

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 293

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

AN ACT

RELATING TO HORSE RACING; REQUIRING A HEARING OFFICER TO
CONDUCT AND DECIDE PRELIMINARY AND ADJUDICATORY HEARINGS HELD
UPON REQUEST OF A LICENSEE WHOSE LICENSE IS SUSPENDED OR
REVOKED BY THE STEWARDS; PROVIDING A HEARING PROCEDURE;
PROVIDING FOR APPEAL ON THE RECORD TO THE DISTRICT COURT;
CREATING THE HORSE RACING APPEAL FUND; MAKING AN APPROPRIATION.

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

SECTION 1. Section 60-1A-4 NMSA 1978 (being Laws 2007,
Chapter 39, Section 4) is amended to read:

"60-1A-4. COMMISSION--POWERS--DUTIES.--

A. The commission may:

(1) grant or deny, [~~suspend or revoke~~] and
shall take action when required pursuant to the Horse Racing
Act to suspend, revoke or not renew, occupational licenses,

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underscored material = new
[bracketed material] = delete

1 secondary licenses and racetrack licenses, establish the terms
2 for each classification of a racetrack license and set fees for
3 submitting an application for a license;

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

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

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

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

25 (6) summon witnesses;

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

3 (8) appoint a hearing officer to conduct
4 hearings required by the Horse Racing Act or a rule adopted
5 pursuant to that act, except for hearings from a violation
6 involving the use of a class 1 or class 2 penalty class A drug
7 as described in Section 60-1A-28 NMSA 1978.

8 B. The commission shall:

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

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

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

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

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

25 (d) a statement of the assets and

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1 liabilities of the person or corporation making the
2 application;

3 (e) the kind of racing to be conducted;

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

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

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

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

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

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

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

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

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

3 (10) require background investigations of
4 employees of a racetrack licensee as set forth in the rules of
5 the commission; [~~and~~]

6 (11) provide an annual report to the governor
7 regarding the commission's administration of horse racing in
8 the state; and

9 (12) contract with a disinterested hearing
10 officer, who shall be an attorney licensed in this state, to
11 make preliminary rulings, set conditions pending an
12 adjudicatory hearing, conduct adjudicatory hearings, make
13 findings of fact and conclusions of law and render final
14 administrative decisions on the commission's behalf regarding
15 decisions or actions of the stewards involving the suspension
16 or revocation of a license for the use of a class 1 or class 2
17 penalty class A drug as described in Section 60-1A-28 NMSA
18 1978. The commission staff shall provide administrative
19 support to the hearing officer upon a reasonable request made
20 by the hearing officer."

21 SECTION 2. Section 60-1A-5 NMSA 1978 (being Laws 2007,
22 Chapter 39, Section 5, as amended) is amended to read:

23 "60-1A-5. COMMISSION RULES--ALL LICENSES--SUSPENSION,
24 REVOCATION OR DENIAL OF LICENSES--PENALTIES.--

25 A. The commission shall adopt rules to implement

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1 the Horse Racing Act and to ensure that horse racing in New
2 Mexico is conducted with fairness and that the participants and
3 patrons are protected against illegal practices.

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

10 C. The commission [~~may~~] shall impose an appropriate
11 civil penalty fine pursuant to Subsection D of this section or
12 suspend, revoke or deny renewal of a license of a person who
13 violates the provisions of the Horse Racing Act or rules
14 adopted pursuant to that act, except as otherwise provided in
15 Section 60-1A-12 NMSA 1978. The commission shall provide a
16 licensee facing suspension, revocation or denial of renewal of
17 a license reasonable notice and an opportunity for a hearing.
18 The suspension, revocation or denial of renewal of a license
19 shall not relieve the licensee from prosecution for the
20 violations or from the payment of fines and penalties assessed
21 the licensee by the commission or by the stewards or a hearing
22 officer pursuant to Section 60-1A-12 NMSA 1978.

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

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

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

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

14 SECTION 3. Section 60-1A-12 NMSA 1978 (being Laws 2007,
15 Chapter 39, Section 12) is amended to read:

16 "60-1A-12. STEWARDS--POWERS--DUTIES.--

17 A. There shall be three stewards, licensed and
18 employed by the commission, to supervise each horse race meet.
19 One of the stewards shall be designated the presiding official
20 steward of the race meet. Stewards, other than the presiding
21 official steward, shall be employed subject to the approval of
22 the racetrack licensee. All stewards shall be licensed or
23 certified by a nationally recognized horse racing organization.
24 Stewards may issue citations for violations of the Horse Racing
25 Act and suspend or revoke a license. The stewards shall

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1 exercise those powers and duties prescribed by commission
2 rules.

3 B. A decision or action of a steward, other than
4 involving a citation for the use of a class 1 or class 2
5 penalty class A drug as described in Section 60-1A-28 NMSA
6 1978, may be reviewed or reconsidered by the commission.

7 C. If the decision or action of a steward involves
8 a licensee's use of a class 1 or class 2 penalty class A drug
9 as described in Section 60-1A-28 NMSA 1978, the steward shall
10 issue a citation to the licensee setting forth the decision or
11 action that includes notice of a right to a hearing.

12 D. Within ten days after receipt of a citation, a
13 licensee may request in writing to the commission an
14 adjudicatory hearing before a hearing officer pursuant to
15 Paragraph (12) of Subsection B of Section 60-1A-4 NMSA 1978.
16 The request shall include a hearing fee of five hundred dollars
17 (\$500), which shall be deposited in the horse racing appeal
18 fund.

19 E. A suspension or revocation made by a steward may
20 remain in effect until a final decision of the hearing officer.
21 Prior to the adjudicatory hearing, a licensee may request a
22 preliminary hearing before the hearing officer to determine if
23 reasonable grounds exist to stay the steward's action pending
24 the adjudicatory hearing on the merits of the steward's action.
25 For good cause shown the hearing officer may impose conditions

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1 on the licensee pending a final decision following the
2 adjudicatory hearing.

3 F. The hearing pursuant to Subsection D of this
4 section shall be held:

5 (1) in the county where the steward issued the
6 citation imposing suspension or revocation or in a county where
7 a live horse racing meet will be held on the hearing date; and

8 (2) within thirty days after the commission
9 received the request for a hearing, unless the hearing is
10 continued pursuant to Subsection G of this section.

11 G. The hearing officer shall cause a record of the
12 hearing to be made and may summon witnesses, administer oaths
13 and compel the production of evidence in whatever form. The
14 hearing officer may continue a hearing on the hearing officer's
15 own motion or the motion of a party to the hearing for good
16 cause shown for a period not to exceed ninety days from the
17 date of the hearing request or for a longer period of time if
18 the licensee consents.

19 H. Within thirty days after the completion of the
20 hearing, the hearing officer shall serve upon the commission
21 and the parties the hearing officer's findings of fact,
22 conclusions of law and a decision on the merits that may
23 include sanctions and penalties. The decision shall be
24 conclusive on the commission and shall become the commission's
25 final administrative decision. If the licensee requesting the

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1 hearing prevails at the adjudicatory hearing, the hearing fee
2 shall be refunded by the commission to the licensee within ten
3 days of the final decision.

4 I. A party aggrieved by the hearing officer's
5 decision may file an appeal in the district court with
6 jurisdiction in the county where the hearing before the hearing
7 officer was held pursuant to the provisions of Section 39-3-1.1
8 NMSA 1978."

9 SECTION 4. A new section of the Horse Racing Act is
10 enacted to read:

11 "[NEW MATERIAL] HORSE RACING APPEAL FUND--APPROPRIATION--
12 USES.--The "horse racing appeal fund" is created as a
13 nonreverting fund in the state treasury. The fund consists of
14 appropriations, gifts, grants, donations and hearing fees
15 required by law to be deposited in the fund. Income from
16 investment of the fund shall be credited to the fund. The
17 commission shall administer the fund, and money in the fund is
18 appropriated to the commission to help defray the costs of
19 hearings and to reimburse hearing fees pursuant to the Horse
20 Racing Act. Expenditures from the fund shall be made on
21 warrant of the secretary of finance and administration pursuant
22 to vouchers signed by the executive director of the
23 commission."

24 SECTION 5. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2014.