D. Licensees and journeyman certificate holders may be required to complete and submit proof of continuing education as a prerequisite for renewal of a license. When required by rule adopted by the division, an applicant for a license renewal must submit with the application for license renewal proof of eight hours of instruction in code change and eight hours of instruction in other industry-related and division-approved subjects. The sixteen hours of continuing education must have been completed within the three years prior to the date of the license renewal application.

E. The director shall, at least thirty days prior to the expiration date of a license, notify the licensee of the approaching expiration. Notice shall be given by mail addressed to the licensee's last address on file with the division. The notice shall include a renewal application form, instructions and any other information prescribed by the division.

F. Failure of a licensee to make application for the renewal of the licensee's license, to furnish such other information required by the commission and to pay the prescribed renewal fee by the last working day prior to the expiration of the license shall cause the license to be suspended by operation of law.

G. Unless the license is renewed within a three-month period, it shall be canceled. The suspended license may be renewed only after payment of a fee equal to one dollar ($1.00) for each day, up to thirty days, that has elapsed since the expiration date of the license and thereafter for a fee equal to twice the amount of the renewal fee.

History: 1953 Comp., § 67-35-20, enacted by Laws 1967, ch. 199, § 20; 1969, ch. 224, § 8; 1977, ch. 245, § 180; 1983, ch. 105, § 10; 1987, ch. 283, § 3; 1989, ch. 6, § 17; 2007, ch. 56, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added a new subsection authorizing the construction industries division to require continuing education for renewal of a contractor's license.

60-13-19. Division; evidence of possession; penalty.

A. The licensee shall exhibit satisfactory evidence of the possession of a license on demand and shall clearly indicate his contractor's license number on all written bids and when applying for a building permit.

B. A contractor who fails to indicate his contractor's license number clearly on all written bids and when applying for a building permit shall be assessed a penalty fee of one hundred fifty dollars ($150) by the division. The fee shall be payable to the code jurisdiction or political subdivision that issued the permit or in which the work for which the bid is submitted is or would be permitted.

C. Before work is commenced, a contract is signed or funds are paid for any residential contracting, the contractor shall disclose in writing to the owner, on a form approved by the division, that the license issued and the bond or other proof of responsibility required pursuant to the Construction Industries Licensing Act does not protect the consumer if the contractor defaults. Any contractor who fails to make the disclosure required by this subsection shall be assessed a fee by the division in an amount not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) as determined by the division. The fee shall be payable to the division.

History: 1953 Comp., § 67-35-21, enacted by Laws 1978, ch. 78, § 1; 1983, ch. 105, § 11; 1989, ch. 6, § 18; 2003, ch. 266, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 78, § 1, repealed former 67-35-21, 1953 Comp. (former 60-13-19 NMSA 1978), as amended by Laws 1977, ch. 245, § 181, relating to evidence of possession, and posting of license, and enacted a new 67-35-21, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

The 2003 amendment, effective June 20, 2003, deleted "Before work is commenced, a contract is signed or funds are paid for any residential contracting, the contractor shall disclose in writing to the owner that the license issued under the Construction Industries Licensing Act [this article] does not protect the consumer if the contractor defaults" at

the end of Subsection A; in Subsection B, deleted "or who fails to make the disclosure statement required under this section" following "for a building permit" near the middle of the first sentence and added "by the division" at the end of the first sentence; and added present Subsection C.

60-13-20. Fees established by the division; payment of examination and licensing service fees.

A. The division shall by regulation establish and charge reasonable candidate and applicant fees for each license and certificate classification for initial applications, initial and additional examinations, license issuance and renewals, certificate of qualification issuance and renewal, and licensing verification services.

B. The division by regulation may provide that fees charged pursuant to Subsection A of this section shall be paid to the agency providing or administering the service if the service is provided pursuant to authority of the division.

History: 1953 Comp., § 67-35-22, enacted by Laws 1967, ch. 199, § 22; 1977, ch. 245, § 182; 1983, ch. 105, § 12; 1987, ch. 283, § 4; 1989, ch. 6, § 19; 1997, ch. 181, § 5.

ANNOTATIONS

Cross references. — For definition of "division," see 60-13-2 NMSA 1978.

The 1997 amendment, effective July 1, 1997, inserted "and licensing service" in the section heading; in Subsection A, inserted "and charge", "candidate and applicant" and "and certificate" and added "and renewal and licensing verification services" at the end; and, in Subsection B, substituted the language beginning "fees charged" for "examination fees, other than examination fees collected by the division for examination of journeymen pursuant to Section 60-13-38 NMSA 1978, shall be paid to the agency administering the examination".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 10, 11.

Amount of license fee imposed on electricians, 96 A.L.R. 1506.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.

Reasonableness of amount of license fee imposed upon plumbers, 114 A.L.R. 573.

53 C.J.S. Licenses §§ 64 to 73.

60-13-21. Division; disposition of fees.

Fees received by the division except journeymen examination fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-35-24, enacted by Laws 1967, ch. 199, § 24; 1969, ch. 189, § 1; 1973, ch. 259, § 10; 1977, ch. 245, § 183; 1986, ch. 107, § 2; 1987, ch. 283, § 5; 1987, ch. 298, § 7; 1989, ch. 6, § 20.

60-13-21.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 283, § 7 repeals 60-13-21.1 NMSA 1978, as enacted by Laws 1986, ch. 107, § 3, relating to collection and distribution of moneys in the "examination fund," effective June 19, 1987.

60-13-22. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 105, § 24, repeals 60-13-22 NMSA 1978, as amended by Laws 1977, ch. 245, § 184, relating to expenses of the division and the trade bureaus, effective July 1, 1983. .

60-13-23. Revocation or suspension of license by the commission; causes.

Any license issued by the division shall be revoked or suspended by the commission for any of the following causes:

A. if the licensee or qualifying party of the licensee willfully or by reason of incompetence violates any provision of the Construction Industries Licensing Act [60-13-1 NMSA 1978] or any rule or regulation adopted pursuant to that act by the division;

B. knowingly contracting or performing a service beyond the scope of the license;

C. misrepresentation of a material fact by the applicant in obtaining a license;

D. failure to maintain proof of responsibility as required by the Construction Industries Licensing Act;

E. unjustified abandonment of any contract as determined by a court of competent jurisdiction;

F. conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction;

G. departure from or disregard of plans or specifications that result in code violations;

H. willful or fraudulent commission of any act by the licensee as a contractor in consequence of which another is substantially injured, as determined by a court of competent jurisdiction;

I. failure to maintain workers' compensation insurance as required by the Workers' Compensation Act [52-1-1 NMSA 1978];

J. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act by allowing a contractor's license to be used by an unlicensed person, or acting as agent, partner, associate or otherwise in connection with an unlicensed person, with the intent to evade the provisions of the Construction Industries Licensing Act; or

K. acting in the capacity of a licensee under any other name than is set forth upon the license.

History: 1953 Comp., § 67-35-26, enacted by Laws 1967, ch. 199, § 26; 1977, ch. 245, § 185; 1989, ch. 6, § 21; 1993, ch. 193, § 13.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, made a stylistic change in Subsection H, inserted present Subsection I, and redesignated the remaining subsections accordingly.

"Conversion." — Section 60-13-23F NMSA 1978 creates a technical trust within the meaning of 11 U.S.C. § 523(a)(4), and that for purposes of the New Mexico statute, "conversion," like "diversion," means the failure by the contractor who is entrusted with funds to be used for a specific project to use the funds for their intended purpose. Crossingham Trust v. Baines (In re Baines), 337 B.R. 392 (Bankr. D.N.M. 2006).

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. Oden v. State, Regulation & Licensing Dep't, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

Contractor's fiduciary capacity imposed by law binding on him. — Fiduciary capacity of contractor who was advanced money pursuant to construction contracts was imposed by law, rather than implied by law, and existed independent of any express understanding he had with the owner governing the same obligation. Since obtaining state license by contractor is prerequisite to entering construction industry in New Mexico, obligation and duties imposed under this section were binding upon contractor prior to any dealings he had with the owner, and a bankruptcy court's finding that the contractor was acting in a fiduciary capacity within the meaning of federal bankruptcy law, is not clearly erroneous. In re Romero, 535 F.2d 618 (10th Cir. 1976).

This section imposes fiduciary duty upon contractors who have been advanced money pursuant to construction contracts. In re Romero, 535 F.2d 618 (10th Cir. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 59 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

Stay, pending review, of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 50 to 53.

60-13-23.1. Administrative penalty.

A. Notwithstanding any provisions of the Uniform Licensing Act [61-1-1 NMSA 1978] or the Construction Industries Licensing Act [60-13-1 NMSA 1978] to the contrary, the commission may, in addition to or instead of revocation or suspension of a license issued by the division for any cause specified in the Construction Industries Licensing Act, assess the licensee an administrative penalty in the following amounts:

(1) where the dollar value of the contract or work performed is five thousand dollars ($5,000) or less, the penalty shall be not less than three hundred dollars ($300) or more than five hundred dollars ($500); or

(2) where the dollar value of the contract or work performed is more than five thousand dollars ($5,000), the penalty shall be in an amount equal to not more than ten percent of the dollar amount of the contract or work performed but not less than five hundred dollars ($500).

B. If a person subject to the penalties under Subsection A of this section previously has had his contractor's license suspended or revoked or has been assessed an administrative penalty pursuant to Subsection A of this section, that person shall be assessed twice the amount specified in Paragraph (1) or (2) of Subsection A of this section, as applicable.

C. Failure to pay an administrative penalty upon the date set by the commission shall subject the offender to an additional penalty of one hundred dollars ($100) for each day the offender fails to comply with the order. The attorney general shall institute an action in the district court to recover the appropriate penalties.

History: 1978 Comp., § 60-13-23.1, enacted by Laws 1987, ch. 283, § 6; 1989, ch. 6, § 22.

60-13-24. Certificates of qualification; statewide inspector's certificates; causes for revocation or suspension.

Any certificate of qualification or statewide inspector's certificate shall be revoked or suspended by the commission for the following causes:

A. misrepresentation of a material fact by the individual in obtaining the certificate;

B. violation, willfully or by reason of incompetence, of any provision of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act; or

C. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act.

History: 1953 Comp., § 67-35-27, enacted by Laws 1967, ch. 199, § 27; 1977, ch. 245, § 186; 1989, ch. 6, § 23; 2013, ch. 142, § 3; 2013, ch. 153, § 3.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided qualifications for statewide inspector’s certificates; in the title, after "qualification", added "statewide inspector’s certificates"; and in the introductory sentence, after "qualification", added "or stateside inspector’s certificate".

Compiler’s notes. – Laws 2013, ch. 142, § 3, effective June 14, 2013, and Laws 2013, ch. 153, § 3, effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 3. *See* 12-1-8 NMSA 1978.

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. Oden v. State, Regulation & Licensing Dep't, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

60-13-25. Qualifying party; termination of relationship.

In the event the employment or business relationship between the qualifying party and the licensee is terminated, the licensee and the qualifying party shall notify the division within thirty days of that termination in relationship, and the license shall be suspended for one hundred twenty days from the date of the termination of employment or business relationship and then canceled unless another individual who is a properly certified qualifying party is approved as the qualifying party for the licensee.

History: 1953 Comp., § 67-35-28, enacted by Laws 1967, ch. 199, § 28; 1977, ch. 245, § 187; 1983, ch. 105, § 13; 1989, ch. 6, § 24.

60-13-26. Division; trade bureaus; liability of commission members.

Neither the division, the bureaus, their duly authorized employees nor members of the commission shall be held personally responsible or liable for any act pertaining to their official duties.

History: 1953 Comp., § 67-35-29, enacted by Laws 1967, ch. 199, § 29; 1977, ch. 245, § 188; 1989, ch. 6, § 25.

60-13-27. Complaints against licensees and certificate holders; investigations by division; informal resolution; notice of revocation action.

A. The division on its own motion or upon the verified complaint in writing of any person shall investigate the actions of any licensee or certificate holder. The director may assign one or more inspectors certified pursuant to Section 60-13-41 NMSA 1978, investigators or other personnel to investigate that licensee or certificate holder or any activity within the jurisdiction of the Construction Industries Licensing Act [60-13-1 NMSA 1978]. The director may authorize an inspector or investigator to enter any code jurisdiction to make investigations. The investigation shall be for the purpose of determining if there has been a code violation or other breach of Section 60-13-23, 60-13-24 or 60-13-36 NMSA 1978 on the part of a licensee or certificate holder constituting probable grounds for revocation or suspension of his license or certificate.

B. The person assigned by the director shall make an immediate investigation, securing all pertinent facts and statements, including a statement from the contractor, if he is available, and names and addresses of witnesses. Within one hundred eighty days of receipt of the complaint by the division, he shall make a full and complete written report to the director.

C. Complaints may be resolved informally at the request of the complainant, the contractor or the commission. For informal resolution of a complaint, all parties must agree to the informal hearing and agree that the decision of the informal hearing officer

is final. The procedures for informal hearings and resolution of complaints shall be established by the commission.

D. All revocation and suspension proceedings conducted by the commission and judicial review of the commission's decision shall be governed by the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978]. Prior to any revocation action by the commission, notice of the pending action shall be given to the bonding company which has in effect for the licensee any bond issued pursuant to the proof of responsibility provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-30, enacted by Laws 1967, ch. 199, § 30; 1977, ch. 245, § 189; 1977, ch. 377, § 4; 1978, ch. 73, § 2; 1989, ch. 6, § 26.

ANNOTATIONS

Obtaining statement from licensee. — This section does not require the investigator to obtain a statement from the licensee before proceeding with the revocation hearing; the statute is properly read as requiring only that the inspector make a reasonable effort to gather all pertinent information during the investigation. Oden v. State, Regulation & Licensing Dep't, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

60-13-28. Suspension period.

A. The commission shall make all suspensions for a definite period not exceeding ninety consecutive days. Suspension of a license for any cause specified in the Construction Industries Licensing Act [60-13-1 NMSA 1978] shall not preclude revocation of that license for cause by the commission.

B. A contractor whose license has been suspended or revoked shall complete work in progress as directed by the commission.

C. At the end of the suspension period, the commission shall review the license to determine if the license should be reinstated or revoked.

History: 1953 Comp., § 67-35-31, enacted by Laws 1967, ch. 199, § 31; 1977, ch. 245, § 190; 1989, ch. 6, § 27.

60-13-29. Application following revoked license or certificate.

A. After revocation of any license or certificate issued pursuant to the Construction Industries Licensing Act, no person shall be eligible to apply for a new license or certificate until a period of one year after the date of the original order of revocation by the commission has expired.

B. Following the revocation of a contractor's license or a qualifying party's certificate pursuant to the Construction Industries Licensing Act, no license or certificate may be

issued to that contractor or qualifying party by the division if the director finds that the contractor or qualifying party has, during the period of revocation, engaged in activity that constitutes a violation of any provision of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-32, enacted by Laws 1967, ch. 199, § 32; 1977, ch. 245, § 191; 1989, ch. 6, § 28; 2005, ch. 264, § 1.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, provided in Subsection A that after revocation of a license or certificate, no person shall be eligible to apply for a new license or certificate for a one year period; deleted in Subsection A the former provision that after the revocation period, a license or certificate shall not be issued, renewed or reissued except as is provided for the issuance of an initial license or certificate; and added Subsection B to provide that after the period of revocation, no license or certificate shall be issued if the director of the division finds that the contractor or qualifying party has during the revocation period violated the Construction Industries Licensing Act.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-30. Suit by contractor for compensation; pleading and proof of license.

A. No contractor shall act as agent or bring or maintain any action in any court of the state for the collection of compensation for the performance of any act for which a license is required by the Construction Industries Licensing Act [60-13-1 NMSA 1978] without alleging and proving that such contractor was a duly licensed contractor at the time the alleged cause of action arose.

B. Any contractor operating without a license as required by the Construction Industries Licensing Act shall have no right to file or claim any mechanic's lien as now provided by law.

History: 1953 Comp., § 67-35-33, enacted by Laws 1967, ch. 199, § 33; 1977, ch. 245, § 192.

ANNOTATIONS

Cross references. — For mechanics' and materialmen's liens, see Chapter 48, Article 2 NMSA 1978.

Licensed contractor is precluded from collecting compensation for work performed by an unlicensed contractor. — Where a licensed general contractor entered into a contract with defendants to stucco defendants' home; the general

contractor employed an unlicensed contractor to perform the work; and the general contractor fully compensated the unlicensed contractor for the work, the general contractor was precluded from collecting compensation for the work performed by the unlicensed contractor. Reule Sun Corp. v. Valles, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and overruling Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960) and Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961).

Unlicensed subcontractor. — An unlicensed subcontractor is barred by this section from recovering compensation for construction work performed for a general contractor. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Recovery of payments from an unlicensed subcontractor. — A general contractor who did not act responsibly in hiring an unlicensed subcontractor is barred by this section from recovering compensation paid to the subcontractor. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Where a general contractor hired an unlicensed subcontractor; the subcontractor did not withhold information concerning the subcontractor's licensure from the general contractor; the general contractor could have obtained information concerning the subcontractor's licensure upon reasonable inquiry; and the general contractor paid the subcontractor for work performed by the subcontractor, the general contractor did not act responsibly in hiring the subcontractor and is barred from recovering the payment from the subcontractor by this section. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Equitable principles do not apply. — Equitable principles do not apply in actions covered by this section to permit recovery. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Subcontractor is not an employee of the general contractor. — Where a masonry contractor used various methods to bill a general contractor, including per hour, per load, per square foot and per item methods; the masonry contractor used its own tools and equipment, had its own employees, invoiced the general contractor under a business name, was responsible for its own registration and licensing, and was paid when each assignment was completed; the general contractor did not direct or control the details of the masonry contractor's work, did not withhold employee related state and federal taxes from the masonry contractor's invoices; and did not include the masonry contractor and its employees under the general contractor's workers' compensation coverage, the masonry contractor was not an employee of the general contractor. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Construction acts cannot be separated to evade the licensing requirement. — Where an unlicensed subcontractor performed work for a general contractor on several individual job assignments; some of the assignments did not require a license, the subcontractor cannot evade the licensing requirement of this section by separating

construction acts into individual job assignments. Romero v. Parker, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Work by employee. — Where a licensed general contractor employed an unlicensed individual and his crew to perform work, issued a detailed work order, observed and oversaw the performance of the work by the individual and his crew, and furnished the individual and his crew with insurance and most of the major equipment and material to perform the work; the individual worked exclusively for the contractor on a full time basis; the individual and his crew were required to wear the contractor's uniforms and display the contractors signs, and the contractor was responsible for defects in the individuals' work, the individual was an employee of the contractor, not a subcontractor, and the contractor could sue for payment on a construction contract for work performed by the individual. Reule Sun Corporation v. Valles, 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, rev'd, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611.

False conflict doctrine applied. — Where the plaintiff performed construction work on a project in Arizona for the defendant; both parties were New Mexico citizens; Arizona law required the plaintiff to have an Arizona contractor's license to perform the work on the project; the plaintiff did not have the required Arizona contractor's license; the defendant had the required Arizona contractor's license; and under both New Mexico and Arizona law unlicensed contractors are barred from recovering for their work under any cause of action, the plaintiff was an independent contractor of the defendant notwithstanding the fact that the parties' contract purported to create an employer-employee relationship between the parties, and the plaintiff did not substantially comply with contractor licensing requirements, the trial court properly applied the false conflict doctrine and dismissed the plaintiff's action for breach of contract and unjust enrichment. Fowler Brothers, Inc. v. Bounds, 2008-NMCA-091, 144 N.M. 510, 188 P.3d 1261.

Contrary to public policy. — Contracts entered into by unlicensed contractors are contrary to public policy and unenforceable. Gamboa v. Urena, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, cert. denied, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 10.

No due process or equal protection contravention. — Section does not contravene due process clause or deny equal protection of law as guaranteed by the New Mexico constitution. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

Act does not violate N.M. Const., art. IV, § 18 as attempt to amend the Mechanic's Lien Law by reference. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

Courts reluctant to construe act broadly. — Purpose of the act is to protect public from incompetent and irresponsible builders and in view of the severity of sanctions and forfeitures which could be involved, the court is reluctant to construe the statute more broadly than necessary for achievement of its purpose. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972); Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Section overrides policy disfavoring unjust enrichment. — The legislature chose to harshly penalize unlicensed contractors by denying them access to the courts to collect compensation for work performed, and its policy must override the judicial principle that disfavors unjust enrichment. Triple B Corp. v. Brown Root, Inc., 106 N.M. 99, 739 P.2d 968 (1987).

Legislative intent to bar suit by unlicensed contractor. — Intent of legislature under this section was to prohibit bringing of suit by unlicensed contractors acting illegally, and not to bar remedy of lawful contractors because of a technical error in their pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

The provisions of this section should not be transformed into an "unwarranted shield for the avoidance of a just obligation." Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Not applicable to joint venturer. — This section did not apply to a party engaged in a joint venture agreement who undertook to perform repair and construction work on property of which he was a joint owner. Lightsey v. Marshall, 1999-NMCA-147, 128 N.M. 353, 992 P.2d 904, cert. denied, 128 N.M. 148, 990 P.2d 822 (1999).

No foreclosure of lien or judgment on contract where no license. — Failure of contractor to have license at the time contract was entered into prevented foreclosure of mechanic's lien or any judgment based on the contract for work done, even though a license was secured before work was completed or his cause of action arose. Crawford v. Holcomb, 57 N.M. 691, 262 P.2d 782 (1953), overruled on other grounds, State ex rel. Gary v. Fireman's Fund Indem. Co., 67 N.M. 360, 355 P.2d 291 (1960).

No recovery based on contract entered into by unlicensed contractor. — To recover damages for breach of contract, where the plaintiff must rely on an alleged contract entered into by him in violation of statutes which prohibit contracting as unlicensed contractor and provide a criminal penalty for the violation, his action may not be maintained. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Unlicensed contractor should not be able to recover for the fabrication of his clients' cabinets and countertops in light of the fact that, under his view of the agreement, he did not charge anything for installation, because under his legal theory, contractor is in effect asking the court to excuse the construction work he performed without a license and exempt him from the requirements of the Construction Industries Licensing Act. Gamboa v. Urena, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, cert. denied, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 10.

When recovery prohibited. — The statute only prohibits an unlicensed contractor from bringing or maintaining an action "for the collection of compensation" for construction work, and therefore, recovery by cross-plaintiff was prohibited only if its action on note

and mortgage was one for collection of compensation for a construction contract. Inst. for Essential Hous., Inc. v. Keith, 76 N.M. 492, 416 P.2d 157 (1966).

To establish that plaintiff is precluded from recovery by this section requires proof that cabinets were "fabricated" into the structure within the meaning of 60-13-3C(1) NMSA 1978 (now see 60-13-3D(1) NMSA 1978). Am. Builders Supply Corp. v. Enchanted Builders, Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Recipient of work can recover payments made on a contract to an unlicensed contractor. Mascarenas v. Jaramillo, 111 N.M. 410, 806 P.2d 59 (1991).

No license requirement for cleanup activity. — When construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of 60-13-3 NMSA 1978 and was therefore not governed by this section. Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Substantial compliance with licensing requirement. — The doctrine of substantial compliance developed in California, which has a licensing act similar to that of New Mexico, is applicable in New Mexico. The three elements of substantial compliance are: (1) appellant held a valid license at the time of contracting; (2) appellant readily secured a renewal of his license; and (3) the responsibility and competence of plaintiff's managing officer were officially confirmed throughout period of performance of contract. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

Since appellant has violated provisions of the act as to aggregate dollar amount of contract for which he is financially responsible at any one time, and thus taken himself out of the duly licensed category, he has "substantially complied" with the licensing requirements to such a degree that he is not barred from bringing suit. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

A contractor was in substantial compliance with the act, despite an inadvertent lapse in his license prior to entering into and performing a construction contract; the cancellation of his license occurred for reasons beyond his control and not for reasons of incompetence or discipline, the contractor readily secured a renewal of his license, and the contractor exhibited fiscal responsibility and competence by complying immediately upon becoming aware of the default. Koehler v. Donnelly, 114 N.M. 363, 838 P.2d 980 (1992).

No substantial compliance. — Subcontractor did not "substantially comply" with licensing requirements to the degree necessary to avoid being barred under this section from bringing suit where he was not licensed at the time he entered into the contract, his efforts to secure a new license when his performance under the subcontract was near completion did not constitute the securing of a "renewal" of his license, and his efforts to

secure a license did not confirm his responsibility and competence throughout the period of performance. Roth v. Thompson, 113 N.M. 331, 825 P.2d 1241 (1992).

Party mining copper ore considered contractor. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is contractor within the terms of this section. Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Employee not independent contractor where performance controlled. — Since plaintiff was hired by defendant for drilling purposes, and since defendant retained at all times the right of control of performance of work as well as the right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor, and was not barred from recovery under this act for failure to obtain contractor's license. Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960).

Effect of knowledge contractor not licensed. — Under former law, fact that defendants in action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with the statute. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Allegation required that contractor duly licensed. — Former law required allegation that contractor was duly licensed at time cause of action arose. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Raising issue of noncompliance with licensing requirements. — If a complaint on its face shows that compliance with requirement that a contractor be licensed is essential to cause of action, the issue of noncompliance may be raised and dealt with as a matter of law. Am. Builders Supply Corp. v. Enchanted Bldrs., Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Failure to allege license is affirmative defense. — The defense of failure to allege license under the statute is affirmative in nature, and should be pleaded. Am. Builders Supply Corp. v. Enchanted Builders, Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Failure to allege license is equivalent to failure to state claim. — Since failure to allege license under the act is fatal to complaint, it may be asserted at any time that complaint fails to state claim on which relief can be granted. Am. Builders Supply Corp. v. Enchanted Builders, Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Evidence of license treated as tried by parties' consent. — Where appellants made no objection to evidence of contractor's license and raised neither jurisdiction nor limitation question at trial, and requested no findings on either question, the requirement of allegation of a contractor's license was a matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot object to

appellate court treating issue tried with consent of the parties as though it had been raised by the pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

Default judgment on crossclaim. — Subcontractor's failure to state a claim upon which relief could be granted by alleging in his crossclaim that he was duly licensed as a contractor did not deprive the district court of jurisdiction to enter a default judgment on the crossclaim. Sundance Mech. & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834, 42 A.L.R. 1226, 118 A.L.R. 646.

Failure to procure license as affecting validity of plumber's contract, 118 A.L.R. 646.

Unjust enrichment of landowner based on adjoining landowner's construction, improvement, or repair of commonly used highway, street, or bridge, 22 A.L.R.5th 800.

53 C.J.S. Licenses §§ 74 to 77.

60-13-31. Trade bureaus created.

There are created under the division the "electrical bureau," the "mechanical bureau," the "general construction bureau" and the "liquefied petroleum gas bureau."

History: 1953 Comp., § 67-35-34, enacted by Laws 1967, ch. 199, § 34; 1973, ch. 259, § 12; 1977, ch. 245, § 193; 1983, ch. 105, § 14.

60-13-32. Trade bureaus; definitions.

As used in the Construction Industries Licensing Act:

A. "electrical wiring" means all wiring, conductors, fixtures, devices, conduits, appliances or other equipment, including generating equipment such as solar electricity generating equipment of not over ten kilowatt capacity, used in connection with the general distribution or use of electrical energy;

B. "plumbing" means the installing, altering and repairing of all plumbing fixtures, fixture traps and soil, waste, supply and vent pipes, with their devices, appurtenances and connections, through which water, waste, sewage, oil and air are carried, when done within the property lines of the building or structure to be served by the plumbing or to the point of connection with the utility system. This subsection shall not be construed as prohibiting the installation by a "fixed works" licensee of service lines from the utility system to a point five feet outside the building or structure to be served by the plumbing;

C. "fixtures" includes closet bowls, lavatories, bathtubs, showers, kitchen sinks, laundry trays, hot water tanks, softeners, urinals, bidets, service sinks, shower pans, drink fountains, water compressors, water coolers, septic tanks or similar systems of sewage disposal and such other similar fixtures used in plumbing as designated by the mechanical bureau;

D. "gas fitting" means the installing, altering and repairing of consumers' gas piping and the installation of appliances utilizing natural gas as fuel and their appurtenances in or upon premises of the consumers;

E. "softener" or "water conditioner" means any appliance, apparatus, fixture and equipment that is designed to soften, filter or change the mineral content of water, whether permanent or portable; and

F. "certificate of competence" means evidence of competence issued by the division to a journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter or journeyman welder working on pipelines, collection lines or compressor stations.

History: 1953 Comp., § 67-35-35, enacted by Laws 1967, ch. 199, § 35; 1969, ch. 224, § 9; 1977, ch. 245, § 194; 1984, ch. 55, § 1; 1989, ch. 6, § 29; 2013, ch. 86, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the definition of "electrical wiring"; and in Subsection A, after "generating equipment", added "such as solar electricity generating equipment".

60-13-33. Trade bureaus; general duties and powers.

The trade bureaus shall:

A. cooperate in administering examinations for the licensing and certification of the occupations or trades assigned to their jurisdictions pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978], and provide those examinations and any related materials in both English and Spanish;

B. perform inspections of all occupations, trades and activities within their jurisdictions;

C. be responsible for all administrative duties and other duties necessary and incidental thereto required in the Construction Industries Licensing Act, including those activities and duties assigned to them by the director; and

D. recommend rules and regulations and submit them to the division for approval by the commission and promulgation by the division.

History: 1953 Comp., § 67-35-36, enacted by Laws 1967, ch. 199, § 36; 1977, ch. 245, § 195; 1977, ch. 377, § 5; 1978, ch. 73, § 2; 1985, ch. 70, § 3; 1989, ch. 6, § 30.

ANNOTATIONS

Cross references. — For trade bureaus, see 60-13-31 NMSA 1978.

Jurisdiction over natural gas piping installation under former law. — The installation, alteration and repair of natural gas piping and the installation of natural gas appliances in house trailers came under the jurisdiction of the state plumbing administrative board under former law. 1959-60 Op. Att'y Gen. No. 60-230.

60-13-34, 60-13-35. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-34 and 60-13-35 NMSA 1978, as amended by Laws 1977, ch. 245, §§ 196 and 197, relating to revocations by, and general powers of, trade bureaus, effective July 1, 1989.

60-13-36. Certificates of competence; suspension and revocation.

A. The commission may suspend any certificate of competence issued within the scope of the bureau's trade for a definite period not exceeding ninety consecutive days.

B. Suspension of a certificate of competence shall be for any cause specified in the Construction Industries Licensing Act [60-13-1 NMSA 1978].

C. The commission may revoke any certificate of competence issued by it only for the following causes:

(1) misrepresentation of a material fact by the individual obtaining the certificate;

(2) violation willfully or by reason of incompetence of any provision of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act pertaining to installation, alteration, maintenance, connection or repair; or

(3) aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant thereto.

History: 1953 Comp., § 67-35-39, enacted by Laws 1967, ch. 199, § 39; 1969, ch. 13, § 2; 1977, ch. 245, § 198; 1983, ch. 105, § 15; 1989, ch. 6, § 31.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

53 C.J.S. Licenses §§ 50 to 62.

60-13-37. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-37 NMSA 1978, as amended by Laws 1977, ch. 245, § 199, relating to renewal of revoked certification, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-38. Certificates of competence; examination; journeymen.

A. A person shall not engage in the occupation or trade of journeyman unless he holds a certificate of competence issued by the division for the occupation or trade in which he desires to engage.

B. The categories for certificates of competence are: journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter, journeyman sheet metal worker, journeyman boiler operator, residential wireman and journeyman welder working on pipelines, collection lines or compressor stations.

C. An applicant for a certificate of competence shall be required to take an examination approved and adopted by the division as to his knowledge of the orders and rules governing the occupation or trade for which a certificate is sought, and as to his technical knowledge and ability pertaining to his particular trade. The examination may be oral, written or demonstrative or any combination thereof, as required by rules of the commission.

D. The division shall issue a certificate of competence to any journeyman welder working on pipelines, collection lines or compressor stations who shows evidence of having satisfactorily completed an examination administered by an independent testing organization or public utility employing engineers registered with the state, such examination meeting the minimum pipeline safety standards set by the public regulation commission.

E. Applications for certificates of competence shall be in the form and shall contain such information and attachments as the division prescribes.

F. The division shall establish a reasonable fee for any examination or issuance of certificate of competence.

G. A person is not eligible to take an examination for a certificate of competence unless he has had two years' experience in the occupation or trade for which a certificate of competence is sought, or the equivalent thereof as determined by the commission, or has successfully completed a course in the trade approved by the vocational education division of the state department of public education.

H. Employment of an apprentice working under the direct supervision of a certified journeyman is not prohibited by the Construction Industries Licensing Act [60-13-1 NMSA 1978].

I. A person is eligible to take an examination for a journeyman electrician certificate of competence after at least:

(1) four years of accredited training in the electrical trade;

(2) four years of apprenticeship in the electrical trade;

(3) four years of practical experience in the electrical trade, of which two years are in the commercial trade, industrial trade or the equivalent as determined by the commission; or

(4) successfully completing an electrical trade program approved by the vocational education division of the state department of public education and two years of practical experience in the commercial electrical trade.

J. Continuing education requirements for a journeyman electrician shall include at least sixteen hours of continuing education in every three-year period between national electrical code updates, of which eight hours are code change instructions and eight hours are other industry-related instruction. All continuing education curricula and instructors shall be approved by the commission based on recommendations by the electrical bureau.

K. A certificate of competence shall not be renewed until a complete application for renewal has been received by the division. Proof of completion of the continuing education requirements shall be submitted to the division with the application for renewal of certificate of competence. An application for renewal that is not accompanied by proof of completion of the continuing education requirements is incomplete and shall not be processed. The continuing education requirements in this subsection shall only apply to a journeyman electrician with the designation "EE-98J" or "JE98". This does not apply to EE98.

L. A person is eligible to take an examination for a residential wireman's certificate of competence after at least:

(1) two years of accredited training or apprenticeship in the electrical trade;

(2) two years of practical experience in wiring residential dwellings; or

(3) successfully completing a course in the trade approved by the vocational education division of the state department of public education and one year of practical experience in wiring residential dwellings.

M. The provisions of Subsections I and L of this section do not apply to a person who was enrolled as a full-time student before June 20, 2003 in an electrical trade program approved by the vocational education division of the state department of public education.

History: 1953 Comp., § 67-35-41, enacted by Laws 1967, ch. 199, § 41; 1971, ch. 212, § 1; 1977, ch. 245, § 200; 1983, ch. 105, § 16; 1984, ch. 55, § 2; 1985, ch. 70, § 4; 1989, ch. 6, § 32; 2003, ch. 366, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "A person shall not engage" for "No individual shall engage" at the beginning of Subsection A; substituted "categories for" for "division shall issue" at the beginning of Subsection B; rewrote Subsection C and added Subsection D and redesignated the following subsections accordingly; in present Subsection D, substituted "public regulation commission" for "state corporation commission" at the end of the subsection; and added Subsections I through M.

State employees must obtain certificate. — The Personnel Act does not exempt state employees in journeyman occupations from obtaining a certificate of competency. 1981 Op. Att'y Gen. No. 81-11.

All persons employed in journeyman trades or occupations, including those employed by a state agency, are required by law to obtain a certificate of competency in accordance with the provisions of the Construction Industries Licensing Act. 1981 Op. Att'y Gen. No. 81-11.

Effect under former law of master electrician's disassociating from business. — When the master electrician disassociated himself from the business, the business had 60 days in which to qualify a new supervisor. The license remained with its owner, the new business, assuming that the master electrician was not a partner. The master electrician then, ipso facto, had no electrical contractor's license. Therefore, he had to apply for and obtain a new one before engaging in the electrical contracting business again. 1961-62 Op. Att'y Gen. No. 62-77.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47, 113, 114.

53 C.J.S. Licenses § 40.

60-13-39. Certificates and examination.

A. Certificates of competence issued by the division are not transferable and shall expire on the date established by the division, not more than three years from the month of issuance.

B. Application shall be made before the expiration date for renewal of a current certificate of competence and shall be accompanied by the fee prescribed for the initial issuance of the certificate.

C. Applications for a renewal of a certificate of competence shall be filed with the division prior to the last working day before the certificate expires. An expired certificate shall be renewable within a six-month period without examination and only upon paying a fee in twice the amount of the renewal fee. If the certificate has not been renewed within the six-month period, it shall be canceled.

History: 1953 Comp., § 67-35-42, enacted by Laws 1967, ch. 199, § 42; 1969, ch. 224, § 11; 1977, ch. 245, § 201; 1989, ch. 6, § 33; 1997, ch. 181, § 6.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "three years" for "one year" in Subsection A.

60-13-40. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-40 NMSA 1978, as amended by Laws 1983, ch. 105, § 17, relating to disposition of fees, effective July 1, 1989.

60-13-40.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 181 § 11 repeals 60-13-40.1 NMSA 1978, as last amended by Laws 1989, ch. 324, § 31, creating the journeymen testing revolving fund, effective July 1, 1997.

60-13-41. Inspectors; designated inspection agencies.

A. State inspectors shall be employed by the director.

B. Qualifications for inspectors shall be prescribed by the commission, and applicants shall submit to an appropriate background check as prescribed by the

commission. Inspectors shall meet the minimum continuing education requirements as prescribed by the nationally recognized code organization for each trade bureau jurisdiction and provide proof of such credits to the division upon application for or renewal of certification.

C. The division shall certify and issue a statewide inspector's certificate to any person who meets the requirements established by the nationally recognized code organization for certification. The certificate shall list all trade bureaus for which the inspector is certified to inspect and shall be valid for a term of three years.

D. An inspector shall be employed by a county, municipality or other political subdivision in order to inspect work under permits issued in the trade bureau for which the inspector is certified; provided that the county, municipality or other political subdivision has a certified building official in its employ and has adopted the current minimum code standards as established by the commission.

E. Except as provided in Subsection F of this section, the state or its agent shall conduct all inspections if a county, municipality or other political subdivision does not have a certified building official in its employ.

F. A county, municipality or other political subdivision may enter into a memorandum of understanding to share a certified building official and inspectors operating under that certified building official with another county, municipality or other political subdivision; provided that the certified building official is employed in the same county, in an adjacent county, within one hundred miles of the county, municipality or other political subdivision or as approved by the division.

G. A person currently acting in the capacity of a certified building official may continue to act in that capacity and shall have five years from the effective date of this 2013 act to become a certified building official as prescribed by the Construction Industries Licensing Act. When a certified building official leaves the employ of a county, municipality or other political subdivision, the plan review, permitting and inspections overseen by that certified building official shall transfer to the state unless the county, municipality or other political subdivision, within sixty days or a longer period as approved by the division, replaces that certified building official or enters into a memorandum of understanding pursuant to Subsection F of this section.

H. The division may appoint inspection agencies to inspect the construction, installation, alteration or repair of manufactured commercial units, modular homes and premanufactured homes, including those manufacturers whose business premises are without the state, to ensure that the New Mexico standards of construction and installation are adhered to and that the quality of construction meets all New Mexico codes and standards. If the inspection agency has no place of business within the state, it shall file a written statement with the secretary of state setting forth its name and business address and designating the secretary of state as its agent for the service of process.

I. The division shall, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction.

J. The director shall assign an investigator to investigate the merits of every complaint brought against an inspector and report to the commission within ten days.

History: 1953 Comp., § 67-35-49, enacted by Laws 1967, ch. 199, § 49; 1972, ch. 11, § 2; 1973, ch. 229, § 4; 1973, ch. 259, § 14; 1975, ch. 331, § 19; 1977, ch. 245, § 203; 1983, ch. 105, § 18; 1989, ch. 6, § 35; 2001, ch. 156, § 1; 2011, ch. 129, § 1; 2013, ch. 142, § 4; 2013, ch. 153, § 4.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided qualifications of inspectors; provided for statewide inspector's certificates; provided for local inspection agencies; in Subsection B, in the first sentence, after "Qualifications", deleted "and job descriptions", after "Qualifications for inspectors", deleted "for the state, municipalities and all other political subdivisions", and after "shall be prescribed by the commission", added the remainder of the sentence and added the second sentence; added Subsections C through G; deleted former Subsection D, which provided for reciprocal agreements with other jurisdictions; and added Subsection J.

Compiler's notes. — Laws 2013, ch. 142, § 4, effective June 14, 2013, and Laws 2013, ch. 153, § 4, effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 4. *See* 12-1-8 NMSA 1978.

The 2011 amendment, effective June 17, 2011, made no change.

The 2001 amendment, effective June 15, 2001, deleted "The commission shall also promulgate rules and regulations establishing a recertification incentive plan which provides for salary increases for state inspectors based on education and training and additional qualifications." from the end of Subsection B.

Authority to create categories of certification of inspectors. — The construction industries division of the regulation and licensing department has the authority to create different categories of certification with different certification standards based on an inspector's status as a state or local inspector. 2011 Op. Att'y Gen. No. 11-06.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-42. Authority of inspectors; limitation.

A. A state certified inspector may, during reasonable hours, enter any building or go upon any premises in the discharge of the inspector's official duties for the purpose of

making an inspection of work performed or for the purpose of testing any installation authorized within the jurisdiction of the inspector's trade certification. The inspector may cut or disconnect, or have cut or disconnected in cases of emergency, an installation or device when necessary for safety to life or property or where the installation may interfere with the work of a fire department.

B. The inspector may disconnect or order the discontinuance of service to any installation, device, appliance or equipment found to be dangerous to life or property because it is defective or is incorrectly installed, until the installation, device, appliance or equipment is made safe and is approved by the inspector.

C. The inspector may order the correction of any defects or any incorrect installation that prompted the disconnection and discontinuance of service.

D. In all cases where disconnection is made, a notice shall be attached by the inspector to the installation, device, appliance or equipment disconnected, which notice shall state that the same has been disconnected by or on order of the inspector and the reason for the disconnection. It is unlawful for a person to remove the notice or to use the installation, device, appliance or equipment without authorization of an inspector.

E. The division shall by regulation adopt official inspection stickers or medallions for the purpose of identifying those modular homes and premanufactured homes that have been inspected and found to comply with all requirements of the state codes and standards. State inspection and acceptance for use of modular homes and premanufactured homes shall exclusively apply to the use and occupancy of such dwellings in the state and in any of its political subdivisions, subject to the requirements of local planning and zoning ordinances and ordinances requiring permits and inspections for foundations, electrical and mechanical hookups or other safety or sanitary requirements.

History: 1953 Comp., § 67-35-50, enacted by Laws 1967, ch. 199, § 50; 1972, ch. 11, § 3; 1973, ch. 259, § 15; 1975, ch. 331, § 20; 1977, ch. 245, § 204; 1989, ch. 6, § 36; 2011, ch. 129, § 2.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, eliminated the restriction that limited inspections by municipal inspectors only in localities where they were authorized to make inspections.

Reasonable business hours requirement is necessary so that the owner/occupier is present and the inspector can seek consent. Mimics, Inc. v. Village of Angel Fire, 394 F.3d 836 (10th Cir. 2005).

Inspection of wiring in trailers, mobile homes. — The former electrical board could inspect the installation and use of electrical wiring in a trailer or mobile home during the

construction of such trailer or mobile home within this state. 1969 Op. Att'y Gen. No. 69-51.

Inspection of buildings on Indian lands. — State inspection of buildings constructed by New Mexico contractors on Indian lands leased to private individuals under a 99-year lease does not interfere with reservation self-government. 1970 Op. Att'y Gen. No. 70-76.

60-13-43. Repealed.

ANNOTATIONS

Repeals. — Laws 2013, ch. 142, § 5 and Laws 2013, ch. 153, § 5 repealed 60-13-43 NMSA 1978, as enacted by Laws 1967, ch. 199, § 51, relating to qualification of municipal and county inspectors, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMONESOURCE.COM*.

60-13-44. Trade bureaus; standards; conflicts.

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to persons who have a physical disability, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to persons with a physical disability that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's commission on disability. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by persons with a physical disability or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the applicable New Mexico building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act [70-5-2 NMSA 1978] in effect at the applicable time shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus.

History: 1953 Comp., § 67-35-52, enacted by Laws 1967, ch. 199, § 52; 1971, ch. 223, § 1; 1972, ch. 11, § 4; 1973, ch. 259, § 16; 1975, ch. 331, § 21; 1977, ch. 245, § 206; 1983, ch. 105, § 19; 1989, ch. 6, § 38; 2000, ch. 40, § 1; 2003, ch. 264, § 2; 2005, ch. 46, § 1; 2007, ch. 46, § 48.

ANNOTATIONS

Cross references. — For the commission on disability, *see* 28-10-1 to 28-10-8.1 NMSA 1978.

For the LPG and CNG Act, *see* 70-5-1 to 70-5-23 NMSA 1978.

Compiler's notes. — The "effective date of the Construction Industries Licensing Act", referred to in the first sentence in Subsection I, is July 1, 1967.

The 2007 amendment, effective June 15, 2007, made non-substantive language changes.

The 2005 amendment, effective June 17, 2005, changed the reference in Subsection D from committee on concerns of the handicapped to the commission on disability; and provided in Subsection H that applicable New Mexico building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act in effect at the applicable time control over conflicting codes and standards.

The 2003 amendment, effective June 20, 2003, rewrote this section.

The 2000 amendment, effective May 17, 2000, added the last sentence in Subsection B, deleted "and regulations" from the phrase "rules and regulations" throughout Subsection D, changed the "New Mexico Uniform Plumbing Code" and the "New Mexico Natural Gas Code" to read the "New Mexico Plumbing Code" and the "Natural Gas Code of New Mexico" in Subsection H, and substituted "rule" for "regulation" in Subsection J.

Enforcement of state building code. — The construction industries division of the regulation and licensing department has the authority to refuse to provide inspection services or certify local inspectors in municipalities that fail to adopt a building code that provides for minimum requirements of the state Uniform Building Code. The construction industries division has the authority to issue a stop work or similar order on a construction project authorized by a local jurisdiction that has adopted a building code that, while the code meets minimum standards set by the CID, differs from the building code adopted by CID. 2011 Op. Att'y Gen. No. 11-06.

Construction Industries Licensing Act authorizes adoption of a statewide code. 1968 Op. Att'y Gen. No. 68-119.

Political subdivisions, not state, included under section. — This section only extends provisions of the codes adopted pursuant to the Construction Industries Licensing Act to political subdivisions of the state; it does not include the state itself. 1970 Op. Att'y Gen. No. 70-38.

Powers of general construction board. — This section empowers general construction board to do anything necessary to ensure that public buildings conform to adopted codes. Requiring building permits and performing inspections are powers necessary to ensure this conformity. Insofar as Attorney General's Opinion No. 70-38 is inconsistent with this opinion, it is amended accordingly. 1974 Op. Att'y Gen. No. 74-10.

Electrical contractor formerly under jurisdiction of electrical board. — Trade which is within jurisdiction of the former electrical board is that of electrical contractor, that is, a person engaged in the installation of electrical wiring. 1969 Op. Att'y Gen. No. 69-51.

60-13-45. Trade bureaus; permits.

A. The trade bureaus within their respective jurisdictions may require a permit to be secured and conspicuously posted prior to any construction, installation, alteration, repair or addition to or within any building, structure or premises.

B. No permit shall be required for the performance of any of the following classes of work:

(1) minor repairs, replacement of lamps, the connection of portable electrical equipment to suitable receptacles which are permanently installed, minor repairs or replacement of or to faucets, taps or jets or connection of portable equipment to suitable connections or inlets which have been permanently installed;

(2) installation of temporary wiring for testing electrical equipment or apparatus or installation of temporary fixtures or devices for testing fixtures, equipment, apparatus or appliances;

(3) installation, alteration or repair of electrical equipment for the operation of signals or the transmission of intelligence by wire; and

(4) installation or work which is done after regular business hours or during a holiday when immediate action is imperative to safeguard life, health or property, provided the person making the installation or performing the work applies for a permit covering the installation or work not later than the next business day.

C. If a permit has been issued for construction of a new residential building, that residential building shall not be occupied until a certificate of occupancy has been issued certifying compliance with all codes and standards.

D. The commission shall make rules and regulations pertaining to the issuance of permits and the setting of reasonable fees to be paid by the applicant for a permit. The regulations shall provide a procedure for the issuance of permits outside the corporate limits of a municipality where inspection is made by a state inspector or a municipal inspector serving as a part-time state inspector and for inspections within a municipality where the inspection is done exclusively by a full-time state inspector. Each trade bureau by regulation may require a reasonable bond or surety in the penal sum of five hundred dollars ($500) or more, but not to exceed fifteen hundred dollars ($1,500), with such bureau named as obligee and conditioned for the payment of inspection fees provided in the Construction Industries Licensing Act [60-13-1 NMSA 1978]. Nothing in this section shall preclude municipalities from making inspections in accordance with the Construction Industries Licensing Act or rules and regulations pursuant to that act or from establishing a schedule of fees to be paid by an applicant for a permit.

E. In the event that the division assumes inspections of a municipal or county jurisdiction, the permit fees shall be paid directly to the division.

History: 1953 Comp., § 67-35-53, enacted by Laws 1967, ch. 199, § 53; 1969, ch. 224, § 12; 1977, ch. 245, § 207; 1989, ch. 6, § 39.

ANNOTATIONS

Recovery by plumber obtaining permit while work in progress. — Plaintiff, a licensed plumber who obtained permit while work was in progress, contrary to former version of statute which required that permit be obtained before job began, could recover for labor performed and materials furnished where defendant was not injured by delay and where former 67-22-11, 1953 Comp., was silent on effect of failure to apply for permit. Measday v. Sweazea, 78 N.M. 781, 438 P.2d 525 (Ct. App. 1968).

Restrictions on municipal permitting or inspection. — The construction industries division of the regulation and licensing department does not have the authority to place special requirements on a local jurisdiction’s approval of construction permits or inspection of construction projects. 2011 Op. Att’y Gen. 11-06

Failure to adopt temporary or permanent CID program requirements. — The construction industries division of the regulation and licensing department does not have the authority to refuse inspection services to a local jurisdiction because the local jurisdiction failed to adopt temporary or permanent CID program requirements for the approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. No. 11-06.

"Permit" as used in this section refers to a "building permit" or "installation permit." 1969 Op. Att'y Gen. No. 69-72.

Municipalities and trade boards not given coextensive authority. — It is unreasonable to interpret this section as giving municipalities and trade boards coextensive authority to require permits and inspections within municipalities. That interpretation would produce the possibility that citizens of a municipality might have to obtain two permits and submit to double inspections for their construction work, which would be contrary to purposes of the Construction Industries Licensing Act, one of which is to eliminate duplication of inspections. 1974 Op. Att'y Gen. No. 74-13.

Construction Industries Licensing Act covers practically entire field of construction industry and leaves municipalities only the right to make inspections or rules and regulations pursuant thereto, and to establish a schedule of fees to be paid by applicant for a permit. 1969 Op. Att'y Gen. No. 69-72.

Right of municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Municipality's power to tax contractors. — Legislature intended all occupations should be taxed under former Section 3-38-3 NMSA 1978, and the mere fact they are not included in suggested classifications which a municipality could choose to use does not prevent taxation of resident or nonresident contractors with a minimum tax of $5.00 and a maximum of $25.00 for an occupation license, unless municipality has issued a license to a contractor under any other law. 1969 Op. Att'y Gen. No. 69-72.

Municipality's power to enact rules, make inspections. — All municipalities have power to enact rules and regulations and make inspections pursuant to the Construction Industries Licensing Act, and charge for building or installation permits, but can add no requirements whatsoever thereto, except possibly as to character and quality of installations, and even this admits of some doubt, if the work passes state inspection. 1969 Op. Att'y Gen. No. 69-72.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131. 13 Am. Jur. 2d Buildings §§ 8 to 11.

60-13-46. Trade bureaus; annual permits.

A. In lieu of an individual permit for each installation, alteration or repair, an annual permit shall be issued, upon application, to any person, commercial or industrial plant or enterprise, governmental agency or political subdivision of the state that regularly employs one or more certified journeymen for installation, alteration, maintenance or repair on premises owned or occupied by the applicant for the permit.

B. The application for an annual permit shall be in writing to the appropriate trade bureau in whose jurisdiction the work is to be done.

C. Annual permit holders shall keep a record of all work done under the annual permit, and the appropriate trade bureau or its authorized employees shall have access to the record.

D. A reasonable fee established by the division shall be paid for each annual permit at the time of issuance. Inspection fees shall be collected at the time of each regular inspection of installations, alterations or repairs made under the annual permit. Fees received by a bureau under this subsection shall be remitted to the division.

E. Annual permits expire one year from their date of issuance.

History: 1953 Comp., § 67-35-54, enacted by Laws 1967, ch. 199, § 54; 1973, ch. 259, § 17; 1975, ch. 331, § 22; 1975, ch. 336, § 1; 1977, ch. 245, § 208; 1983, ch. 105, § 20; 1989, ch. 6, § 40.

60-13-47. Trade bureaus; connection to installation.

A. Except where work is done under an annual permit, no public utility shall make a connection from a supply of water or gas to an installation for which a permit is required, or which has been disconnected or ordered to be disconnected by the trade bureau having jurisdiction, without the authorization of the trade bureau having jurisdiction.

B. The public utility may make a connection from a supply of water or gas to an installation under the following circumstances:

(1) if within seven days after notification to the appropriate trade bureau of the completion of any work or installation the bureau has failed to approve or disapprove the connection; or

(2) if an installation or work is not located in any territory where there is an authorized inspector; provided, however, before any such connection is made by the public utility, the public utility must have received a written statement from the licensee declaring that the installation or work conforms with the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] and the orders, rules and regulations, codes and minimum standards made pursuant to that act. The public utility shall immediately report to the proper trade bureau the receipt and contents of the statement. If it is discovered by the trade bureau that the declaration made in the statement is

false, the trade bureau shall order the licensee making the statement to rectify the defects within five days after receipt of the written notice thereof from the bureau.

C. No public or municipally owned electric utility shall make a connection from a supply of electricity for which a permit is required without the approval of the electrical bureau or its authorized representative. In the event of an emergency, the electrical contractor shall issue a prefinal permit to the serving utility authorizing the service to be reconnected. The electrical contractor shall report the emergency on the next working day to the electrical bureau or its authorized representative for inspection.

History: 1953 Comp., § 67-35-55, enacted by Laws 1967, ch. 199, § 55; 1977, ch. 245, § 209; 1983, ch. 105, § 21.

ANNOTATIONS

Indirect and purely economic harm is not the type of harm that the legislature sought to prevent in enacting this section, as this section is a health and safety measure. McElhannon v. Ford, 2003-NMCA-091, 134 N.M. 124, 73 P.3d 827.

Inspection of plumbing in public schools. — Municipal inspectors have authority to inspect plumbing installed in public schools, even though they may not collect a fee for such inspection. If the inspector does not conduct an inspection, or if no inspector has been appointed in the area to be inspected, the connection to the municipal water or sewer system can be made. 1961-62 Op. Att'y Gen. No. 61-15.

60-13-48. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-48 NMSA 1978, as amended by Laws 1977, ch. 245, § 210, relating to contractors' financial responsibility, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-48.1. Financial statements; confidentiality.

No information from financial statements obtained from applicants for licenses or licensees for the division's use in determining responsibility or maintaining proof of responsibility for the future shall be released unless in statistical form and classified to prevent identification of particular applicants. Any employee of the division, any former employee of the division or any other person who reveals to another individual any information which he is prohibited from lawfully revealing by provision of this section is guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1978 Comp., § 60-13-48.1, enacted by Laws 1983, ch. 105, § 22; 1989, ch. 6, § 41.

60-13-49. Proof of responsibility.

A. No applicant for a contractor's license or for renewal of a contractor's license shall be issued a license until the director determines that the applicant furnishes proof of responsibility pursuant to Subsection B of this section.

B. Proof of responsibility shall be a bond of ten thousand dollars ($10,000) acceptable to the director and underwritten by a corporate surety authorized to transact business in New Mexico. Such bond shall meet the following conditions:

(1) payments from a bond required pursuant to this section shall only be used to cure code violations caused by a licensee, certified by the division and not corrected by the licensee. Claims against the bond shall be made within two years following final inspection by the governmental entity having jurisdiction over code enforcement or within two years of issuance of a certificate of occupancy for the construction project, whichever is earlier;

(2) the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond;

(3) the bond carrier shall provide to the division and to the licensee thirty days' prior written notice of intent to cancel a bond required pursuant to this section. The surety for such a bond shall remain liable under the provisions of the bond for all obligations of the principal pertaining to bond terms that occur before the bond is canceled, expires or otherwise becomes ineffective;

(4) failure to maintain the bond for the period required by law is cause for revocation of the license; and

(5) if the bond is canceled, expires or otherwise becomes ineffective during the period of a license, the division shall notify the licensee that a new bond is required. If the licensee has not provided proof of a new bond before the fortieth day after the date on which the bond was canceled, expired or otherwise became ineffective, the license shall be subject to revocation for failure of proof of responsibility.

History: 1953 Comp., § 67-35-57, enacted by Laws 1967, ch. 199, § 57; 1969, ch. 224, § 13; 1977, ch. 245, § 211; 1985, ch. 153, § 1; 1989, ch. 6, § 42; 2008, ch. 38, § 1.

ANNOTATIONS

The 2008 amendment, effective July 1, 2009, deleted former Subsections B through J, which provided for the form and amounts of financial responsibility; for revocation of a license for failure to maintain proof of financial responsibility; for the limitation in actions

on the proof of responsibility; and for cancellation of a license upon cancellation or expiration of a contractor's proof of responsibility; and added a new Subsection B.

Formerly, judgments against principal could not be collaterally attacked by surety because it was claimed that attorneys' fees were not proper element of damages in suit based upon a statutory contractor's bond. State ex rel. Dar Tile Co. v. Glens Falls Ins. Co., 78 N.M. 435, 432 P.2d 400 (1967).

Judgment against principal was conclusive, absent fraud or collusion under former law. State ex rel. Dar Tile Co. v. Glens Falls Ins. Co., 78 N.M. 435, 432 P.2d 400 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 17 Am. Jur. 2d Contractors' Bonds § 1 et seq.

53 C.J.S. Licenses § 42.

60-13-50. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-50 NMSA 1978, as enacted by Laws 1967, ch. 199, § 58, relating to exemptions, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-51. Contractor's bond; municipal requirement prohibited.

No municipality shall require any person or corporation licensed under the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] to file or obtain as a condition of doing business as a licensed contractor within the municipality any additional license bond as proof of responsibility if the person or corporation has met the responsibility requirements of the commission.

History: 1953 Comp., § 67-35-58.1, enacted by Laws 1971, ch. 233, § 1; 1977, ch. 245, § 212; 1989, ch. 6, § 43.

60-13-52. Penalty; misdemeanor.

A. Any person who acts in the capacity as a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978] without a license required by that act, and any person who holds himself out as a sales representative of a contractor which contractor is without a license as required by that act, is guilty of a misdemeanor, and upon conviction therefor the court shall:

(1) where the dollar value of the contracting work is five thousand dollars ($5,000) or less, sentence the person to be imprisoned in the county jail for a term of ninety days or to the payment of a fine of not less than three hundred dollars ($300) nor

more than five hundred dollars ($500), or to both such imprisonment and fine in the discretion of the court; and

(2) where the dollar value of the contracting work exceeds five thousand dollars ($5,000), sentence the person to be imprisoned in the county jail for a term of six months or to the payment of a fine of ten percent of the dollar value of the contracting work, or to both such imprisonment and fine in the discretion of the court.

B. Any person who acts in the capacity as a journeyman within the meaning of the Construction Industries Licensing Act without holding a valid certificate of competence issued by the division is guilty of a misdemeanor, and upon conviction therefor the court shall sentence the person to be imprisoned in the county jail for a term of ninety days or to payment of a fine of not less than one hundred dollars ($100) nor more than three hundred dollars ($300), or to both such imprisonment and fine.

C. Any person who, after having been convicted and sentenced in accordance with the provisions of either Subsection A or Subsection B of this section, is again convicted pursuant to the provisions of this section shall be sentenced to twice the applicable penalty imposed by the provisions of this section.

D. In the case of a first conviction under this section, the court may impose a deferred sentence on the condition that the person comply with the provisions for licensure pursuant to Subsection D of Section 60-13-14 NMSA 1978.

History: 1953 Comp., § 67-35-59, enacted by Laws 1977, ch. 377, § 6; 1979, ch. 274, § 1; 1989, ch. 6, § 44.

ANNOTATIONS

Repeals and reenactments. — Laws 1977, ch. 377, § 6, repealed former 67-35-59, 1953 Comp., relating to penalties, and enacted a new 67-35-59, 1953 Comp.

Legislature casts harsh eye on contracting without a license. Gamboa v. Urena, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, cert. denied, 2004-NMCERT-005, 135 N.M. 656, 92 P.3d 10.

Acting in capacity of contractor without required license is a misdemeanor. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Evidence sufficient for conviction. — Conviction for contracting without a license was supported by sufficient evidence, where, although the contract stated that another firm would perform any work requiring a contractor's license, the contract was written on a form with the defendant's trade name and address at the top and was an undertaking for the entire project, for which the defendant remained responsible. State v. Jenkins, 108 N.M. 669, 777 P.2d 908 (Ct. App. 1989).

Jurisdiction of justices of the peace. — Justices of the peace did not have jurisdiction to try cases arising out of a violation of 67-22-21, 1953 Comp., of the former Plumbing Administrative Act. 1964 Op. Att'y Gen. No. 64-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 70 to 80.

53 C.J.S. Licenses §§ 78 to 81.

60-13-53. Commission or division; powers of injunction; mandamus.

The commission or division may enforce in the district court of the county in which the offense was committed the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] by injunction, mandamus or any proper legal proceeding.

History: 1953 Comp., § 67-35-60, enacted by Laws 1967, ch. 199, § 60; 1977, ch. 245, § 213; 1989, ch. 6, § 45.

60-13-54. Continuation of license.

Any person who, at the time of the passage and approval of the Construction Industries Licensing Act [60-13-1 NMSA 1978], is engaged in any occupation, trade or activity related thereto, pursuant to a valid license authorizing such acts and operations issued under laws repealed by this act and rules and regulations pursuant thereto, is entitled to continue such act and operations, and the license shall continue in effect until the expiration date thereof, subject in all cases to suspension or revocation as provided by the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-61, enacted by Laws 1967, ch. 199, § 61.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Exception of existing buildings or businesses from statute or ordinance enacted in exercise of police or license taxing power, as unconstitutional discrimination, 136 A.L.R. 207.

60-13-55. Continuation of construction codes and standards.

Any code and minimum standard related to the construction, alteration, installation or repair of a private or public building, or installation on public or private premises, in effect at the time of passage and approval of the Construction Industries Licensing Act [60-13-1 NMSA 1978] shall continue in effect until the commission and trade bureaus created by the Construction Industries Licensing Act amend or revise those codes and minimum standards pursuant to provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-62, enacted by Laws 1967, ch. 199, § 62; 1977, ch. 245, § 214; 1989, ch. 6, § 46.

60-13-56. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-56 NMSA 1978, as amended by Laws 1977, ch. 245, § 215, relating to transfer of property, supplies and records, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-57. Hearing officer authorized.

The commission may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978]. Hearing officers may be employees or individuals hired outside the division by contract or on a case by case basis as determined by the commission.

History: 1953 Comp., § 67-35-64, enacted by Laws 1973, ch. 229, § 5 and Laws 1973, ch. 259, § 9; 1977, ch. 245, § 216; 1989, ch. 6, § 47.

ANNOTATIONS

Compiler's notes. — Laws 1973, ch. 229, § 5 and ch. 259, § 9 enact identical new sections which are compiled as the above section.

60-13-58. Repealed.

ANNOTATIONS

Repeals. — Laws 2005, ch. 208, § 27 repealed 60-13-58 NMSA 1978, effective June 17, 2005. which would have repealed the Construction Industries Licensing Act on July 1, 2006. For provisions of former section, *see* the 2004 NMSA 1978 on the *NMONESOURCE.COM*.

60-13-59. Building permits; contents; display.

Every building permit or notice of permit required under the provisions of a building code shall:

A. clearly indicate the name and address of the owner of the property;

B. contain a legal description of the property being built upon, either by "lot and block" description in a subdivision, by street address in a municipality or by township, range and section numbers if outside a municipality or platted subdivision;

C. contain the name, address and license number of the general contractor, where applicable; and

D. be prominently displayed on the site where the construction or work is to be performed.

History: Laws 1987, ch. 209, § 1.

ARTICLE 13A
Employee Leasing

60-13A-1. Short title.

This act [60-13A-1 to 60-13A-14 NMSA 1978] may be cited as the "Employee Leasing Act".

History: Laws 1993, ch. 162, § 1.

60-13A-2. Definitions.

As used in the Employee Leasing Act [60-13A-1 NMSA 1978]:

A. "applicant" means a person applying for registration as an employee leasing contractor;

B. "client" means a person who obtains workers through an employee leasing arrangement;

C. "department" means the regulation and licensing department;

D. "employee leasing arrangement" means any arrangement in which a client contracts with an employee leasing contractor for the contractor to provide leased workers to the client; provided, "employee leasing arrangements" does not include temporary workers;

E. "employee leasing contractor" means any person who provides leased workers to a client in New Mexico through an employee leasing arrangement;

F. "leased worker" means a worker provided to a client through an employee leasing arrangement; provided that if a worker works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to

provisions of or regulations adopted under the New Mexico Insurance Code [59A-1-1 NMSA 1978], the worker shall be presumed to be a leased worker and the employee leasing contractor that provides the worker shall comply with the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978];

G. "person" means an individual or any other legal entity;

H. "temporary services employer" means an employing unit that contracts with clients or customers to provide workers to perform services for the client or customer and performs all of the following functions:

(1) negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;

(2) determines assignments of workers, even though workers retain the right to refuse specific assignments;

(3) retains the authority to reassign or refuse to reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;

(4) assigns the worker to perform services for a client or customer;

(5) sets the rate of pay for the worker, whether or not through negotiation; and

(6) pays the worker directly; and

I. "temporary worker" means a worker employed or provided by a temporary services employer to support or supplement another's work force in special work situations, such as employee absences, temporary skill shortages, temporary provision of specialized professional skills, seasonal workloads and special temporary assignments, including the production of motion pictures, television programs and other commercial media projects; provided that if a worker who is employed or provided by a temporary services employer works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code [59A-1-1 NMSA 1978], the worker shall be presumed to be a temporary worker and the temporary services employer that provides the worker shall comply with the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978].

History: Laws 1993, ch. 162, § 2; 2003, ch. 242, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, rewrote Subsection F; inserted present Subsection H; redesignated former Subsection H as Subsection I and substituted

"employed or provided by a temporary services" for "hired and employed by an" and added the proviso at the end.

60-13A-3. Registration as an employee leasing contractor required as condition to do business in the state.

A. No person shall do business in the state as an employee leasing contractor unless the person is registered with the department.

B. Registration shall be renewed annually. The renewal date shall be the first day of the month one year after the month in which the initial registration occurred.

C. Applications for initial registration and renewals of registration shall be made on forms supplied by the department and shall contain the information required by Section 6 [60-13A-6 NMSA 1978] of the Employee Leasing Act. The department may by regulation require additional information for initial registration and renewal of registration.

D. Upon initial registration an employee leasing contractor shall pay a fee to the department of one thousand dollars ($1,000). On the annual renewal date the employee leasing contractor shall pay an annual renewal fee of one thousand dollars ($1,000).

E. Neither the initial registration fee nor the renewal fee is refundable.

F. If a registered employee leasing contractor does not submit a completed renewal application within thirty days after the annual renewal date, the department shall mail a notice to the contractor by certified mail, return receipt requested, which notice shall inform the contractor that unless the renewal fee is paid within thirty days of the receipt of the notice by the contractor, together with a delinquency charge of five hundred dollars ($500), the contractor's registration shall be canceled. The department shall cancel the registration of any contractor who does not comply with the requirements for payment of a renewal fee and a delinquency charge.

History: Laws 1993, ch. 162, § 3.

ANNOTATIONS

Contractor was unlicensed but contract was not void. — General contractor's payment bond issuer was liable to the leasing contractor when the general contractor defaulted on payment even though employee leasing contractor was not licensed under this section. Eastland Fin. Servs. v. Mendoza, 2002-NMCA-035, 132 N.M. 24, 43 P.3d 375.

60-13A-4. Licensure requirements for certain employee leasing contractors.

An existing employee leasing contractor domiciled in New Mexico as of September 30, 1993 shall be issued an employee leasing contractor's license upon application.

History: Laws 1993, ch. 162, § 4; 1995, ch. 24, §1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section.

60-13A-5. Compliance with and applicability of workers' compensation laws.

A. Every employee leasing contractor shall comply with the provisions of Section 52-1-4 NMSA 1978, and that compliance shall be a condition precedent to initial registration. Failure to maintain compliance with the cited law shall result in the immediate revocation of any registration or license held by the noncomplying employee leasing contractor in addition to any other sanctions that may be imposed under applicable laws or regulations.

B. Workers' compensation insurance or self-insurance applicable to leased workers shall cover the employee leasing contractor and the client as co-insureds. Workers' compensation insurance applicable to leased employees may be provided in any manner authorized by and in compliance with regulations of the superintendent of insurance issued pursuant to Section 59A-2-9.1 NMSA 1978.

C. The employee leasing contractor and the client shall be deemed co-employers of leased workers for purposes of the Workers' Compensation Act [52-1-1 NMSA 1978]. The Workers' Compensation Act shall constitute leased workers' exclusive remedy against both the employee leasing contractor and the client if the conditions of Section 52-1-9 NMSA 1978 are satisfied.

History: Laws 1993, ch. 162, § 5; 1995, ch. 24, §2.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, inserted "and applicability of" in the section heading; designated the existing provisions as Subsection A and made a stylistic change therein; and added Subsections B and C.

60-13A-6. Registration application; contents.

A. An application for registration as an employee leasing contractor shall be signed by an individual for the applicant and verified by him under oath before a notary public. It shall contain:

(1) the applicant's full name, the title of his position with the employee leasing contractor and a statement that he is authorized to act on behalf of the employee leasing contractor in connection with the application;

(2) the business name, if any, of the applicant;

(3) the applicant's legal entity status;

(4) if the applicant is an individual, his age, date and place of birth and social security number;

(5) the applicant's state and federal tax identification numbers and employer identification number;

(6) the current residence street or location address of the principal office of the applicant and a current mailing address, if different from the residency address;

(7) a signature by:

(a) an individual sole proprietor if the applicant is a proprietorship;

(b) each of the general partners if the applicant is a partnership; or

(c) a corporate officer having authority to make the application if the applicant is a corporation;

(8) for a corporate applicant, the name and residence street address of the corporation's agent for the service of process; and

(9) proof of compliance with Section 5 [60-13A-5 NMSA 1978] of the Employee Leasing Act [60-13A-1 NMSA 1978].

B. Any changes in information required to be included in the application for registration as an employee leasing contractor shall be reported to the department by the contractor within thirty days of the date the change occurs. Failure by the contractor to comply with this requirement constitutes cause for the department to cancel the contractor's registration.

History: Laws 1993, ch. 162, § 6.

60-13A-7. Surety requirements for employee leasing contractors.

A. An employee leasing contractor domiciled and registered in New Mexico as of September 30, 1993 shall file and maintain with the department a surety bond in the amount of twenty-five thousand dollars ($25,000) issued by an insurance company authorized to do business in this state. An employee leasing contractor domiciled and

registered in New Mexico after September 30, 1993 shall file and maintain with the department a surety bond in the amount of one hundred thousand dollars ($100,000) issued by an insurance company authorized to do business in this state. Interest accrued on such liquid securities shall be paid to the employee leasing contractor providing the liquid security. The bond shall be conditioned upon the prompt payment of wages for which the employee leasing contractor becomes liable. The employee leasing contractor's liability for these wages shall terminate six months after the employee leasing contractor terminates his employee leasing business.

B. In lieu of the surety bond required under Subsection A of this section, the employee leasing contractor may deposit with a depository designated by the department liquid securities with a market value equal to the amount required for a surety bond. The deposit contract shall authorize the department to liquidate the securities to the extent necessary to pay any obligations that the employee leasing contractor fails to pay promptly when due.

History: Laws 1993, ch. 162, § 7; 1995, ch. 24, § 3.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote Subsection A.

60-13A-8. Department to adopt regulations to implement act.

The department shall adopt regulations to implement the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978].

History: Laws 1993, ch. 162, § 8.

60-13A-9. Agreement required.

The employment relationship between the client and the leased workers shall be established by written agreement between the employee leasing contractor and the client. Written notice of the employment relationship and of compliance with the requirements of Section 52-1-4 NMSA 1978 shall be given by the contractor to each leased worker.

History: Laws 1993, ch. 162, § 9.

60-13A-10. Employment contributions; benefits; tax withholding.

An employee leasing contractor shall provide any benefits required by law to be provided employees by employers. The contractor shall provide to the department proof of any required insurance benefits prior to registration or renewal of registration.

History: Laws 1993, ch. 162, § 10.

60-13A-11. Revocation of registration; disciplinary proceedings.

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the department may revoke the registration of any employee leasing contractor upon grounds that the contractor:

(1) is guilty of fraud, deception or misrepresentation in procuring registration under the Employee Leasing Act [60-13A-1 NMSA 1978];

(2) has willfully or negligently violated any provision of the Employee Leasing Act or any of the rules or regulations of the department pursuant to that act; or

(3) has not maintained the surety bond or complied with the deposit requirements pursuant to Section 7 [60-13A-7 NMSA 1978] of the Employee Leasing Act.

B. Disciplinary proceedings may be instituted by sworn complaint of any person and shall conform with the provisions of the Uniform Licensing Act.

C. An employee leasing contractor whose registration has been revoked may reapply for registration after a period of two years from the date the revocation is effective.

History: Laws 1993, ch. 162, § 11.

60-13A-12. Criminal penalty.

Any person doing business in this state as an employee leasing contractor without being registered as required under the Employee Leasing Act [60-13A-1 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1993, ch. 162, § 12.

60-13A-13. Civil penalties and remedies.

A. Any employee leasing contractor who violates any provision of the Employee Leasing Act [60-13A-1 NMSA 1978] may be fined by the department for the violation in the amount of one thousand dollars ($1,000) and, if it is a continuing violation, the department may impose a fine of one thousand dollars ($1,000) for each day during which the violation continues.

B. The department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the Employee Leasing Act.

C. A client, a leased employee or other person who suffers damages proximately caused by the failure of an employee leasing contractor to comply with the Employee Leasing Act may bring an action in any court of competent jurisdiction to recover the damages incurred.

D. If a person is determined to have violated the provisions of the Employee Leasing Act by the department or a court of competent jurisdiction, that person shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act and also for reasonable attorneys' fees and costs incurred by the department in a court action.

History: Laws 1993, ch. 162, § 13.

60-13A-14. Disclosure to clients required.

An employee leasing contractor shall disclose to a client the services to be rendered by the contractor, the costs of those services and a description of the respective rights and obligations of the parties prior to entering into an employee leasing arrangement with the client.

History: Laws 1993, ch. 162, § 14.

ANNOTATIONS

Severability. — Laws 1993, ch. 162, § 15 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 14
Manufactured Housing

60-14-1. Short title.

Chapter 60, Article 14 NMSA 1978 may be cited as the "Manufactured Housing Act."

History: 1953 Comp., § 67-41-1, enacted by Laws 1975, ch. 331, § 1; 1983, ch. 295, § 7.

ANNOTATIONS

Jurisdiction over installation of gas lines. — The Mobile Housing Act does not supersede or repeal by implication the Liquefied Petroleum Gas Act, Section 70-5-1 NMSA 1978 et seq., with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit. 1976 Op. Att'y Gen. No. 76-38.

60-14-2. Definitions.

As used in the Manufactured Housing Act:

A. "broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive twelve-month period;

B. "certificate of qualification" means a certificate issued by the division to a qualifying party;

C. "committee" means the manufactured housing committee;

D. "consumer" means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. "dealer" means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive twelve-month period. A dealer may also engage in any brokerage activities included under the definition of broker in this section; provided, "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers; and

(3) finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. "director" means the director of the manufactured housing division and the construction industries division of the regulation and licensing department;

G. "division" means the manufactured housing division of the regulation and licensing department;

H. "inspection agency" means any firm, partnership, corporation, association or any combination thereof approved in accordance with regulations adopted by the division as having the personnel and equipment available to adequately inspect for the proper

construction of manufactured homes or house trailers not used exclusively for recreational purposes;

I. "inspector" means a person appointed by the division as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tie-downs, blocking, skirting and water, gas and sewer connections of any manufactured homes in New Mexico;

J. "installer" means any person who installs manufactured homes for remuneration;

K. "installation" means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

L. "manufacturer" means any resident or nonresident person who manufactures or assembles manufactured homes or any component of manufactured homes;

M. "manufactured home" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. "Manufactured home" does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. "Manufactured home" includes any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes;

N. "permit" means a certificate issued by the division to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the division;

O. "person" includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;

P. "qualifying party" means any individual who submits to the examination for a license, other than a broker's or salesperson's license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. "repairman" means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. "salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

History: 1953 Comp., § 67-41-2, enacted by Laws 1978, ch. 79, § 1; 1983, ch. 295, § 8; 1988, ch. 102, § 3; 2013, ch. 36, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 79, § 1, repealed former 67-41-2, 1953 Comp. (former 60-14-2 NMSA 1978), as amended by Laws 1977, ch. 341, § 1, relating to definitions used in the Mobile Housing Act, and enacted a new 67-41-2, 1953 Comp.

The 2013 amendment, effective June 14, 2013, clarified the definition of "director"; and in Subsection F, after "manufactured housing", added "division and the" and after "construction industries division", added "of the regulation and licensing department".

Offering units for sale constitutes "dealing". — In order to be engaged in the business of mobile home dealing, it is not necessary that a person actually sell mobile housing units so long as he offers mobile housing units for sale or attempts to negotiate such sales in pursuit of a livelihood. 1982 Op. Att'y Gen. No. 82-12.

Offering units not dealing in real estate. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property, he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Law reviews. — For comment, "A Comparison of State and Federal Exemptions: 11 U.S.C. § 101-1330 (Supp. II 1978)," see 10 N.M.L. Rev. 431 (1980).

60-14-3. Purpose.

It is the intent of the legislature that the large and growing manufactured housing industry be supervised and regulated by a division of the commerce and industry department [regulation and licensing department]. The purpose of the Manufactured Housing Act [60-14-1 NMSA 1978] is to insure the purchasers and users of manufactured homes the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the

members of the industry with due regard to the ultimate consumers in this important area of human shelter.

History: 1953 Comp., § 67-41-3, enacted by Laws 1975, ch. 331, § 3; 1977, ch. 245, § 218; 1983, ch. 295, § 9.

ANNOTATIONS

Bracketed material. — Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the mobile housing division, and Laws 1983, ch. 297, § 31, provides that all references in law to the mobile housing division of the commerce and industry department shall be construed to be references to the same division within the regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like, in residential neighborhoods, 95 A.L.R.3d 378.

60-14-4. Powers and duties of division.

The division shall:

A. prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act;

C. establish and collect fees authorized to be collected by the division pursuant to the Manufactured Housing Act;

D. subject to the approval of the committee, adopt rules and regulations relating to the construction, repair, modification, installation, tie-down, hookup and sale of all manufactured homes, which regulations shall be uniform throughout the state and shall be enforced by inspectors for the division to insure minimum standards of safety within the state and any of its political subdivisions. Ordinances of any political subdivision of New Mexico relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas; electricity; sanitary plumbing; and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the division pursuant to the Manufactured Housing Act;

E. adopt a budget and submit it to the regulation and licensing department for approval;

F. make an annual report to the superintendent of regulation and licensing concerning the operations of the division. The report shall contain the division's recommendations for legislation that it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business in New Mexico;

I. subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

J. subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the department of housing and urban development pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

K. issue permits and provide for a single inspection of every installation in New Mexico, regardless of the location;

L. subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring; the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petroleum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation; and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico;

M. conduct "inspector schools" so that each inspector under the division's jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The division may enter into agreements with municipalities and counties to provide for the inspection of

manufactured homes by employees of municipalities and counties, to be performed under the supervision and control of the division. The division may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the division and shall be related to the completeness of the inspection performed;

O. administer oaths through any member of the division, the director or a hearing officer;

P. subject to the approval of the committee, adopt rules and regulations for the conducting of hearings and the presentation of views, consistent with the regulations promulgated by the department of housing and urban development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. subject to the approval of the committee, adopt by regulation a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. coordinate with and qualify inspectors for any multiple inspection program provided by the construction industries division of the regulation and licensing department for inspection of manufactured homes;

S. subject to the approval of the committee, adopt regulations, codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured homes being used for nonresidential purposes on May 18, 1988 shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential purposes after May 18, 1988 shall be required to meet Uniform Building Code standards. None of the provisions contained in this subsection shall apply to retailers licensed by the motor vehicle division of the taxation and revenue department; and

T. with the approval of the superintendent of regulation and licensing, employ such personnel as the director deems necessary for the exclusive purposes of investigating violations of the Manufactured Housing Act, enforcing Section 60-14-17 NMSA 1978 and instituting legal action in the name of the division to enforce the provisions of Section 60-14-19 NMSA 1978.

History: 1953 Comp., § 67-41-6, enacted by Laws 1978, ch. 80, § 1; 1983, ch. 295, § 10; 1988, ch. 102, § 4; 1988, ch. 102, § 4; 2007, ch. 62, § 1.

ANNOTATIONS

Cross references. — For the motor vehicle division of the taxation and revenue department, *see* 66-2-1 NMSA 1978 et seq.

For the Federal Regulation 1910, *see* 44 C.F.R. § 60.1 et seq.

Repeals and reenactments. — Laws 1978, ch. 80, § 1, repealed former 67-41-6, 1953 Comp. (former 60-14-4 NMSA 1978), relating to powers and duties, and enacted a new 67-41-6, 1953 Comp.

The 2007 amendment, effective June 15, 2007, added Subsection T to permit the division to employ personnel exclusively to investigate violations and enforce the Manufactured Housing Act.

Shared jurisdiction over liquefied petroleum gas line installations. — Mobile Housing Act in no way confers on the mobile housing commission (now mobile housing division) exclusive jurisdiction over liquefied petroleum gas line installations within mobile housing units. Both the mobile housing commission and the liquefied petroleum gas commission (now liquefied petroleum gas bureau) have jurisdiction to regulate and inspect the installation of liquefied petroleum gas lines in mobile homes. 1976 Op. Att'y Gen. No. 76-38.

60-14-5. Manufactured housing committee created; membership; compensation; duties.

A. There is created within the division the "manufactured housing committee". It shall be composed of seven members who are residents of New Mexico and who shall serve at the pleasure of the governor and be appointed by the governor as follows:

(1) one member who is or is the designated representative of a manufacturer licensed under the Manufactured Housing Act;

(2) one member who is or is the qualifying party of a dealer licensed under the Manufactured Housing Act;

(3) one member who is or is the qualifying party of an installer licensed under the Manufactured Housing Act;

(4) one member who is the owner of a manufactured housing dealership licensed under the Manufactured Housing Act;

(5) one member who is engaged in the business of financing the purchase of manufactured housing units; and

(6) two public members who are manufactured housing unit owners not subject to licensure under the Manufactured Housing Act.

The term of office of each member of the committee is four years; provided that members shall be appointed for staggered terms beginning July 1, 1983 so that two terms end on June 30, 1985, two terms end on June 30, 1986 and three terms end on June 30, 1987. Thereafter, all members shall be appointed to four-year terms. Members

shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

C. The committee shall annually elect a chair and vice chair from its membership. The director of the division shall serve as the executive secretary of the committee.

D. The committee shall meet at least bimonthly at the call of the chair.

E. The committee shall provide technical and policy advice to the division, review and approve or disapprove all rules, regulations, standards and codes subject to its approval under the provisions of the Manufactured Housing Act and:

(1) establish by regulation classifications of licenses issued by the division and qualifications and examinations necessary for licensure under the Manufactured Housing Act; and

(2) suspend or revoke for cause any license or certificate of qualification issued by the division.

History: 1953 Comp., § 67-41-6.1, enacted by Laws 1977, ch. 245, § 220; 1983, ch. 295, § 11; 2013, ch. 36, § 2.

ANNOTATIONS

Cross references. — For termination of committee, see 60-14-16 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the composition of the manufacturing housing committee; in Paragraph (4) of Subsection A, after "member who is", deleted "a broker" and added "the owner of a manufactured housing dealership"; added Paragraph (5) of Subsection A; and in Paragraph (6) of Subsection A, at the beginning of the sentence, deleted "three members" and added "two public members".

60-14-6. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers.

A. The division, with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the division a consumer protection bond underwritten by a corporate surety authorized to transact business in New Mexico, in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulation, to be conditioned upon the dealer, broker, salesperson, manufacturer,

repairman or installer complying with the provisions of the Manufactured Housing Act [60-14-1 NMSA 1978] and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

(1) as a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the division adopted pursuant to that act;

(2) as a result of a violation of any regulation adopted by the division;

(3) by fraud of a licensee in the execution or performance of a contract; or

(4) by misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the division pursuant to this section. The division, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this section.

History: 1953 Comp., § 67-41-7, enacted by Laws 1978, ch. 81, § 1; 1983, ch. 295, § 12.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 81, § 1, repealed former 67-41-7, 1953 Comp. (former 60-14-6 NMSA 1978), as amended by Laws 1977, ch. 341, § 3, relating to bonding requirements for dealers, manufacturers and installers, and enacted a new 67-41-7, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

Authority of committee. — Since the mobile home dealer and buyer had settled a dispute over return of a deposit through arbitration, the committee was estopped from ordering the dealer to return the deposit to the buyer based on the dealer's violation of a division regulation providing a time limit for return of deposits; the committee was only entitled to attach the dealer's consumer protection bond to the extent the buyer was damaged by delay in return of the deposit and require return of that amount; in addition, the committee could suspend the dealer's license for a violation of the regulation, but could not condition staying the suspension on return of the total deposit. Rex, Inc. v. Manufactured Hous. Comm., 119 N.M. 500, 892 P.2d 947 (1995).

Elements to be proved at proceeding to attach bond pursuant to the Manufactured Housing Act are (1) the existence of the bond; (2) losses sustained by the consumer; and (3) the losses occurring by reason of misrepresentation. Rex, Inc. v. Manufactured Hous. Comm., 2003-NMCA-134, 134 N.M. 533, 81 P.3d 470.

Collateral estoppel applied in committee hearing on attachment of bond. – Where the purpose of a manufactured housing committee hearing was not to investigate consumers' complaints, but to determine whether the committee could attach the manufacturer's consumer protection bond and disburse it to consumers in partial payment of a judgment recovered in an Unfair Practices Act action, the committee was in privity with the consumers in the UPA action, and the doctrine of collateral estoppel applied on the issues of misrepresentation and loss by the consumers. Rex, Inc. v. Manufactured Hous. Comm., 2003-NMCA-134, 134 N.M. 533, 81 P.3d 470.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades and Professions § 7.

60-14-7. License required; classification; examination.

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salesperson unless licensed as provided in the Manufactured Housing Act or the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978].

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling, leasing or exchanging or offering for sale, lease or exchange, any manufactured home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

History: 1953 Comp., § 67-41-8, enacted by Laws 1975, ch. 331, § 8; 1977, ch. 245, § 222; 1983, ch. 295, § 13; 2013, ch. 36, § 3.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2013 amendment, effective June 14, 2013, permitted licensees under the Construction Industries Licensing Act to engage in activities regulated by the Manufactured Housing Act; and in Subsection A, after "Manufactured Housing Act", added "or the Construction Industries Licensing Act".

When real estate broker must be licensed. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 1 et seq.

53 C.J.S. Licenses §§ 26, 27.

60-14-8. Licensure; exemption.

The provisions of Section 60-14-7 NMSA 1978 shall not apply to:

A. licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee; or

B. technicians working on weatherization projects that do not exceed a cost of three thousand five hundred dollars ($3,500) and that are administered by a state or federal agency.

History: 1953 Comp., § 67-41-8.1, enacted by Laws 1977, ch. 6, § 1; 1983, ch. 295, § 14; 1999, ch. 90, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, added the Subsection A designation, added Subsection B, and made a minor stylistic change.

When real estate broker must be licensed. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses §§ 35, 36.

60-14-9. License; application; issuance.

A. Application for a license required under Section 60-14-7 NMSA 1978 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the division on forms prescribed and furnished by the division. The application shall contain such information and be accompanied by such attachments as are required by regulations of the division. The forms shall be accompanied by the prescribed fee.

B. No license shall be issued by the division to any person unless the division is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection C of this section.

C. An applicant for licensure shall:

(1) demonstrate financial responsibility as required by regulations of the committee;

(2) be of good reputation;

(3) not have engaged illegally in the licensed classification that he is applying for within one year prior to making the application;

(4) demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;

(5) if a corporation, have complied with the laws of New Mexico regarding qualifications for doing business in this state or have been incorporated in New Mexico and have and maintain a registered agent and a registered office in this state;

(6) if an individual or partnership, have maintained a residence or street address in New Mexico for at least thirty days preceding the date of application;

(7) submit proof of registration with the revenue division of the taxation and revenue department and submit a current tax identification number; and

(8) personally or through the applicant's qualifying party successfully pass an examination administered by the division in the license classification for which application is made.

History: 1953 Comp., § 67-41-9, enacted by Laws 1975, ch. 331, § 9; 1977, ch. 245, § 223; 1983, ch. 295, § 15.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.

53 C.J.S. Licenses §§ 37 to 42.

60-14-10. Qualifying party; examination; certificate.

A. Except as provided in Subsection C of this section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he has passed with a satisfactory score an examination prepared, administered and graded by the division.

B. The examination where applicable shall consist of:

(1) general business knowledge, the rules and regulations of the division and committee and the provisions of the Manufactured Housing Act [this article];

(2) technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the division who is expert in the particular classification for which certification is sought; and

(3) general knowledge of the statutes of this state relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualifying party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this section within one year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

History: 1953 Comp., § 67-41-10, enacted by Laws 1975, ch. 331, § 10; 1977, ch. 245, § 224; 1983, ch. 295, § 16.

60-14-11. Division fees.

The division shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-41-11, enacted by Laws 1975, ch. 331, § 11; 1977, ch. 245, § 225; 1983, ch. 295, § 17; 1987, ch. 298, § 9.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.

53 C.J.S. Licenses §§ 64 to 73.

60-14-12. Suspension and revocation.

Any license or certificate of qualification issued by the division shall be suspended for a definite period or revoked under the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978] by the committee for any of the following causes:

A. if a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act [60-14-1 NMSA 1978] or any regulations adopted by the division or committee pursuant to that act;

B. false, misleading or deceptive advertising;

C. knowingly contracting or performing a service beyond the scope of the license;

D. misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. misrepresentation or omission of a material fact in any manufactured home transaction;

F. failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. failure by a manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the division.

History: 1953 Comp., § 67-41-12, enacted by Laws 1975, ch. 331, § 12; 1977, ch. 245, § 226; 1983, ch. 295, § 18.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

53 C.J.S. Licenses §§ 50 to 62.

60-14-13. Transition.

The records, automobiles, field equipment, office furniture and office equipment and the records of the mobile housing commission shall be transferred to the mobile housing division on the effective date of the Commerce and Industry Department Act. The regulations and all licenses and permits currently in force under the Construction Industries Licensing Act [60-13-1 NMSA 1978] regarding mobile homes shall remain in force to be administered by the division under the Mobile Housing Act until replaced by regulations adopted by the division.

History: 1953 Comp., § 67-41-13, enacted by Laws 1975, ch. 331, § 13; 1977, ch. 245, § 227.

ANNOTATIONS

Commerce and Industry Department Act. — The Commerce and Industry Department Act refers to Laws 1977, ch. 245, §§ 1 to 12, the provisions of which were compiled as 9-2-1 to 9-2-10. Laws 1983, ch. 297, § 33, repeals 9-2-1 to 9-2-13 NMSA 1978.

Mobile Housing Act. — The Mobile Housing Act refers to Laws 1975, ch. 331, the provisions of which were compiled as 60-13-2, 60-13-10, 60-13-41, 60-13-42, 60-13-44, 60-13-46, 60-14-1, 60-14-3, 60-14-7, 60-14-9 to 60-14-15 NMSA 1978. However, Laws 1983, ch. 295, § 7, amended 60-14-1 NMSA 1978 to change the name of the Mobile Housing Act to the Manufactured Housing Act. For scope of Manufactured Housing Act, see 60-14-1 NMSA 1978.

60-14-14. Hearing officer.

The division or committee may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act [60-14-1 NMSA 1978].

History: 1953 Comp., § 67-41-14, enacted by Laws 1975, ch. 331, § 14; 1977, ch. 245, § 228; 1983, ch. 295, § 19.

60-14-15. Committee and division; consumer complaints; orders; suspension; revocation.

In addition to the other duties imposed on the committee and division under the Manufactured Housing Act [60-14-1 NMSA 1978], the committee and division shall receive complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or division cannot secure a proper adjustment, the committee or division shall prepare a formal complaint for the consumer, and, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

History: 1953 Comp., § 67-41-15, enacted by Laws 1975, ch. 331, § 23; 1983, ch. 295, § 20.

60-14-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2005, ch. 208, § 27 repealed 60-14-16 NMSA 1978, as enacted by Laws 1983, ch. 295, § 21, relating to termination of the manufactured housing committee and division, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMONESOURCE.COM*.

60-14-17. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties.

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufactured Housing Act [60-14-1 NMSA 1978] without a license required by that act. Any person who conspires with any person to violate any provision of that act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or ten percent of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer's, broker's, salesperson's, repairman's, manufacturer's or installer's license, whichever is greater.

History: 1953 Comp., § 60-14-17, enacted by Laws 1979, ch. 351, § 1; 1979, ch. 400, § 1; 1983, ch. 295, § 22.

60-14-18. Committee or division; powers of injunctions; mandamus.

The division or committee may enforce the provisions of the Manufactured Housing Act [60-14-1 NMSA 1978] by injunction, mandamus or any proper legal proceeding in the district court of the county in which the offense was committed.

History: 1953 Comp., § 60-14-18, enacted by Laws 1979, ch. 351, § 2; 1979, ch. 400, § 2; 1983, ch. 295, § 23.

60-14-19. Penalties.

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act or any rule, regulation or administrative order of the committee or division in a manner that threatens the health or safety of any purchaser or consumer is guilty of a misdemeanor and on conviction shall be fined not more than one thousand dollars ($1,000) or shall be confined in the county jail not longer than one year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the division, upon petition to the court, may recover on behalf of the state a civil penalty not to exceed one thousand dollars ($1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with the warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Practices Act [57-12-1 NMSA 1978] and is actionable pursuant to the Unfair Practices Act. As such, the venue provisions and all remedies available in the Unfair Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

D. The director may issue a license to an applicant who at any time within one year prior to making an application has acted as an unlicensed dealer, broker, salesperson, repairman, manufacturer or installer in New Mexico without a license as required by the division if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the unlicensed work in the discretion of the committee; or

(b) if the applicant has bid or offered a price on a project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount in the discretion of the committee; and

(2) the director is satisfied that no incident of unlicensed work:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant.

E. Any unlicensed person who has performed unlicensed work may settle the claims against that unlicensed person without becoming licensed if the administrative claims arise from that person's first offense and that person pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the unlicensed person pursuant to the provisions of Subsection D or E of this section is twenty-five dollars ($25.00) or less, the fee may be waived by the director.

History: 1953 Comp., § 60-14-19, enacted by Laws 1983, ch. 295, § 24; 2007, ch. 62, § 2.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, added Subsections D, E and F to provide for the issuance of licenses to applicants who have acted without a required license; settlement of claims against unlicensed persons; and for waiver of the fee to be paid by an unlicensed person if the fee is $25.00 or less.

60-14-20. Criminal offenders character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Manufactured Housing Act [60-14-1 NMSA 1978].

History: Laws 1983, ch. 295, § 25.

ARTICLE 15
Hoisting Operators Safety

60-15-1. Short title.

Chapter 60, Article 15 NMSA 1978 may be cited as the "Hoisting Operators Safety Act".

History: Laws 1993, ch. 183, § 1; 1995, ch. 138, § 1.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "Chapter 60, Article 15 NMSA 1978" for "This act".

60-15-2. Purpose.

The purpose of the Hoisting Operators Safety Act [60-15-1 NMSA 1978] is to promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work.

History: Laws 1993, ch. 183, § 2.

60-15-3. Definitions.

As used in the Hoisting Operators Safety Act [60-15-1 NMSA 1978]:

A. "class I hoisting operator" means any person who is authorized to operate a conventional crane, tower crane or hydraulic crane of any size or weight;

B. "class II hoisting operator" means any person who is authorized to operate:

(1) a hydraulic crane of up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility; and

(2) any other type or size of crane or hoisting equipment under the direct supervision of a class I hoisting operator;

C. "class III hoisting operator" means any person who is authorized to work as an apprentice, trainee or crane oiler or driver under the direct supervision of a class I or class II hoisting operator;

D. "council" means the hoisting operators licensure examining council;

E. "crane" means a tower crane used in construction, demolition or excavation work; a hydraulic crane; a power-operated derrick; or a mobile, carrier-mounted, track or crawler type power-operated hoisting machine that utilizes a power-operated boom capable of lateral movement by the rotation of the machine on the carrier. "Crane" does not include a crane, except as provided in Subsection M of this section;

F. "department" means the regulation and licensing department;

G. "endorsement" means the authorization stamped on a class I hoisting operator's license indicating authorization to operate a conventional crane, a tower crane or a hydraulic crane of any size or weight;

H. "hoisting equipment" means, except as provided in Subsection M of this section:

(1) a tower crane;

(2) a hydraulic crane with over two tons lifting capacity;

(3) a derrick crane; or

(4) a mobile cable crane;

I. "licensee" means any person licensed under the Hoisting Operators Safety Act;

J. "person" means an individual, firm, partnership, corporation, association or other organization or any combination thereof;

K. "seat time" means the actual hands-on operation of a crane by a class II hoisting operator while under the direct supervision of a licensed class I hoisting operator or by a class III hoisting operator while under the direct supervision of a licensed class I or II hoisting operator;

L. "superintendent" means the superintendent of the regulation and licensing department; and

M. "crane" or "hoisting equipment" does not include any crane or hoisting equipment used in construction, demolition or excavation associated with:

(1) natural gas gather lines;

(2) interstate transmission facilities and interstate natural gas facilities subject to the federal Natural Gas Pipeline Safety Act of 1968 and its amendments;

(3) interstate pipeline facilities and carbon dioxide pipeline facilities subject to the federal Hazardous Liquid Pipeline Safety Act of 1979;

(4) gas and oil pipeline facilities subject to the Pipeline Safety Act [70-3-11 NMSA 1978];

(5) mining, milling or smelting operations subject to mine safety and health administration regulations or occupational safety and health administration regulations;

(6) prefabricated control rooms of natural gas, oil or carbon dioxide pipeline transmission facilities;

(7) oil and gas exploration, production or drilling;

(8) rural electric cooperative and electric, gas and water utility operations;

(9) commercial sign operations;

(10) the construction or operation of railroads; or

(11) the installation and maintenance of telephone or television cable.

History: Laws 1993, ch. 183, § 3; 1995, ch. 138, § 2.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, rewrote the section.

Federal acts. — The federal Natural Gas Pipeline Safety Act of 1968, the federal Hazardous Liquid Pipeline Safety Act of 1979, and the federal Pipeline Safety Act, referred to in Subsection M, formerly appeared as part of 49 App. U.S.C. Following the revision of Title 49 in 1994, present comparable provisions appear as 49 U.S.C. § 60101 et seq.

60-15-4. License required; exemption.

A. No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless the person is licensed under the Hoisting Operators Safety Act or the operation is exempt pursuant to Subsection M of Section 60-15-3 NMSA 1978.

B. Operating hoisting equipment without a license shall be considered unlicensed operation and shall subject the person who is operating the hoisting equipment and the employer, or the employer's representative, that allows a person not licensed under the Hoisting Operators Safety Act to operate hoisting equipment to the penalties as provided in that act.

C. The licensee and the licensee's employer shall be subject to applicable regulations controlling the use and operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute.

History: Laws 1993, ch. 183, § 4; 1995, ch. 138, § 3; 2005, ch. 52, § 1; 2013, ch. 76, § 1.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, prohibited a person from operating hoisting equipment without a license; in the title, added "exemption"; in Subsection A, after "Hoisting Operators Safety Act or" added "the operation"; in Subsection B, deleted the former language which permitted a person who completed in-house training to operate hoisting equipment for a period of one year without a license and added the current language of the subsection; and in Subsection C, at the beginning of the sentence, deleted "operator's" and added "licensee and the licensee's".

The 2005 amendment, effective July 1, 2006, provided that a person who completes an approved in-house training course may operate hoisting equipment for one year and that after the one year period, the person must obtain a license as provided in Section 60-17-7 NMSA 1978, with the exception that the requirement for passing a written examination is waived.

The 1995 amendment, effective July 1, 1995, in the first sentence, substituted "industry recognized" for "industrial", inserted "based on American national standards institute standards", and substituted "hoisting operators" for "hoist operators".

60-15-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2005, ch. 52, § 5 repealed 60-15-5 NMSA 1978, as enacted by Laws 1993, ch. 183, § 5, relating to license and examination, effective July 1, 2006. For provision of former section, *see* the 2005 NMSA 1978 on *NMONESOURCE.COM*.

60-15-6. Administration of act.

A. The department shall enforce and administer the provisions of the Hoisting Operators Safety Act [60-15-1 NMSA 1978].

B. The department shall adopt rules and regulations necessary to carry out the provisions of the Hoisting Operators Safety Act.

History: Laws 1993, ch. 183, § 6.

60-15-7. Requirements for licensure.

A. The department shall issue a license for a class I hoisting operator with a conventional crane, hydraulic crane or tower crane endorsement to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) has passed a written examination as prescribed by the department or has successfully completed an employer's in-house training program approved by the council;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class I hoisting operator; and

(4) within the past three years, has completed at least five hundred hours of seat time in the type of hoisting equipment for which the applicant seeks a license and an endorsement and has successfully passed a practical examination administered by a council-approved examining vendor or completed an employer's in-house training course approved by the council in the type of hoisting equipment for which the applicant seeks a license and an endorsement.

B. The department shall issue a license for a class II hoisting operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed a written examination prescribed by the department or has successfully completed an employer's in-house training course approved by the council;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class II hoisting operator; and

(4) within the past three years, has completed at least five hundred hours of seat time in the actual operation of hydraulic cranes with over ten tons and up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility and has successfully passed a practical examination administered by a council-approved examining vendor or has completed an employer's in-house training course approved by the council in the type of hoisting equipment for which the applicant seeks a license.

C. A class II hoisting operator who seeks to become licensed as a class I hoisting operator shall keep a log book of the class II hoisting operator's seat time and must accumulate five hundred hours of seat time under the direct supervision of a class I hoisting operator.

D. The department shall issue a license for a class III hoisting operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed an examination prescribed by the department; and

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class III hoisting operator.

E. A class III hoisting operator who seeks to become licensed as a class I or class II hoisting operator shall keep a log book of the class III hoisting operator's seat time within the past three years and must accumulate five hundred hours of seat time under the direct supervision of a class I or class II hoisting operator who is properly licensed in the kind of crane being operated.

F. A class III hoisting operator shall not operate hoisting equipment unless under the direct supervision of a class I or class II hoisting operator who is properly licensed in the type of hoisting equipment being operated.

G. The department shall recognize an in-house hoisting operator card issued to an applicant who:

(1) is at least eighteen years of age;

(2) is participating in an in-house training course approved by the council; and

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a hoisting operator.

H. A person with an in-house hoisting operator card shall only operate hoisting equipment for the employer who provided the approved in-house training course. The employer of a person with an in-house hoisting operator card shall provide that operator with supervision and additional training by a class I or class II hoisting operator who is properly licensed in the type of hoisting equipment being operated to ensure compliance and safe operation of the hoisting equipment pursuant to the Hoisting Operators Safety Act.

I. An in-house hoisting operator card shall be valid for two years and is not subject to extension or renewal.

History: Laws 1993, ch. 183, § 7; 1995, ch. 138, § 5; 2013, ch. 76, § 2.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, provided the requirements for Class I, II, and III hoisting operator licenses; in Subsection A, after "Class I hoisting operator", added "with a conventional crane, hydraulic crane or tower crane endorsement"; in Paragraph (2), after "prescribed by the department", added the remainder of the sentence; deleted former Paragraph (4), which permitted the issuance of a license to a person who had three years' experience operating a conventional crane, hydraulic crane or tower crane, and added Paragraph (4); in Subsection B, in Paragraph (2), after "prescribed by the department", added the remainder of the sentence and in Paragraph (4), at the beginning of the sentence, added "within the past three yeas", after "three years, has", deleted "had at least two years' experience" and added "completed at least five hundred hours of seat time", and after "means of mobility", deleted "or otherwise demonstrates his operating experience and competency by examination prescribed by the department" and added the remainder of the sentence; in Subsection E, after "log book of", deleted "his" and added "the class III hoisting operator's", after "operator's seat time", added "within the past three years", after "five hundred hours of seat time", deleted "or six thousand hours of experience", and after "class II hoisting operator", added the remainder of the sentence; and added Subsections F through I.

The 1995 amendment, effective July 1, 1995, rewrote this section.

60-15-8. License renewal.

A. A license issued pursuant to Section 60-15-7 NMSA 1978 shall be valid for two years from the date of issuance.

B. License renewal procedures shall be prescribed by the department by rule.

C. Any license not renewed by the expiration date shall be considered expired, and the licensee shall not operate hoisting equipment within the state until the license is renewed. Operating hoisting equipment with an expired license shall be considered unlicensed operation and shall subject the person who is operating the hoisting equipment to the penalties as provided in the Hoisting Operators Safety Act.

D. The department shall adopt and promulgate rules for renewal of an expired license and may require the licensee to reapply as a new applicant.

History: Laws 1993, ch. 183, § 8; 1995, ch. 138, § 6; 2013, ch. 76, § 3.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, provided for renewal of licenses; prohibits a licensee whose license has expired from operating hoisting equipment until the license is renewed; provided for penalties for violations of this section; in Subsection B, after "department by", deleted "regulation" and added "rule"; deleted former Subsection C, which provided a misdemeanor penalty for operating hoisting equipment after the expiration of a license; and added Subsections C and D.

The 1995 amendment, effective July 1, 1995, substituted "Section 60-15-7 NMSA 1978" for "Section 7 of the Hoisting Operators Safety Act" in Subsection A; in Subsection C, substituted "class I" for "first class", substituted "class II" for "second class", substituted "class III" for "third class", and substituted "less than one hundred dollars ($100) or more than three hundred dollars ($300)" for "more than five hundred dollars ($500)".

60-15-9. License fees.

Applicants for licensure shall pay a fee set by the department not to exceed:

A. seventy-five dollars ($75.00) for an initial license or a renewal; and

B. five dollars ($5.00) per month in late fees for failure to renew a license within the allocated time period.

History: Laws 1993, ch. 183, § 9.

60-15-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 138, § 10, repeals 60-15-10 NMSA 1978, as enacted by Laws 1993, Chapter 183, Section 10, creating the Hoisting Operators Fund, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMONESOURCE.COM*.

60-15-11. Fines; denial, suspension or revocation of license; stop work orders; injunctive proceedings; violations.

A. Notwithstanding any other provision of the Hoisting Operators Safety Act, the department upon reasonable cause that a violation of the provisions of the Hoisting Operators Safety Act or a rule adopted pursuant to that act has occurred that creates a health or safety risk for the community, which requires immediate action, may issue a stop work order. At any time after service of the order to stop work, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a stop work order within twenty-four hours, the department may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

B. Whenever the department possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Hoisting Operators Safety Act or a rule adopted pursuant to that act, the department may seek temporarily or permanently to restrain or to enjoin the act or practice. The department shall not be required to post a bond when seeking a temporary or permanent injunction.

C. Unless otherwise provided in the Hoisting Operators Safety Act, it is a violation of that act for a person to:

(1) operate, or employ a person to operate, hoisting equipment in construction, demolition or excavation work without a valid license issued pursuant to the Hoisting Operators Safety Act;

(2) refuse to comply with a stop work order issued by the department;

(3) refuse or fail to comply with the provisions of the Hoisting Operators Safety Act or a rule adopted pursuant to that act;

(4) make a material misstatement in an application for licensure;

(5) intentionally make a material misstatement to the department during an official investigation;

(6) aid or abet another in violating provisions of the Hoisting Operators Safety Act or a rule adopted pursuant to that act;

(7) alter or falsify a license issued by the department; or

(8) fail to furnish to the department, its investigators or its representatives information requested by the department in the course of an official investigation.

D. The department may deny, suspend or revoke a license for a violation of the rules adopted by the department pursuant to the Hoisting Operators Safety Act or for a violation of the provisions of that act.

E. Disciplinary proceedings may be instituted by sworn complaint by any person, including department staff or a member of the council, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

F. The department may issue a citation and fine to an individual or business for violation of the provisions of the Hoisting Operators Safety Act. The amount of such fines and terms of such orders shall be established by the department by rule subject to the limitations of Section 60-15-13 NMSA 1978.

History: Laws 1993, ch. 183, § 11; 1995, ch. 138, § 7; 2013, ch. 76, § 4.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, provided for stop work orders, injunctive proceedings, and disciplinary action; in the title, deleted "reprimand", after "fines", added "denial", and after "license", added "injunctive proceedngs; violations"; deleted the former language of the section, which provided for reprimands, fines, suspension and

revocation of a license for negligent or reckless operation of hoisting equipment; and added Subsections A through F.

The 1995 amendment, effective July 1, 1995, added "Reprimand; fines; suspension or" in the Section heading, inserted "reprimand or fine a licensee or suspend or" and substituted "violation of the rules and regulations adopted by the department or for any violation of the provisions of the Hoisting Operators Safety Act" for "that causes damage to property or injury to an individual".

60-15-12. Licensure denial, suspension or revocation; hearing; appeals.

The superintendent shall, before denying a license to an applicant, or revoking or suspending a license for a violation of any provision of the Hoisting Operators Safety Act, provide for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

History: Laws 1993, ch. 183, § 12; 2005, ch. 52, § 2.

ANNOTATIONS

The 2005 amendment, effective July 1, 2006, required that before the superintendent can deny a license or revoke or suspend a license, the superintendent must provide the applicant or licensee a hearing pursuant to the Uniform Licensing Act [61-1-1 NMSA 1978].

60-15-13. Civil and administrative penalties.

A. A person who engages in unlicensed operation may be assessed an administrative penalty not to exceed one thousand dollars ($1,000).

B. An employer, firm, partnership, corporation, association or other organization that knowingly violates the provisions of the Hoisting Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars ($5,000).

C. Any licensed hoisting operator who violates a provision of the Hoisting Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars ($5,000).

D. The department may bring an action in a court of competent jurisdiction to enforce the provisions of or to enjoin a person from violating the provisions of the Hoisting Operators Safety Act. If the court finds that a violation has occurred, the person who committed the violation shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act plus reasonable attorney fees and costs associated with court action.

History: Laws 1993, ch. 183, § 13; 1995, ch. 138, § 8; 2013, ch. 76, § 5.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, provided for administrative, rather than civil and criminal, penalties; in the title, deleted, "Violations; criminal"; in Subsection A, between "A person who" and "engages in unlicensed", deleted language which provided that the operation of a crane without a license was a misdemeanor, and added the remainder of the sentence; in Subsection B, between "An employer" and "firm, partnership", deleted language which provided that knowingly allows an unlicensed person to operate hoisting equipment was a misdemeanor; and added the remainder of the sentence; in Subsection C, after "may be assessed", deleted "a civil" and added "an administrative" and after "penalty not to exceed", deleted "one thousand dollars ($1,000) for each day during any portion of which a violation occurs" and added "five thousand dollars ($5,000)", and deleted former Subsection E, which provided for administrative penalties not to exceed one thousand dollars.

The 1995 amendment, effective July 1, 1995, substituted "a hoisting operator's" for "the appropriate" and substituted "less than one hundred dollars ($100) or more than three hundred dollars ($300)" for "more than five hundred dollars ($500)" in Subsection A, substituted "An employer or his representative" for "A person" and made a minor stylistic change in Subsection B, and added Subsections C through E.

60-15-14. Hoisting operators licensure examining council; appointed.

A. The "hoisting operators licensure examining council" is created. The members of the council shall serve at the pleasure of the superintendent. The superintendent shall appoint at least five members to the council with consideration given to geographical representation and proportional representation of operator, contractor, labor and public members. The members of the council shall include at least:

(1) one class I hoisting operator;

(2) one contractor, as defined by Section 60-13-3 NMSA 1978, who employs at least one hoisting operator;

(3) one representative of organized labor; and

(4) two members from the public at large who are not licensed hoisting operators.

B. The duties of the council include:

(1) reviewing and approving the applications, qualifications and examinations of applicants for licensure as hoisting operators and recommending to the

superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

(2) reporting findings and recommendations from the hearings to the superintendent;

(3) proceeding according to regulations adopted by the department; and

(4) approving examinations and training programs that meet the requirements of the federal occupational safety and health administration, United States department of labor or occupational health and safety bureau of the department of environment.

History: Laws 1993, ch. 183, § 14; 1995, ch. 138, § 9; 2005, ch. 52, § 3; 2013, ch. 76, § 6.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, clarified the structure of the licensure examining council; deleted the introductory paragraph, which provided the structure of the licensure examining council; added Subsection A; and in Subsection B, added the introductory sentence and Paragraph (4).

The 2005 amendment, effective July 1, 2006, increased the number of members to the hoisting operators licensure examining council to five members; required that the superintendent give consideration to geographical representation in the appointment of members to the council; and required that one member be a representative of organized labor and that two members be public members who are not licensed hoisting operators.

The 1995 amendment, effective July 1, 1995, in the third sentence in the introductory paragraph substituted "class I" for "first class" and added "who employs one or more hoisting operators", and inserted "and approving" in Subsection A.

60-15-15. Hoisting Operators Safety Act fund created; purpose; appropriation.

A. The "Hoisting Operators Safety Act fund" is created in the state treasury. The fund shall consist of legislative appropriations to the fund; fees charged by the department pursuant to the Hoisting Operators Safety Act; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the department, and money in the fund is appropriated to the department for the purpose of carrying out the provisions of the Hoisting Operators Safety Act. Expenditures from the fund shall be made on warrants

drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent or the superintendent's authorized representative.

History: Laws 2005, ch. 52, § 4.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 52, § 6 made the act effective July 1, 2006.