

## ARTICLE 1A Horse Racing Act

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**60-1A-1. Short title. (Repealed effective July 1, 2022.)**

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

History: Laws 2007, ch. 39, § 1.

**Compiler's notes.** — Laws 2007, ch. 39, § 34, repealed the former Horse Racing Act, § 60-1-23 NMSA 1978, and enacted a new Horse Racing Act, effective July 1, 2007.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 (Repealed effective July 1, 2022.)**

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.

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

## ANNOTATIONS

**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*, 1965-NMSC-017, 74 N.M.

799, 399 P.2d 285(decided under former law.)

**60-1A-3. Commission created; appointment of members; terms of office. (Repealed effective July 1, 2022.)**

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.

**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, 2022.)**

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.

**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.

## ANNOTATIONS

**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*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (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*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (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*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (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*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (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*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (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*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (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, 2022.)**

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.

**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.

## ANNOTATIONS

**Section legalizes pari-mutuel betting under fixed conditions** and declares that it shall not be construed as gambling. *Patton v. Fortuna Corp.*, 1960-NMSC-136, 68 N.M. 40, 357 P.2d 1090 (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*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (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*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (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*, 1973-NMSC-028, 84 N.M. 679, 507 P.2d 426 (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 chance 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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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.

## ANNOTATIONS

**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.*, 1972-NMCA-153, 84 N.M. 524, 505 P.2d 867, cert. denied, 84 N.M. 512, 505 P.2d 855 (decided under former law).

### **60-1A-9. Secondary licenses; applications; specific requirements. (Repealed effective July 1, 2022.)**

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.

**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, 2022.)**

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.

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

## ANNOTATIONS

**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*, 1973-NMSC-028, 84 N.M. 679, 507 P.2d 426 (decided under former law).

**60-1A-11. Granting a license; standards; denial and revocation; suspension and penalties. (Repealed effective July 1, 2022.)**

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, is honest and has integrity;
- (2) does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;
- (3) does not have any 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. The commission may deny or revoke an occupational license 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 administered, attempted to administer or conspired to administer to a racehorse, internally, externally or by injection, a drug, chemical, stimulant or depressant, or other prohibited 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.

E. In addition to its authority to deny or revoke an occupational license for the conduct described in Subsection D of this section, the commission may suspend a license and impose fines on a licensee. For suspensions and fines, the commission shall adopt as its own rules the model rules for the imposition of penalties for the use of prohibited substances 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 rules that are generally accepted in the horse racing industry as determined by the commission.

F. The commission shall revoke for a period not to exceed five years an occupational license if the occupational licensee used, attempted to use or conspired with others to use an electrical or mechanical device, implement or instrument for the purpose of affecting the speed or stamina of a racehorse.

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

History: Laws 2007, ch. 39, § 11; 2013, ch. 103, § 2; 2017, ch. 28, § 1; 2017, ch. 145, § 1.

**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.

**Duplicate amendments.** — Laws 2017, ch. 28, § 1 and Laws 2017, ch. 145, § 1, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 1. See compiler's note below.

**Compiler's notes.** — Laws 2017, ch. 28, § 1, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 1.

**The 2017 amendment**, effective July 1, 2017, removed certain exceptions to conduct that requires denial or revocation of an occupational license, and authorized the state racing commission to revoke occupational licenses for a period not to exceed five years if the licensee attempted to use or conspired with others to use an electrical or mechanical device for the purpose of affecting the speed or stamina of a racehorse; in the catchline, added "denial and revocation; suspension and penalties"; in Subsection A, Paragraph A(1), after "character", deleted "honesty" and added "is honest", and after "and", added "has", and in Paragraph A(3), in the introductory clause, after "does not have", added "any"; deleted former

Subsection D, which provided for the denial of occupational licenses for certain violations, and redesignated former Subsection E as new Subsection D; in Subsection D, deleted "An occupational license may be denied or revoked" and added "The commission may deny or revoke an occupational license", deleted the paragraph designation "(1)", after "stimulant or depressant, or other", deleted "performance altering" and added "prohibited", after "as determined by the commission", deleted "unless the applicant or occupational licensee has been specifically permitted to do so by the commission or a steward; or", and deleted former Paragraph E(2), which listed certain prohibited acts and exceptions; added new Subsections E and F, and redesignated former Subsection F as Subsection G; and in Subsection G, after "to be issued", added "a license".

**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.

## ANNOTATIONS

**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*, 1970-NMSC-134,82 N.M. 108, 476 P.2d 767 (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*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (decided under former law).

### **60-1A-12. Stewards; powers; duties. (Repealed effective July 1, 2022.)**

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.

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

**60-1A-13. Equine health and testing advisor; qualifications; duties. (Repealed effective July 1, 2022.)**

The commission shall hire or contract with an equine health and testing advisor. An equine health and testing advisor shall be a doctor of veterinary medicine or shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the specimens collected pursuant to Section 60-1A-14 NMSA 1978. The equine health and testing advisor shall exercise the duties prescribed by rules of the commission.

History: Laws 2007, ch. 39, § 13; 2017, ch. 28, § 2; 2017, ch. 145, § 2.

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

**Duplicate amendments.** — Laws 2017, ch. 28, § 2 and Laws 2017, ch. 145, § 2, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 2. See compiler's note below.

**Compiler's notes.** — Laws 2017, ch. 28, § 2, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 2.

**The 2017 amendment**, effective July 1, 2017, required the state racing commission to hire or contract with an equine health and testing advisor, and removed the provision requiring the commission to designate an official chemist; in the catchline, deleted "Official chemist" and added "Equine health and testing advisor"; after "The commission shall", deleted "designate at least one official chemist" and added "hire or contract with an equine health and testing advisor", after "An", deleted "official chemist" and added "equine health and testing advisor", after "shall", added "be a doctor of veterinary medicine or shall", after "techniques used for testing the", deleted "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" and added "specimens collected pursuant to Section 60-1A-14 NMSA 1978", and after "The", deleted "official chemist" and added "equine health and testing advisor".

**60-1A-14. Testing specimens. (Repealed effective July 1, 2022.)**

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 samples, and:

(1) one sample, designated as the "official 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 prohibited substances as defined in guidelines 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; and

(2) the remaining samples, each designated as a "split sample", may be forwarded by the commission to the scientific laboratory division of the department of health or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection.

C. After a positive test result on the official 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, a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule.

D. All samples shall be kept in a controlled environment for a period of time specified by the commission in each case.

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; 2017, ch. 28, § 3; 2017, ch. 145, § 3.

**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.

**Duplicate amendments.** — Laws 2017, ch. 28, § 3 and Laws 2017, ch. 145, § 3, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 3. See compiler's note below.

**Compiler's notes.** — Laws 2017, ch. 28, § 3, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 3.

**The 2017 amendment**, effective July 1, 2017, clarified the designation and handling of testing samples taken from racehorses; in Subsection B, after "two or more", deleted "equal", in Paragraph B(1), after "one sample", added "designated as the 'official sample'", after "depressants or other", deleted "performance altering substances" and added "prohibited substances", after "as defined", added "in guidelines published", in Paragraph B(2), deleted "second sample shall" and added "remaining samples, each designated as a 'split sample', may", after "department of health", added "or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection"; in Subsection C, after "positive test result on the", added "official", after "designated by the commission", deleted "the scientific laboratory division shall transmit the corresponding second sample to the New Mexico horsemen's association" and added "a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule"; and in Subsection D, deleted "The scientific laboratory division shall keep", after "All samples", added "shall be kept", and after "period of", deleted "at least three months" and added "time specified by the commission in each case".

**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.

## ANNOTATIONS

**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*, 1988-NMCA-056, 107 N.M. 632, 763 P.2d 66 (decided under former law).

### **60-1A-14.1. Racehorse testing fund; created; purpose. (Repealed effective July 1, 2022.)**

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, 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. 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 and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 NMSA 1978. 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; 2017, ch. 28, § 4; 2017, ch. 145, § 4.

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

**Duplicate amendments.** — Laws 2017, ch. 28, § 4 and Laws 2017, ch. 145, § 4, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 4. See compiler's note below.

**Compiler's notes.** — Laws 2017, ch. 28, § 4, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 4.

**The 2017 amendment**, effective July 1, 2017, provided that money from the racehorse testing fund be used to compensate the equine health and testing advisor; after "incorporated", added "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", and after "Section 60-1A-14 NMSA 1978", deleted "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", and added "and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 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, 2022.)**

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.

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

## ANNOTATIONS

**Section legalizes pari-mutuel betting under fixed conditions** and declares that it shall not be construed as gambling. *Patton v. Fortuna Corp.*, 1960-NMSC-136, 68 N.M. 40, 357 P.2d 1090 (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*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (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*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (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 chance 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, 2022.)**

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.

**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, 2022.)**



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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

**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, 2022.)**

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.

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

### ANNOTATIONS

**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*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

#### **60-1A-27. Predetermining horse races; influencing or attempting to influence; fourth degree felony. (Repealed effective July 1, 2022.)**

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.

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

### ANNOTATIONS

**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*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

**60-1A-28. Affecting speed or stamina of a race horse; penalties. (Repealed effective July 1, 2022.)**

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.

**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".

## ANNOTATIONS

**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*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

### **60-1A-28.1. Racetrack licensees; power to eject or exclude. (Repealed effective July 1, 2022.)**

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.

**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.

## ANNOTATIONS

**Statute, authorizing racetrack licensees to exclude any person from its racetrack, enacted after case filed cannot be applied to pending case.** — Where plaintiff, a racehorse owner and trainer, filed a complaint in 2013 against several private racetracks for excluding plaintiff from entering the racetracks and the races held at the racetracks, alleging that his rights as a licensee were violated, 60-1A-28.1 NMSA 1978, which was enacted in 2014 and gives racetrack licensees the power to exclude any person from its racetrack for any lawful reason, could not be applied to plaintiff's pending case, because statutes are presumed to operate prospectively only and will not be given a retroactive effect unless such intention on the part of the legislature is clearly apparent. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

**Limitations on common law right to exclude.** — A privately owned racetrack possesses a common law right to exclude individuals, both patrons and licensees, from its racetracks, but the exclusion must be for a lawful reason and may not be based on race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

**Privately owned racetracks have a common law right to exclude any person, patron or licensee, from races held at their racetracks.** — Where plaintiff, a racehorse owner and trainer, filed a complaint against several private racetracks for excluding plaintiff from entering the racetracks and the races held at the racetracks based on incidents that had occurred involving the death and injury of plaintiff's horses at certain racetracks, the district court did not err in granting summary judgment in favor of the racetracks because under the common law, a privately owned racetrack possesses a right to exclude any person for any lawful reason, and plaintiff did not meet his burden of proving that exclusion was not a reasonable discretionary business judgment. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

### **60-1A-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2022.)**

The state racing commission is terminated on July 1, 2021 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, 2022. Effective July 1, 2022, Chapter 60, Article 1A NMSA 1978 is repealed.

**History:** Laws 2007, ch. 39, § 29; 2011, ch. 75, § 2; 2018, ch. 31, § 1.

**The 2018 amendment**, effective May 16, 2018, extended the termination date of the state racing commission; after the first occurrence of "July 1", deleted "2017" and added "2021", and after each of the next two occurrences of "July 1", deleted "2018" and added "2022".

**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, 2022.)**

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.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

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