

1 HOUSE BILL 293

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Candy Spence Ezzell

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10 AN ACT

11 RELATING TO HORSE RACING; REQUIRING A HEARING OFFICER TO
12 CONDUCT AND DECIDE ADJUDICATORY HEARINGS FOR THE STATE RACING
13 COMMISSION; PROVIDING FOR A HEARING PROCEDURE; PROVIDING FOR
14 APPEAL ON THE RECORD TO THE DISTRICT COURT; CREATING THE HORSE
15 RACING APPEAL FUND; MAKING AN APPROPRIATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "60-1A-4. COMMISSION--POWERS--DUTIES.--

21 A. The commission may:

22 (1) grant or deny, [~~suspend or revoke~~] and
23 shall take action when required pursuant to the Horse Racing
24 Act to suspend, revoke or not renew occupational licenses,
25 secondary licenses and racetrack licenses; establish the terms

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1 for each classification of a racetrack license; and set fees
2 for submitting an application for a license;

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

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

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

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

24 (6) summon witnesses; and

25 (7) administer oaths for the effective

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1 discharge of the commission's authority [~~and~~
2 ~~(8) appoint a hearing officer to conduct~~
3 ~~hearings required by the Horse Racing Act or a rule adopted~~
4 ~~pursuant to that act~~].

5 B. The commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (10) require background investigations of

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1 employees of a racetrack licensee as set forth in the rules of
2 the commission; ~~and~~

3 (11) provide an annual report to the governor
4 regarding the commission's administration of horse racing in
5 the state; and

6 (12) contract with a hearing officer, who
7 shall be an attorney licensed in this state, to conduct
8 adjudicatory hearings, make findings of fact and conclusions of
9 law and render final administrative decisions on the
10 commission's behalf, including for appeals to the commission
11 that are timely filed from decisions or actions of the stewards
12 involving the suspension or revocation of a license. The
13 commission staff shall provide administrative support to the
14 hearing officer upon a reasonable request made by the hearing
15 officer."

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

18 "60-1A-5. COMMISSION RULES--ALL LICENSES--SUSPENSION,
19 REVOCATION OR DENIAL OF LICENSES--HEARINGS--PENALTIES.--

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

24 B. Every license issued by the commission shall
25 require the licensee to comply with the rules adopted by the

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1 commission. A racetrack licensee shall post printed copies of
2 the rules in conspicuous places on the racing grounds and shall
3 maintain them during the period when live horse races are being
4 conducted.

5 C. The commission [~~may~~] shall suspend, revoke or
6 deny renewal of a license of a person who violates the
7 provisions of the Horse Racing Act or rules adopted pursuant to
8 that act.

9 D. The commission shall provide a licensee facing
10 suspension, revocation or denial of renewal of a license or a
11 licensee appealing a decision or action of the stewards
12 reasonable notice and an opportunity for a hearing on the
13 merits before a hearing officer.

14 E. The commission shall prepare rules for the
15 provision of notice and conduct of the hearing. At the
16 hearing, the technical rules of evidence shall apply, and a
17 party has the right to be represented by counsel, to call
18 witnesses on the party's own behalf and to cross-examine the
19 witnesses of other parties.

20 F. The hearing shall be held:
21 (1) in the county where the conduct leading to
22 suspension, revocation or denial of renewal occurred; provided
23 that a hearing on an appeal of a decision or action of the
24 stewards pursuant to Section 60-1A-12 NMSA 1978 shall, in the
25 discretion of the hearing officer, be held in the county in

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1 which the decision or action occurred or in a county in which a
2 live horse racing meet is being conducted on the hearing date;
3 and

4 (2) within thirty days after notice of the
5 suspension, revocation or denial of renewal has been made or
6 after receipt of an appeal from a decision or action of the
7 stewards pursuant to Section 60-1A-12 NMSA 1978 unless the
8 hearing officer sets a different date.

9 G. The hearing officer shall cause a record of the
10 hearing to be made and may summon witnesses, administer oaths
11 and compel the production of evidence in whatever form. The
12 hearing officer may postpone or continue a hearing on the
13 hearing officer's own motion or the motion of a party to the
14 hearing for good cause shown for a period not to exceed ninety
15 days from the date of notice of revocation, suspension or
16 denial of renewal of a license from the commission or from the
17 date of appeal from a decision or action of the stewards.

18 H. Within ten days after the completion of the
19 hearing, the hearing officer shall serve upon the commission
20 and the parties the hearing officer's findings of fact,
21 conclusions of law and a decision on the merits that shall
22 include penalties, if any. The decision shall be conclusive on
23 the commission and shall become the commission's final
24 administrative decision.

25 I. A party aggrieved by the commission's decision

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1 may file an appeal in the district court with jurisdiction in
2 the county where the hearing before the hearing officer was
3 held pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

4 J. The suspension, revocation or denial of renewal
5 of a license shall not relieve the licensee from criminal
6 prosecution for the violations or from the payment of fines and
7 penalties assessed the licensee by the commission.

8 [~~D-~~] K. The commission may impose civil penalty
9 fines upon a licensee for a violation of the provisions of the
10 Horse Racing Act or rules adopted by the commission. The fines
11 shall not exceed one hundred thousand dollars (\$100,000) or one
12 hundred percent of a purse related to the violation, whichever
13 is greater, for each violation.

14 [~~E-~~] L. Fines shall be paid into the current school
15 fund.

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

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

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

2 A. There shall be three stewards, licensed and
3 employed by the commission, to supervise each horse race meet.
4 One of the stewards shall be designated the presiding official
5 steward of the race meet. Stewards, other than the presiding
6 official steward, shall be employed subject to the approval of
7 the racetrack licensee. All stewards shall be licensed or
8 certified by a nationally recognized horse racing organization.
9 Stewards shall exercise those powers and duties prescribed by
10 commission rules.

11 B. A decision or action of a steward may be
12 [~~reviewed or reconsidered by the commission~~] appealed in
13 writing to the commission, within ten days of the decision or
14 action or the right to appeal expires, upon the filing of a fee
15 of one thousand dollars (\$1,000) to cover the reasonable cost
16 of the appeal and compensation for the hearing officer. The
17 fee shall be deposited in the horse racing appeal fund. An
18 appeal to the commission shall be heard before a hearing
19 officer and decided in the same manner and subject to the same
20 terms as hearings pursuant to Section 60-1A-5 NMSA 1978. Upon
21 the filing of the fee, the commission shall stay the decision
22 or action of the stewards until the hearing officer has entered
23 a final decision on the merits in the appeal. If the person
24 filing the appeal prevails on all issues raised in the appeal,
25 the filing fee shall be refunded by the commission to the

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1 person within ten days of the final decision."

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

4 "[NEW MATERIAL] HORSE RACING APPEAL FUND--APPROPRIATION--
5 USES.--The "horse racing appeal fund" is created as a
6 nonreverting fund in the state treasury. The fund consists of
7 appropriations, gifts, grants, donations and amounts designated
8 pursuant to Subsection B of Section 60-1A-12 NMSA 1978. Income
9 from investment of the fund shall be credited to the fund. The
10 commission shall administer the fund, and money in the fund is
11 appropriated to the commission to help defray the costs of
12 adjudicatory hearings and compensation for hearing officers and
13 to reimburse appeal fees to persons who have prevailed on all
14 issues raised in an appeal to the commission from a decision or
15 action of the stewards pursuant to the Horse Racing Act.
16 Expenditures from the fund shall be made on warrant of the
17 secretary of finance and administration pursuant to vouchers
18 signed by the executive director of the commission."

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