CHAPTER 60
BUSINESS LICENSES

ARTICLE 1
HORSE RACING

60-1-1. Conducting a race without license prohibited. (Effective until July 1, 1994.)

It is unlawful for any person, firm, association or corporation to hold public horse races or race meetings for profit or gain in any manner unless a license therefor has first been obtained from the racing commission as provided in the Horse Racing Act [this article].

History: Laws 1933, ch. 55, § 1; 1937, ch. 203, § 1; 1941 Comp., § 62-601; 1953 Comp., § 60-6-1; Laws 1973, ch. 323, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Temporary provisions. - Laws 1991, ch. 195, § 7, effective June 14, 1991, provides that the legislative council shall assign to the appropriate interim legislative committee the responsibility of a complete analysis of the racing industry of New Mexico, the tax laws imposed on that industry and their effect on the state and report the results of their analysis and findings, with appropriate legislative recommendations to the second session of the fortieth legislature.

Constitutionally adequate due process provided. - The statutes and regulations set forth in the Horse Racing Act provide constitutionally adequate due process of law. State Racing Comm'n v. McManus, 82 N.M. 108, 476 P.2d 767 (1970).

And fact there is no provision for hearing prior to suspension is not fatal to the validity of the law. State Racing Comm'n v. McManus, 82 N.M. 108, 476 P.2d 767 (1970).

Legislative intent. - Through these sections, there are revealed permissive rules for both horse racing and gambling and the conditions which premise their activation. The provisions for application for a racing license, the consideration of such application and action thereon are legislative delegations to an administrative body, the state racing commission, which is charged with the guidance of the stated policy. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 30.

Liability for license fee or occupation tax of one who has conducted business without required license or payment, 5 A.L.R. 1312, 107 A.L.R. 652.

Right to injunction to restrain acts or course of conduct without the required permit from public, 53 A.L.R. 811.

Right to enjoin practice of profession or conduct of business or practicing profession without a license or permit, 81 A.L.R. 292, 92 A.L.R. 173.

86 C.J.S. Theaters and Shows § 22.

60-1-2. State racing commission administratively attached to tourism department. (Effective until July 1, 1994.)

The state racing commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the tourism department.

History: 1953 Comp., § 60-6-1.1, enacted by Laws 1977, ch. 245, § 123; 1991, ch. 21, § 38.

Delayed repeals. - See 60-1-26 NMSA 1978.

The 1991 amendment, effective March 27, 1991, substituted "tourism" for "commerce and industry" in the catchline and in the text of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 28.

86 C.J.S. Theaters and Shows § 3.

60-1-3. Application for licenses; state racing commission created; members; terms of office; vacancies; powers and duties. (Effective until July 1, 1994.)

A. Any person, firm, association or corporation desiring to hold a horse race or to engage in horse race meetings shall apply to the state racing commission for a license.

B. There is created the "state racing commission". The state racing commission shall consist of five members, no more than three of whom shall be members of the same political party. They shall be appointed by the governor, and no less than three of them shall be practical breeders of racehorses within the state. Each member shall be an actual resident of New Mexico and of such character and reputation as to promote public confidence in the administration of racing affairs.

C. The term of office of each member of the state racing commission shall be six years from his appointment, and he shall serve until his successor is appointed and qualified. In case of any vacancy in the membership of the commission, the governor shall fill the vacancy by appointment for the unexpired term.

D. No person shall be eligible for appointment as a member of the state racing commission who is an officer, official or director in any association or corporation conducting racing within the state.

E. Members of the state racing commission shall receive no salary but each member of the commission shall receive per diem and mileage in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. The commission may appoint a secretary and fix his duties and compensation.

F. The state racing commission has the power to:

(1) grant, refuse and revoke licenses;

(2) make rules and regulations for the holding, conducting and operating of all race meets and races held in the state and to fix and set racing dates;

(3) make an annual report to the governor of its administration of the racing laws;

(4) require of each applicant for a license the full name of the person, association or corporation applying and, if the applicant is a corporation or an association, the name of the state in which incorporated, the nationality and residence of the members of the association and the names of the stockholders and directors of the corporation;

(5) require of an applicant for a license the exact location where it is desired to conduct or hold a race or race meeting, whether or not the racetrack or plant is owned or leased and, if leased, the name and residence of the fee owner or, if the owner is a corporation, the names of the directors and stockholders, a statement of the assets and liabilities of the person, association or corporation making the application, the kind of racing to be conducted and the period desired and such other information as the commission may require;

(6) require on each application a statement under oath that the information contained in the application is true;

(7) personally or by agents and representatives supervise and check the making of pari-mutuel pools and the distribution from those pools;

(8) cause the various places where race meets are held to be visited and inspected at reasonable intervals;

(9) make rules governing, restricting or regulating bids on leases;

(10) regulate rates charged by the licensee for admission to races or for the performance of any service or the sale of any article on the premises of the licensee;

(11) approve all proposed extensions, additions or improvements to the buildings, stables or tracks upon property owned or leased by a licensee and require the removal of any employee or official employed by the licensee;

(12) completely supervise and control the pari-mutuel machines and equipment at all races held or operated by the state or any state agency or commission;

(13) approve all contracts and agreements for the payment of money and all salaries, fees and compensations by any licensee;

(14) regulate the size of the purse, stake or reward to be offered for the conducting of any race;

(15) exclude or compel the exclusion of, from all racecourses, any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates the racing laws or any rule, regulation or order of the commission or any law of the United States or of this state;

(16) compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records shall be kept;

(17) investigate the operations of any licensee, and the commission has authority to place attendants and such other persons as may be deemed necessary in the offices, on the tracks or in places of business of any licensee for the purpose of satisfying itself that the rules and regulations are strictly complied with; and

(18) employ staff as peace officers for the purpose of conducting investigations and for enforcing rules and regulations of the racing commission and the laws of the state and to obtain documents and information from other agencies in order to assist the racing commission. Staff employed as peace officers shall be required to satisfactorily complete a basic law enforcement training program but such peace officers shall not carry firearms or other deadly weapons while on duty.

G. The state racing commission shall publicly state its reasons for refusing an application for a license. The reasons shall be included in the minute book of the commission, and the minute book shall be subject to public inspection at all reasonable times.

H. The state racing commission has the power to summon witnesses, books, papers, documents or tangible things and to administer oaths for the effectual discharge of the commission's duties. The commission may appoint a hearing officer to conduct any hearing required by the Horse Racing Act [this article] or any rule or regulation promulgated pursuant to that act.

History: Laws 1933, ch. 55, § 2; 1937, ch. 203, § 2; 1941 Comp., § 62-602; Laws 1947, ch. 192, § 1; 1953 Comp., § 60-6-2; Laws 1955, ch. 87, § 1; 1973, ch. 323, § 2; 1975, ch. 95, § 1; 1989, ch. 99, § 1; 1989, ch. 377, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Cross-references. - For rule-making authority of racing commission, see 60-1-11 NMSA 1978.

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.

However, it has been granted broad and sweeping powers to regulate horse racing and wagering thereon. 1963-64 Op. Att'y Gen. No. 63-115.

The legislature in its wisdom intended to confer broad discretionary powers of licensing upon the commission as an expert body. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958).

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 60-1-9 NMSA 1978 that the commission's determinations should be final and conclusive and not subject to any appeal. Ross v. State Racing Comm'n, 64 N.M. 478, 330 P.2d 701 (1958).

Discretion of commission in granting licenses. - The racing commission has broad discretion in the matter of granting licenses, but, like other administrative agencies, it may not act in an arbitrary, unreasonable or capricious manner. 1963-64 Op. Att'y Gen. No. 63-115.

It may refuse to renew racing license when it expires, but it can only do so for reasons which would have permitted it to refuse to issue the license in the first instance. 1959-60 Op. Att'y Gen. No. 59-73.

Or revoke license. - The racing commission is empowered, after a hearing, to revoke a license, and such a revocation is justified if, as a matter of fact, reasons exist which would have justified a refusal of the license in the first instance. 1963-64 Op. Att'y Gen. No. 63-115.

And it may review the action of former commission to determine the regularity and validity of a license issued by the former commission. The state racing commission can revoke a license obtained by fraud from a former commission. The state racing

commission cannot revoke a license issued by a former commission for nonuse of racing dates granted by the former commission unless a condition as to when racing shall be commenced, subject to forfeiture of a license, has been imposed by the commission issuing the license. 1959-60 Op. Att'y Gen. No. 59-29.

No hearing required for license issuance or reinstatement. - The state racing commission is not legally required to give a person seeking a license or requesting reinstatement of a license a hearing before refusing to grant or reissue the said license. In refusing the license, the commission must, however, not be arbitrary or capricious. 1959-60 Op. Att'y Gen. No. 59-8.

And 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. New Mexico State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969).

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. New Mexico State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969).

Prior to 1972, members of racing commission were public officers, not employees, and not entitled to benefits under the Workers' Compensation Act. 1968 Op. Att'y Gen. No. 68-109.

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

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.

Commission not authorized to issue free passes. - The racing 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.

And it 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. 5914.

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.

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 racing commission for its approval is to be required, and if there is no submission for approval, the possible penalty is cancellation or revocation of the racing license. Sierra Blanca Sales Co. v. Newco Indus., Inc., 84 N.M. 524, 505 P.2d 867 (Ct. App.), cert. denied, 84 N.M. 512, 505 P.2d 855 (1972).

But contract not void for failure to submit. - This section does not make ratification to the contract void for failure to submit the contract to the racing commission for approval. Sierra Blanca Sales Co. v. Newco Indus., Inc., 84 N.M. 524, 505 P.2d 867 (Ct. App.), cert. denied, 84 N.M. 512, 505 P.2d 855 (1972).

And enforceable although not submitted. - This section, requiring submission of contracts of a licensee to the racing commission for its approval, does not prevent a party from enforcing an employment contract against another party where there was no proof the contract had been submitted to the commission. Sierra Blanca Sales Co. v. Newco Indus., Inc., 84 N.M. 524, 505 P.2d 867 (Ct. App.), cert. denied, 84 N.M. 512, 505 P.2d 855 (1972).

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

And to rule horse off track. - All owners 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 30.

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

86 C.J.S. Theaters and Shows § 23.

60-1-4. [Manner of appointment of commission.] (Effective until July 1, 1994.)

The five racing commissioners shall be appointed at large from the state by the governor and with the advice and consent of the senate.

History: 1953 Comp., § 60-6-2.1, enacted by Laws 1955, ch. 87, § 2.

Delayed repeals. - See 60-1-26 NMSA 1978.

60-1-5. Licenses; qualifications. (Effective until July 1, 1994.)

A. All persons engaged in racing, or employed on a licensee's premises by those engaged in racing, or operating a horse racing meeting, and persons operating concessions for or under authority of any licensee or employed by the concessionaire shall be licensed by the state racing commission and shall be fingerprinted.

B. Racetracks shall be licensed each calendar year.

C. The state racing commission may provide by regulation for the issuance of licenses for terms not to exceed five years for horse owners, trainers, jockeys and their employees; veterinarians; and employees of a racetrack. Fees for licenses under this subsection, not to exceed one hundred dollars ($100), shall be set by regulation of the commission.

D. The state racing commission shall not issue or renew a license and shall revoke or suspend any license issued pursuant to this section if, after due consideration for the proper protection of public health, safety, morals, good order and the general welfare of the inhabitants of this state, it finds that the issuance of the license or the holding of the license is inconsistent with the public interest. The burden of proving his qualifications to receive and hold a license under this section shall be at all times on the applicant or licensee. The state racing commission shall establish by regulation such qualifications for licenses to be issued pursuant to this section as it deems in the public interest.

E. Any person who is addicted to or uses narcotic drugs or who has been convicted of a violation of any federal or state narcotics law shall not be licensed on any New Mexico racetrack.

F. If the state racing commission finds that any person has done any of the following acts, the person shall not be licensed by the commission for a period of five years from the date of the finding that the person, for the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout:

(1) administered, attempted to administer or conspired with others to administer to any horse, in or prior to a race, any dope, drug, chemical agent, stimulant or depressant, either internally, externally or hypodermically;

(2) attempted to use, used or conspired with others to use in any race any electrical or mechanical buzzer, goad, device, implement or instrument, excepting only the ordinary whip and spur, or acted to sponge the nostrils or windpipe of a racehorse; or

(3) used any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or affecting its speed or stamina in a race or workout.

G. The validity of any license issued by the state racing commission shall be conditioned upon the licensee not engaging in racing, operating a horse race meeting or participating as an employee or concessionaire at any racetrack in New Mexico operating or permitting to be operated an organized wagering system not licensed by the commission. Any licensee not complying with that condition shall, after reasonable notice and hearing, have his license revoked, and the license shall not be reissued until the expiration of one year from the date of revocation.

History: 1953 Comp., § 60-6-2.2, enacted by Laws 1973, ch. 323, § 3; 1977, ch. 96, § 1; 1985, ch. 215, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Cross-references. - As to state racing commission, see 60-1-2 NMSA 1978.

Repeals and reenactments. - Laws 1973, ch. 323, § 3, repealed former § 60-6-2.2, 1953 Comp., relating to license qualifications, and enacted a new 60-6-2.2, 1953 Comp.

License granted jockey is privilege similar to that granted to owners and trainers; it is not a vested right within the meaning of the due process clause of the state and federal constitutions. State Racing Comm'n v. McManus, 82 N.M. 108, 476 P.2d 767 (1970).

Requirements for renewal same as those for initial issuance. - Since a license must be obtained prior to each race meet, the requirements for the renewal of a license are exactly the same as those for the initial issuance of a license. 1963-64 Op. Att'y Gen. No. 63-115.

Application for renewal and hearing thereon not to be pro forma. - Since horse racing is permitted in New Mexico only under highly regulated conditions, the yearly application for "renewal" of licenses held by existing licensees, and the hearing thereon, should not be a pro forma matter. At each such "renewal" hearing the same matters should be thoroughly explored that are considered in an initial application hearing. 1963-64 Op. Att'y Gen. No. 63-115.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 28, 30.

86 C.J.S. Theaters and Shows § 22.

60-1-6. Qualifications for license to conduct a horse race meet. (Effective until July 1, 1994.)

A. A license to conduct a horse racing meet in this state may be issued by the racing commission to any person whom the commission determines to be a qualified applicant. Such qualification shall be decided by the commission after due consideration for the proper protection of the public health, safety, morals, good order and the general welfare of the inhabitants of the state. The burden of proving his qualifications to receive and hold a license to conduct a horse racing meet shall be at all times on the applicant or licensee. The racing commission may establish by regulation such qualifications for licenses to conduct horse race meets as it deems to be in the public interest.

B. Without limiting the power of the racing commission to adopt by regulation additional qualifications pursuant to Subsection A of this section, no person shall be qualified to be licensed under this section if he:

(1) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the racing commission; however, the provisions of this paragraph shall not apply to any person who has been convicted of a felony prior to June 1, 1977, with respect to such prior conviction, if, with knowledge of the conviction, the state racing commission has as of June 1, 1977, granted him a license to conduct a horse race meet;

(2) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the racing commission;

(3) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the racing commission;

(4) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the racing commission;

(5) is consorting or associating with bookmakers, touts or persons of similar pursuits;

(6) is financially irresponsible; or

(7) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the racing commission.

C. No person shall be eligible to receive or hold any license to conduct a horse race meet unless each person having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, is individually licensed under this section. If the applicant for a 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 must, individually, be licensed under this section. This subsection shall not apply to any person owning or holding, directly, indirectly or beneficially less than ten percent of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a race meet in this state, unless such person has some other direct or indirect financial interests therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory.

D. The racing commission may prescribe a limit to the number of persons directly or indirectly financially interested in the licensee to conduct a horse race meet and shall also determine whether the financial interests of any applicant or group of applicants are compatible with the general welfare of the inhabitants of this state.

E. Without limiting the power of the racing commission, pursuant to Subsection D of this section, to limit the number of persons directly or indirectly interested in racetracks licensed in this state, no person or group of persons shall have a direct or indirect interest of any nature whatsoever, whether financial, administrative, policymaking or supervisory, in more than two racetracks in this state. For purposes of this subsection, a person or group of persons shall not be considered to have a direct or indirect interest in any racetrack if they own or hold, directly, indirectly or beneficially, less than ten percent of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a horse race meet in this state, unless such person or group of persons has some other direct or indirect interest of any nature whatsoever, whether financial, administrative, policymaking or supervisory in more than two licensed tracks. Any person or group of persons having a direct or indirect interest in more than two racetracks shall be immediately ordered by the commission to divest themselves of such interest. Beginning with the time the commission gives notice to divest such interest, the provisions of Subsection H of this section shall apply to such person or persons.

F. Any corporation, holding a license to conduct a race meet in this state, shall not issue to any person shares of its stock amounting to ten percent or more of its total authorized, issued and outstanding shares; nor issue shares, which would, when added to a person's existing owned or held shares, amount to that person owning or holding, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of the corporation, unless:

(1) it has given written notice to the racing commission, at least sixty days prior to the contemplated date of such transfer; and

(2) it receives written notice from the commission of its approval of such transfer.

G. It shall be the duty of every corporation holding a license to conduct a race meet in this state to notify, immediately, the racing commission when it appears from the stock records of the corporation that a person not licensed by the commission holds ten percent or more of the total authorized, issued and outstanding shares of the corporation.

H. Any person owning or holding, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation which is licensed to conduct a horse race meet in this state, but who has not been licensed by the commission to hold such shares or whose license has been revoked, shall not directly or indirectly in any manner:

(1) exercise any financial, administrative, policymaking or supervisory power with respect to such corporation;

(2) be an officer or director of such corporation;

(3) receive dividends, either in stock or in cash;

(4) hold or receive interest on any certificate of indebtedness of such corporation;

(5) exercise, individually or through any trustee, nominee or agent, any voting right or other power or privilege conferred by such securities; or

(6) otherwise receive any remuneration of whatsoever kind or nature from the corporation.

I. A person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of the corporation licensed to conduct a race meet in this state shall be licensed pursuant to Subsection A of this section. If the commission finds such person is not qualified to be licensed to own or hold, or to continue to own or hold, said ten percent interest in such corporation, it shall give notice of such finding to the corporation and to the person owning or holding such interest and that person shall immediately offer such securities to such corporation for purchase. If the corporation does not elect to purchase said shares, then that person may offer the shares to other purchasers, subject to prior approval of such purchasers by the commission pursuant to this section. Beginning from the time the commission gives the corporation and the shareholder written notice of disapproval and divestiture, the provisions of Subsection H of this section shall apply until final commission approval of the owner or holder of such shares is given.

J. The commission may at any time issue a written request to any nominee or trustee holding an equity interest in a corporation which is licensed to conduct a race meet in this state, for the name, address and internal revenue service identification number of the real party in interest owning said shares. If the nominee or trustee fails within thirty

days from said request to furnish the information requested to the commission, the commission may invoke the divestiture procedures in Subsection I above.

K. Every security hereafter issued by a corporation which holds a license shall bear a statement, on both sides of the certificate evidencing such security, of the restrictions and penalties imposed by this section.

L. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000) or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

M. The racing commission shall deny or revoke a license of a corporation which is not in compliance with the provisions of this section.

N. For purposes of determining interest in a racetrack, insofar as such determination 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 owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants; and

(3) stock constructively owned by a person by reason of the application of Paragraph (1) shall, for the purposes of applying Paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of Paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

History: 1953 Comp., § 60-6-2.3, enacted by Laws 1973, ch. 323, § 4; 1977, 1h. 92, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Mandatory duty of commission to review licensees. - The commission's duty of inquiry under Subsection A is the same for licensees as for applicants. The commission must undertake a continuing review of the licensee's qualifications in the interest of protecting the public welfare. 1976 Op. Att'y Gen. No. 76-31.

Ineligibility because of bribery conviction. - A person who has been convicted of a federal bribery violation may thereby be declared ineligible to retain a license to conduct a horse race. 1976 Op. Att'y Gen. No. 76-31.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 28, 30.

86 C.J.S. Theaters and Shows § 24.

60-1-6.1. Classification of licenses. (Effective until July 1, 1994.)

A. A license to conduct a horse racing meet in this state shall be classified as either a class A or class B license, determined by the state racing commission as follows:

(1) a class A license means a license of any licensee who received from all race meetings 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 license means the license of any licensee who received from all race meetings in the preceding calendar year a gross amount wagered through the pari-mutuel system of less than ten million dollars ($10,000,000).

B. Any new license to conduct a horse racing meet in this state shall be given a classification by the state racing commission based on the best estimate of the anticipated gross amounts to be received by the licensee from all pari-mutuel wagering in the licensee's first full calendar year. After the licensee's first full calendar year of racing, the state racing 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 [this article], except as otherwise provided in that act. The state racing commission shall adopt and promulgate such rules and regulations as are necessary to provide for license classification.

History: Laws 1991, ch. 7, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Emergency clauses. - Laws 1991, ch. 7, § 6 makes the act effective immediately. Approved March 13, 1991.

60-1-7. [Execution and contents of application.] (Effective until July 1, 1994.)

The application for a license shall be in writing and signed by the applicant or applicants and the facts therein recited shall be sworn to.

The application shall specify the days on which such races or meetings are to be held, the name or names of the applicant desiring the license together with the location and the enclosure where the same are to be held, and if the application desires the use of the pari-mutuel system in connection with such races the application shall so specify and state the terms upon which tickets and certificates are to be sold, and such other facts as the state racing commission may require.

History: Laws 1933, ch. 55, § 3; 1937, ch. 203; § 3; 1941 Comp., § 62-603; 1953 Comp., § 60-6-3.

Delayed repeals. - See 60-1-26 NMSA 1978.

Cross-references. - As to pari-mutuel betting, see 60-1-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 36.

86 C.J.S. Theaters and Shows § 24.

60-1-8. Time for filing application; amount of daily tax. (Effective until July 1, 1994.)

A. Application shall be filed not less than sixty days prior to the first day the proposed races or meetings are to be held, and at the time pari-mutuel wagering is conducted the applicant shall pay to the state racing commission the daily tax provided by this section.

B. The daily tax to be paid whenever the licensee offers pari-mutuel wagering on live on-track races shall be:

(1) for a class A license, six hundred fifty dollars ($650) for each racing day authorized by the state racing commission; and

(2) for a class B license, one-eighth of one percent of a class B licensee's gross daily handle, up to a maximum of three hundred dollars ($300), for each racing day authorized by the state racing commission for class B licenses.

C. The daily tax provided in Subsection B of this section shall go to the credit of the general fund; provided, however, that for a class A license located in an incorporated municipality with a population, according to the 1990 federal census, that is either:

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

(2) more than eight thousand but less than ten thousand persons if located in a county with a population of more than one hundred thousand but less than one hundred fifty thousand persons; then one hundred fifty dollars ($150) of the daily tax paid by those

class A licensees that qualify under Paragraphs (1) and (2) of this subsection shall be paid to the municipality in which each licensee is located.

D. The daily tax to be paid whenever the licensee offers no pari-mutuel wagering on live on-track races and offers solely pari-mutuel wagering on simulcast races pursuant to Section 60-1-25 NMSA 1978 shall be one-eighth of one percent of the licensee's gross daily handle, up to a maximum of three hundred dollars ($300), for each racing day authorized by the state racing commission.

E. The daily tax for any state fair association designated by law, which in good faith conducts a public fair and exhibition of stock and farming products, shall be six hundred fifty dollars ($650) per day for each racing day authorized; provided, however, that where a licensed state fair association offers no pari-mutuel wagering on live on-track races and offers solely pari-mutuel wagering on simulcast races pursuant to Section 60-1-25 NMSA 1978, the daily tax shall be one-eighth of one percent of the licensee's gross daily handle, up to a maximum of three hundred dollars ($300).

History: Laws 1933, ch. 55, § 4; 1937, ch. 203, § 4; 1941 Comp., § 62-604; 1953 Comp., § 60-6-4; Laws 1961, ch. 78, § 1; 1978, ch. 160, § 1; 1989, ch. 260, § 2; 1990, ch. 130, § 1; 1991, ch. 7, § 2; 1991, ch. 195, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

The 1990 amendment, effective March 7, 1990, in Subsection B, inserted "whenever the licensee offers pari-mutuel wagering on live on-track races"; added Subsection C; and designated the former last sentence of Subsection B as present Subsection D, adding therein the proviso at the end.

1991 amendments. - Laws 1991, ch. 7, § 2, effective March 13, 1991, in Subsection B, inserted the paragraph designation "(1)", added "for a class A license" at the beginning of Paragraph (1) and added Paragraph (2); made a minor stylistic change near the beginning of Subsection C; designated the former fourth and fifth sentences of Subsection C as present Subsection D; and designated former Subsection D as present Subsection E.

Laws 1991, ch. 195, § 1, effective June 14, 1991, amending this section as amended by Laws 1991, ch. 7, § 2, substituted "daily tax" for "license fees" in the catchline and throughout the section; substituted "pari-mutuel wagering is conducted" for "of filing" in Subsection A; substituted "six hundred fifty dollars ($650)" for "three hundred dollars ($300)" in Paragraph (1) of Subsection B; rewrote Subsection C; deleted the former second sentence in Subsection D, which read "No part of this fee shall be paid to a county or municipality"; and, in Subsection E, substituted "six hundred fifty dollars ($650)" for "three hundred dollars ($300)" and deleted "and no part of this fee shall be paid to the county or a municipality" following "authorized" near the middle of the subsection.

Section does not authorize commission to give credit to licensee to utilize unused racing days at times other than for the dates authorized by the license issued. 1951-52 Op. Att'y Gen. No. 5552.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 32.

Validity of license tax on horse race, 58 A.L.R. 1343, 111 A.L.R. 778.

86 C.J.S. Theaters and Shows § 26.

60-1-9. Hearing on application; notice; conflicting dates; bond; determination by commission is final. (Effective until July 1, 1994.)

A. The racing commission may, within ten days from the date of filing of any application to conduct a horse race meeting, set a date for a hearing on the application, to be held within twenty days of the filing thereof, for the purpose of inquiring into or hearing proof about the responsibility and eligibility of the applicant and his right to receive a license as provided in the Horse Racing Act [this article]. The applicant shall be notified of the hearing at least five days prior to it and shall have the right to be heard and to present testimony in support of his application. Notice shall be mailed to the address of the applicant or applicants appearing upon the application for the license and the deposit of the notice in the United States mail constitutes notice.

B. If, after a hearing on an application, the commission finds that the applicant is not eligible under the provisions of the Horse Racing Act or any regulations promulgated under it to receive a license or does not tender upon request a good and sufficient bond as required in this section, then the license shall be refused.

C. If there is more than one application pending at the same time, and if there are conflicting dates for the holding of any races or meetings applied for, the racing commission may determine the racing days that will be allotted to each applicant.

D. The racing commission may require as a condition precedent to the issuance of a license under this section a bond not to exceed the sum of twenty-five thousand dollars ($25,000) with a corporate surety, qualified to do business in the state of New Mexico. The bond shall be approved by the commission and conditioned for the payment by the applicant of all fees, awards, civil penalties and taxes levied and to be paid pursuant to the provisions of the Horse Racing Act.

E. A determination by the racing commission of any matters under this section shall be final and conclusive and not subject to any appeal. In the event any application for a license is refused or rejected, the license fees tendered with the application shall be returned to the applicant.

History: Laws 1933, ch. 55, § 5; 1937, ch. 203, § 5; 1941 Comp., § 62-605; 1953 Comp., § 60-6-5; Laws 1973, ch. 323, § 5.

Delayed repeals. - See 60-1-26 NMSA 1978.

Court may require commission to use discretion or issue license. - While state racing commission has discretion in issuance of licenses, where applicant shows he meets all of the requirements and that license was arbitrarily, capriciously and unreasonably denied, a court may undoubtedly, upon proper proceedings being instituted, require the commission to use reasonable discretion and perhaps to issue the license. 1945-46 Op. Att'y Gen. No. 4810.

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

Restrictions on commission's licensing races, meetings. - Following the 1937 amendment, the only restriction upon the racing commission in licensing horse races or meetings was that a $50.00 fee be paid at time of filing for each day on which the applicant expects races to be conducted, and definite dates must be approved before the license may be issued therefor. 1945-46 Op. Att'y Gen. No. 4867.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 28.

86 C.J.S. Theaters and Shows § 23.

60-1-10. Pari-mutuel method legalized; maximum commissions; horsemen's commission; gambling statutes not repealed; commission distribution. (Effective until July 1, 1994.)

A. Within the enclosure where any horse races are conducted, either as live on-track horse races or as horse races simulcast pursuant to Section 60-1-25 NMSA 1978, and where the licensee has been licensed to use the pari-mutuel method or system of wagering on races, the pari-mutuel system is lawful, but only within the enclosure where races are conducted.

B. The sale to patrons, present on the grounds, of pari-mutuel tickets or certificates on the races or the use of the pari-mutuel system shall not be construed to be either betting, gambling or pool selling and is authorized under the conditions provided by law.

C. There shall be for each class A licensee a commission of nineteen percent of the gross amount wagered on win, place and show through the pari-mutuel system, of which eighteen and three-fourths percent shall be retained by a class A licensee and one-fourth of one percent shall be allocated to the general fund. A commission in an amount determined by the licensee of not less than eighteen and six-eighths percent and not greater than twenty-five percent of the gross amount wagered on win, place and show through the pari-mutuel system shall be retained by a class B licensee. Each class B licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the percentage the licensee shall retain as commission. From that commission, each class A and class B licensee shall allocate five-eighths of one percent to the New Mexico horse breeder's association for weekly distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.

D. Except as otherwise provided in this subsection, a commission shall be retained by the licensee at the election of each class A licensee of not less than twenty-one percent and not greater than twenty-five percent of the gross amount wagered on exotic wagering and at the election of each class B licensee, and with the approval of the racing commission, of not less than twenty-one percent and not greater than thirty percent of the gross amount wagered on exotic wagering. For the purpose of this subsection "exotic wagering" means all wagering other than win, place and show, through the pari-mutuel system. Each licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the amount of the commission of the gross amount wagered on exotic wagering to be retained by the licensee. From that commission, the licensee shall allocate one and three-eighths percent to the New Mexico horse breeder's association for weekly distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.

E. The odd cents of all redistributions to the wagerer over the next lowest multiple of ten from the gross amount wagered through the pari-mutuel system shall be retained by the licensee, with fifty percent of the total being allocated to race purses.

F. All money resulting from the failure of patrons who purchased winning pari-mutuel tickets during the meeting to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the meeting and all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to refund but were not refunded during the same sixty-day period shall become the property of the licensee, with fifty percent of the total being allocated to race purses; provided that any licensee whose gross average daily handle for the licensee's most recent completed horse race meeting was three hundred thirty thousand dollars ($330,000) or less may keep one hundred percent of the total of such money.

G. To promote and improve the quality of horse racing and simulcasting and the participation of interested persons in horse racing in New Mexico, one-half of one percent of the gross amount wagered on simulcast horse races at each licensed racetrack in New Mexico that receives simulcast horse races shall be allocated by each licensee for distribution to the New Mexico horsemen's association, provided that at

least one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated is used solely for medical benefits for the members of the New Mexico horsemen's association, and provided further that the remaining one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated shall be used to enhance purses at each such licensed racetrack. The state racing commission shall by regulation provide for the timing and manner of the distribution required by this subsection and shall audit, or arrange for an independent audit of, the disbursement required by this subsection.

H. Fifty percent of the net retainage of each licensee shall be allocated to race purses. For purposes of this section, "net retainage" of the licensee means the commission retained by the licensee on all forms of wagers minus:

(1) the taxes delineated in Sections 60-1-8 and 60-1-15 NMSA 1978;

(2) money allocated to the New Mexico horse breeder's association by this section and Section 60-1-17 NMSA 1978;

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

(4) a deduction for expenses incurred to engage in intrastate simulcasting pursuant to Section 60-1-25 NMSA 1978, provided that:

(a) the deduction for each licensee shall be a portion of five percent of the gross amount wagered at all the sites receiving the same simulcast horse races;

(b) the deduction portion for each licensee shall be an amount allocated to the licensee by agreement voluntarily reached among all the licensees sending or receiving the same simulcast horse races; and

(c) the deduction portion for each licensee shall be an amount allocated to the licensee by the state racing commission if all the licensees sending or receiving the same simulcast horse races fail to reach a voluntary agreement under Subparagraph (b) of this paragraph; and

(5) a deduction for fees and commissions incurred to receive interstate simulcasts pursuant to Section 60-1-25 NMSA 1978.

I. Existing statutes of this state against horse racing on Sundays or on bookmaking, pool selling or other methods of wagering on the racing of horses are not repealed but are hereby expressly continued in effect, with the exception that the operation of the pari-mutuel method or system in connection with the racing of horses, when used as provided by law, is lawful.

J. In the event any money paid or allocated to the New Mexico horse breeder's association or the New Mexico appaloosa racing association pursuant to the Horse

Racing Act [this article] cannot be paid to or allocated or administered by such associations, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money pursuant to the provisions of Section 60-1-17 NMSA 1978. If the state racing commission or its controlled designee is required to pay, allocate or administer money on behalf of the New Mexico horse breeder's association or the New Mexico appaloosa racing association pursuant to this subsection, then the maximum percentage of funds set forth in Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978 shall be paid by the state racing commission to the New Mexico horse breeder's association or the New Mexico appaloosa racing association as a fee to obtain the certification of the registry of the dam and stud of the New Mexico bred horse.

K. In the event any money paid or allocated to the New Mexico horsemen's association pursuant to the Horse Racing Act cannot be paid to or allocated or administered by the association, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money to achieve the purposes of the provisions of this section.

History: Laws 1933, ch. 55, § 6; 1941 Comp., § 62-606; 1953 Comp., § 60-6-6; Laws 1961, ch. 78, § 2; 1966, ch. 23, § 1; 1979, ch. 4, § 2; 1979, ch. 348, § 1; 1981, ch. 227, § 1; 1983, ch. 8, § 1; 1989, ch. 251, § 1; 1990, ch. 130, § 2; 1991, ch. 7, § 3; 1991, ch. 195, § 2.

Delayed repeals. - See 60-1-26 NMSA 1978.

The 1990 amendment, effective March 7, 1990, inserted "horsemen's commission" in the catchline; in Subsection A, substituted "races are conducted" for "races are held" in two places and inserted "either as live on-track horse races or as horse races simulcast pursuant to Section 60-1-25 NMSA 1978"; in Subsection F, inserted "and all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to refund but were not refunded during the same sixty-day period"; added present Subsection G; redesignated former Subsection G as present Subsection H, adding therein Paragraphs (3) to (5); redesignated former Subsection H as present Subsection I; and added Subsections J and K.

1991 amendments. - Laws 1991, ch. 7, § 3, effective March 13, 1991, in Subsection C, substituted "a class A licensee" for "the licensee" at the end of the first sentence, inserted the second and third sentences and substituted "each class A and class B licensee" for "the licensee" in the final sentence; in Subsection D, divided the former first sentence into the present first and second sentences and rewrote the provision which read "Except as otherwise provided in this subsection, a commission at the election of each licensee of not less than 21% and not greater than 25% of the gross amount wagered on exotic wagering which, for the purpose of this subsection means all

wagering other than win, place and show, through the pari-mutel system shall be retained by the licensee"; and made a stylistic change in Subsection K.

Laws 1991, ch. 195, § 2, effective June 14, 1991, amending this section as amended by Laws 1991, ch. 7, § 3, rewrote the first sentence in Subsection C, which read "A commission of eighteen and six-eighths percent of the gross amount wagered on win, place and show through the pari-mutuel system shall be retained by a Class A licensee", and inserted the reference to 60-1-8 NMSA 1978 in Paragraph (1) of Subsection H.

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

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

No injunctive relief against pari-mutuel betting. - Plaintiffs could not seek injunctive relief through the general gambling statute, 40-22-6, 1953 Comp. (now repealed), to enjoin defendant from using certain premises for pari-mutuel betting on horse racing until they had shown that the racing or pari-mutuel statute was unconstitutional. Patton v. Fortuna Corp., 68 N.M. 40, 357 P.2d 1090 (1960).

Lack of standing where injury not alleged. - Where plaintiffs seek injunctive relief based upon claimed unconstitutionality of statute authorizing pari-mutuel betting under fixed conditions and their complaint does not allege in what manner they are adversely affected, plaintiffs lack standing to challenge the constitutionality of this section. Patton v. Fortuna Corp., 68 N.M. 40, 357 P.2d 1090 (1960).

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

The phrase "patrons present on the grounds" requires that these patrons be physically present to place a pari-mutuel wager. 1965 Op. Att'y Gen. No. 65-98.

Commissions added to purse to be divided equally. - The one-third of the commission to be added to the purses for each day's races under this section must be divided equally among all the races occurring or held on any particular day. 1959-60 Op. Att'y Gen. No. 60-20 (decided prior to 1961 amendment).

Word "equally" means exactly what it indicates; that is, that one-third of the total commissions from the pari-mutuel handle shall be distributed equally to the purses of each race held during the day. In other words, the percentage must be computed at the end of the day's races and thereafter divided and distributed equally to the purses for each race. 1959-60 Op. Att'y Gen. No. 60-20 (decided prior to 1961 amendment).

Wagering contract is void. Schnoor v. Griffin, 79 N.M. 86, 439 P.2d 922 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling § 47.

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

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

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

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

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

38 C.J.S. Gaming § 8.

60-1-11. Rules and regulations; licensure; representatives of commission; special policemen; revocation or cancellation of licenses; penalties. (Effective until July 1, 1994.)

A. The racing commission shall adopt reasonable rules and regulations in writing to achieve the objectives that all horse races be conducted with fairness and that the participants and the patrons be protected against all wrongful, unlawful or unfair conduct and practices of every kind on the grounds where the races are held. The commission shall give reasonable public notice of the promulgation of its regulations.

B. Every license issued by the commission shall require the applicant to abide by the rules and regulations promulgated by the commission, and the holder of each license shall post printed copies of the rules and regulations in conspicuous places upon the grounds where the races are being conducted and shall maintain them during the period when races are held.

C. The racing commission shall appoint a representative or representatives to be personally present at races to oversee them, to require strict observance of rules and

regulations, to avoid violations thereof and to protect against the want of integrity on the part of the licensee or his representatives in conducting the races.

D. For the purpose of preserving order and preventing violations of the Horse Racing Act [this article] and rules and regulations promulgated pursuant thereto, a track licensed to conduct a horse race meet, with the prior approval of the commission, shall appoint special policemen, who shall have the same powers and immunities within and around the grounds of the track as are vested in county sheriffs to protect the property within such grounds, to eject or arrest all persons within the grounds who are guilty of disorderly conduct or who shall neglect to pay fees or observe the rules of the commission. The appointment of any such person shall not be deemed to supersede the authority of peace officers within the grounds of the racetrack.

E. In the event of any violation by a license holder of the provisions of the Horse Racing Act or of any of the rules and regulations promulgated by the racing commission, the license of the offending license holder may be cancelled or revoked at any time by the commission, provided, however, that the licensee shall have reasonable notice and opportunity to be heard before cancellation or revocation, and provided, further, that the cancellation or revocation of any license shall not relieve the licensee from prosecution for any of the violations or from payment of fines and penalties.

F. The commission is authorized to impose civil penalties upon any licensee for a violation of the Horse Racing Act or any rules or regulations promulgated pursuant thereto, not exceeding five thousand dollars ($5,000) for each violation; which penalties shall be paid into the current school fund.

G. The commission shall not approve the hiring of any personnel or any special policemen, pursuant to this section, unless it finds that the system of security services to be provided will be at least equal to the services which would be provided by the thoroughbred racing protective bureau of the thoroughbred racing association of the United States under similar conditions.

History: Laws 1933, ch. 55, § 7; 1937, ch. 203, § 6; 1941 Comp., § 62-607; 1953 Comp., § 60-6-7; Laws 1973, ch. 323, § 6.

Delayed repeals. - See 60-1-26 NMSA 1978.

License can be revoked if obtained by fraud or deceit. 1963-64 Op. Att'y Gen. No. 63-115.

Reasons justifying license revocation. - The racing commission is empowered, after a hearing, to revoke a license, and such a revocation is justified if, as a matter of fact, reasons exist which would have justified a refusal of the license in the first instance. 1963-64 Op. Att'y Gen. No. 63-115.

License not vested property right subject to due process. - The state may prescribe strict liability under which it will grant a license, 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. New Mexico State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969).

Notice and hearing opportunity required for license revocation. - Until a formal notice is given and opportunity for the interested parties to be heard, the racing commission would be in violation of the statutes in regard to the revocation of a license of a racing park. 1953-54 Op. Att'y Gen. No. 5931.

But lack of hearing provision as to license suspension not fatal. - The fact that there is no provision for a hearing prior to suspension is not fatal to the validity of the law. State Racing Comm'n v. McManus, 82 N.M. 108, 476 P.2d 767 (1970).

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. New Mexico State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969).

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

Commission approval of existing contracts required. - Section 60-1-3 NMSA 1978 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 racing commission for its approval is to be required, and if there is no submission for approval, the possible penalty is cancellation or revocation of the racing license. Sierra Blanca Sales Co. v. Newco Indus., Inc., 84 N.M. 524, 505 P.2d 867 (Ct. App.), cert. denied, 84 N.M. 512, 505 P.2d 855 (1972).

Commission cannot charge license fee to horsemen training and handling horses at the racetrack. 1937-38 Op. Att'y Gen. No. 272.

Participants' fraud not covered. - Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be

settled by the track authorities under this section or any rule adopted pursuant thereto. Grandi v. LeSage, 74 N.M. 799, 399 P.2d 285 (1965).

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

But mandamus available remedy where commission's 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. New Mexico State Racing Comm'n, 80 N.M. 200, 453 P.2d 370 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling § 173.

Grounds for and justification of revocation of license or permit for an exhibit or amusement enterprise, 79 A.L.R. 286.

86 C.J.S. Theaters and Shows § 29.

60-1-12. Stewards; powers and duties; review. (Effective until July 1, 1994.)

There shall be three stewards, licensed by the racing commission, to supervise each horse race meeting. One of the stewards shall be the official steward of the racing commission. Stewards shall exercise those powers and duties prescribed by the rules and regulations of the commission. Any decision or action of the stewards may be reviewed or reconsidered by the commission.

History: 1953 Comp., § 60-6-7.1, enacted by Laws 1973, ch. 323, § 7.

Delayed repeals. - See 60-1-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 28.

86 C.J.S. Theaters and Shows § 4.

60-1-13. Official state racing chemist; qualifications; duties. (Effective until July 1, 1994.)

The racing commission shall designate one or more "official state racing chemist." An official state racing chemist shall hold a doctorate degree in chemistry or a related field

and shall be knowledgeable and experienced in the techniques used for testing the blood, urine and saliva of horses for drugs, dope, chemical agents, stimulants and depressants. He may be either an employee of a private laboratory located in New Mexico or an employee of an agency of the state of New Mexico. He shall exercise those duties as prescribed by the rules and regulations of the commission.

History: 1953 Comp., § 60-6-7.2, enacted by Laws 1975, ch. 189, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Use of out-of-state testing. - The legislative intent was not to prohibit the commission from using, for evidentiary purposes, the results of racehorse drug tests conducted in laboratories located outside the state. Neither 60-1-22 NMSA 1978 nor any other provision of this chapter requires that the official state chemist perform the official tests or that he directly supervise all tests to detect whether illegal drugs have been administered to a racehorse. Claridge v. New Mexico State Racing Comm'n, 107 N.M. 632, 763 P.2d 66 (Ct. App. 1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 86 C.J.S. Theaters and Shows § 4.

60-1-14. [Illegal use of pari-mutuel method.] (Effective until July 1, 1994.)

If any person, firm, association or corporation shall either directly or indirectly use the pari-mutuel method or system except when licensed, and used as authorized under this act and in accordance with the rules and regulations promulgated by the state racing commission such person, firm, association or corporation shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in an amount not to exceed the sum of five thousand dollars [$5,000] or imprisonment [imprisoned] for not more than ninety days or both such fine and imprisonment. The officers of any corporation violating any of the provisions hereof shall be deemed personally responsible and subject to the penalties imposed under this section.

History: Laws 1933, ch. 55, § 8; 1937, ch. 203, § 7; 1941 Comp., § 62-608; 1953 Comp., § 60-6-8.

Delayed repeals. - See 60-1-26 NMSA 1978.

Meaning of "this act". - The term "this act," referred to in the first sentence, means Laws 1933, ch. 55, presently compiled as 60-1-1, 60-1-3, 60-1-7 to 60-1-11, 60-1-14 to 60-1-16 and 60-1-19 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling § 172.

38 C.J.S. Gaming § 86.

60-1-15. Tax levied; certain license fees and taxes prohibited. (Effective until July 1, 1994.)

A. In addition to the daily tax provided in Section 60-1-8 NMSA 1978, a tax of two and three-sixteenths percent is levied on the gross amount wagered each day at each place where horse racing is conducted by any state fair association designated by law which in good faith conducts a public fair and exhibition of stock and farming products or where horse racing for profit is held. The tax shall be paid from the commissions of the licensee.

B. To encourage the improvement of horse racing facilities for the benefit of the public, breeders and horse owners and to increase the revenue to the state from the increase in pari-mutuel wagering and tourism resulting from these improvements, not more than two percent of the tax levied under Subsection A of this section:

(1) for the first two hundred fifty thousand dollars ($250,000) of daily handle only, shall be offset for class A licensees by the amount that each licensee expends for capital improvements or in financing term investment in capital improvements at existing racetrack facilities and for class B licensees by the amount that the licensee expends for capital improvements, not to exceed fifty percent of the tax levied under this section, and by the amount the licensee expends for advertising, marketing and promoting horse racing in the state, not to exceed fifty percent of the tax levied under this section. The offset provided in this paragraph shall also apply to the daily handle generated at its facility by a licensee engaged solely in simulcasting pursuant to Section 60-1-25 NMSA 1978. The term "capital improvement" means any capital investment in items that are subject to depreciation under the United States Internal Revenue Code and are approved by the state racing commission; and

(2) for class A licensees for the period July 1, 1989 through June 30, 1994 for the total amount wagered each day on amounts in excess of two hundred fifty thousand dollars ($250,000) but not in excess of three hundred fifty thousand dollars ($350,000), shall be offset by the amount that each licensee expends for advertising, marketing and promoting horse racing in the state. The offset provided in this paragraph shall also apply to the daily handle generated at its facility by a licensee engaged solely in simulcasting pursuant to Section 60-1-25 NMSA 1978. The licensee is required to keep accurate records of any expenditures made pursuant to this paragraph, and the state auditor is required to audit the expenditures and submit his report to the state racing commission.

C. Accurate records shall be kept by the licensee to show all commissions, total gross amounts wagered and breakage, as well as other information the state racing commission may require. Records shall be open to inspection and shall be audited by the commission or any of its authorized representatives. Should any licensee fail to keep records accurately and intelligibly, the commission may prescribe the method in which the licensee shall keep records.

D. All remaining revenues collected as a result of the tax on the gross amount wagered shall be deposited in the state general fund.

E. Notwithstanding any other provision of law, no political subdivision of this state may impose any occupational tax against a racetrack operating under authority of a license granted by the state racing commission. No political subdivision may levy an excise tax against any racetrack operating under authority of a license granted by the state racing commission, except that taxes imposed pursuant to the County Gross Receipts Tax Act [7-20-1 to 7-20-9 NMSA 1978], the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], the County Sales Tax Act, the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-9 NMSA 1978], the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] and the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978] may be imposed to the extent permitted by law.

History: Laws 1933, ch. 55, § 9; 1937, ch. 203, § 8; 1941 Comp., § 62-609; 1953 Comp., § 60-6-9; Laws 1961, ch. 78, § 3; 1966, ch. 23, § 2; 1972, ch. 4, § 1; 1973, ch. 280, § 1; 1981, ch. 227, § 2; 1983, ch. 327, § 1; 1985, ch. 137, § 2; 1989, ch. 260, § 3; 1990, ch. 130, § 3; 1991, ch. 7, § 4; 1991, ch. 195, § 3.

Delayed repeals. - See 60-1-26 NMSA 1978.

Cross-references. - As to the state racing commission, see 60-1-2 NMSA 1978.

As to the general fund, see 6-4-2 NMSA 1978.

The 1990 amendment, effective March 7, 1990, in Subsection B, inserted the present second sentence in Paragraphs (1) and (2).

1991 amendments. - Laws 1991, ch. 7, § 4, effective March 13, 1991, in subsection B, inserted "for class A licensees" and "class A licensees for" in Paragraphs (1) and (2), added the language beginning with "and for class B" at the end of the first sentence of Paragraph (1) and substituted "1992" for "1991" in the first sentence of Paragraph (2).

Laws 1991, ch. 195, § 3, effective June 14, 1991, amending this section as amended by Laws 1991, ch. 7, § 4, substituted "daily tax" for "license fees" and "two and three-sixteenths percent" for "two percent" in Subsection A; inserted "not more than two percent of" near the end of Subsection B; deleted former Subsection C, relating to the transfer of revenues to the municipal treasurer of a municipality to compensate for additional municipal services required by the location of a race track within a municipality; and redesignated former Subsections D to F as present Subsections C to E.

Internal Revenue Code. - The United States Internal Revenue Code, referred to in the third sentence in Subsection B(1), appears as 26 U.S.C. § 1 et seq.

County Sales Tax Act. - The County Sales Tax Act, referred to in the second sentence in Subsection F, appeared as 7-21-1 to 7-21-7 NMSA 1978 before being repealed in 1986.

Commission has been granted broad and sweeping powers to regulate horse racing and wagering thereon. - See 1963-64 Op. Att'y Gen. No. 63-115.

Tax liability of race track operator. - A race track operator is not liable for state gross receipts and compensating tax and county sales tax on receipts from sale of memberships in a jockey club and cost of supplies purchased outside of state. Santa Fe Downs, Inc. v. Bureau of Revenue, 85 N.M. 115, 509 P.2d 882 (Ct. App. 1973).

Full price of licensee's ticket taxed. - It is obviously incorrect to deduct the amount of the tax from the price of the ticket before figuring the tax; since the licensee receives the full price of the ticket, he must pay a tax of 10% of that amount. 1953-54 Op. Att'y Gen. No. 5892.

Under this section, admission price of box seats is taxable. 1947-48 Op. Att'y Gen. No. 5053.

State has considerable interest in pari-mutuel audit, although the race track operation is privately owned. 1954 Op. Att'y Gen. No. 64-128.

Commission has jurisdiction over audits called for in this section. 1964 Op. Att'y Gen. No. 64-128.

State auditor's jurisdiction over pari-mutuel audits. - If the state racing commission designated the state auditor as its authorized representative to conduct pari-mutuel audits, the state auditor would have jurisdiction to do so. 1964 Op. Att'y Gen. 64-128.

Taxpayers' burden to prove excise and occupational tax exemption. - The "in lieu of" provision of this section can fairly be read to mean that the licensee is exempt from excise or occupational taxes except as provided in this section. It does not clearly appear that the funds taxes are exempt from further taxation. Where this section does not clearly authorize an exemption claimed, it is the taxpayers' burden to establish their right to the exemption. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling § 19.

86 C.J.S. Theaters and Shows § 26.

60-1-15.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 195, § 8 repeals 60-1-15.1 NMSA 1978, as enacted by Laws 1985, ch. 137, § 3, relating to determination of amount of compensation for municipal services, effective June 14, 1991. For provisions of former section, see 1988 Replacement Pamphlet.

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

60-1-16. Suspense fund to pay claims. (Effective until July 1, 1994.)

From the funds derived from license fees and taxes, the racing commission is authorized to create a special suspense fund with the treasurer of the state in an amount not to exceed three thousand dollars ($3,000) to pay all legal claims for refunds. Any surplus over and above the maximum suspense fund amount shall be deposited into the general fund of the state.

History: Laws 1933, ch. 55, § 10; 1937, ch. 203, § 9; 1941 Comp., § 62-610; 1953 Comp., § 60-6-10; Laws 1957, ch. 17, § 1; 1965, ch. 270, § 2; 1973, ch. 323, § 8; 1977, ch. 161, § 1; 1979, ch. 348, § 2.

Delayed repeals. - See 60-1-26 NMSA 1978.

Commission's maintenance of state fair racetrack unauthorized. - This section does not empower the racing commission to expend its funds for the maintenance of the state fair racetrack. Since the state fair board is specifically empowered to maintain the racetrack at the state fair, use of racing commission funds for that purpose would violate the constitutional provision prohibiting donation to a public corporation. 1953-54 Op. Att'y Gen. No. 5914.

Suspense fund not to revert to general fund. - The legislature intended for the full amount of the suspense fund to be available at all times to make legal refunds. The fund should not revert to the general fund at the end of the fiscal year. Everything over the maximum fund is placed in the general fund throughout the fiscal year. There is no reason to require the fund to revert one day and then deposit $3000 the next day to recreate it. 1966 Op. Att'y Gen. No. 66-125.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling § 188.

86 C.J.S. Theaters and Shows § 26.

60-1-17. Breeders' awards. (Effective until July 1, 1994.)

A. To promote and improve the quality of racehorse breeding in New Mexico, the track shall pay a sum of money equal to ten percent of the first money of each purse won in New Mexico by a horse registered with the New Mexico horse breeder's association or

the New Mexico appaloosa racing association as New Mexico bred, except stake-race purses, in which case an amount equal to ten percent of the added money shall be paid.

B. The sum of money provided for in Subsection A of this section shall be paid weekly to the owner of the dam of the animal at the time the animal was foaled upon certification of the state racing commission and either the New Mexico horse breeder's association or the New Mexico appaloosa racing association, depending on the registry of the horse.

C. In addition to the money distributed pursuant to Subsection A of this section, the New Mexico horse breeder's association shall distribute the money collected by the association pursuant to Subsections C and D of Section 60-1-10 NMSA 1978 in the following manner and in accordance with the rules and regulations promulgated by the state racing commission:

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

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

(3) no more than eight percent of the money to be retained by the New Mexico horse breeder's association for the purpose of administering the commission distribution program; and

(4) the remaining money to be divided among the first, second and third place finishers during each New Mexico commercial meet, which finishers are registered as New Mexico bred with the New Mexico horse breeder's association.

D. The New Mexico horse breeder's association shall file a fiduciary bond with the state racing commission in a face amount equal to double the total money distributed during the previous calendar year pursuant to Subsection C of this section, which 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: 1953 Comp., § 60-6-10.1, enacted by Laws 1977, ch. 161, § 2; 1979, ch. 348, § 3; 1980, ch. 95, § 1; 1983, ch. 8, § 2.

Delayed repeals. - See 60-1-26 NMSA 1978.

Repeals and reenactments. - Laws 1977, ch. 161, § 2, repealed former 60-6-10.1, 1953 Comp., relating to breeders' awards, and enacted a new 60-6-10.1, 1953 Comp.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Animals § 75.

60-1-18. Purpose of act. (Effective until July 1, 1994.)

The purpose of this act [60-1-16, 60-1-18 NMSA 1978] is to promote and improve the quality of horse breeding in New Mexico by establishing a breeders' fund, without imposition upon New Mexico revenues, from which to pay merit and incentive awards to breeders of horses of achievement in New Mexico.

History: 1953 Comp., § 60-6-10.2, enacted by Laws 1965, ch. 270, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

60-1-19. Time for payment of license fees and taxes. (Effective until July 1, 1994.)

All license fees provided hereunder shall be paid immediately upon the granting of such license and all taxes shall be paid to the state racing commission at the close of the business day on Thursday of every week during and immediately after any race meeting or season. Failure to make such weekly remittances by the licensee shall result in an assessment by the racing commission against the licensee of a fine of one percent of the amount due weekly.

History: Laws 1933, ch. 55, § 11; 1937, ch. 203, § 10; 1941 Comp., § 62-611; 1953 Comp., § 60-6-11; Laws 1963, ch. 191, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 32.

86 C.J.S. Theaters and Shows § 26.

60-1-20. [Influencing or attempting to influence persons to predetermine horse races; penalty.] (Effective until July 1, 1994.)

Any person influencing or attempting to influence in any manner by offer of money, thing of value, future benefit, favor, preferment or by any form of pressure or threat, or seeking or having an agreement, or understanding or conniving, with any owner, jockey, groom or the person associated with or interested in any stable of horses, horse or race in which any such horse participates, to predetermine the result of any such race shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state penitentiary for not less than one (1) year or more than two (2) years or fines not less than one thousand ($1,000.00) dollars or more than five thousand ($5,000.00) dollars or penalized by both such imprisonment and fine, in the discretion of the court.

History: 1941 Comp., § 62-612, enacted by Laws 1947, ch. 94, § 1; 1953 Comp., § 60-6-12.

Delayed repeals. - See 60-1-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 C.J.S. Gaming § 86.

60-1-21. [Affecting speed or stamina of horse by drugs, dope, chemical agents, stimulants, electrical or mechanical devices; penalty.] (Effective until July 1, 1994.)

Any person administering or attempting to administer or conspiring with others to administer to any horse, in a race or prior thereto, any dope, drug, chemical agent, stimulant or depressant, either internally, externally or hypodermically, or attempting to use, using or conspiring with others to use in any race any electrical or mechanical buzzer, goad, device, implement or instrument, excepting only the ordinary whip and spur, or the act of sponging the nostrils or windpipe of a racehorse, or using any method injurious or otherwise for the purpose of stimulating or depressing such horse or affecting its speed or stamina in a race, or workout, and any person within the confines of the track, stands, stables, sheds or other places where horses are kept which are eligible to race over the racetrack of any racing association or licensee, having within his possession with intent to use, sell, give away, exchange or deliver to another, and possession shall be prima facie evidence of intent, any such dope, drug, chemical agent, stimulant, depressant, electrical or mechanical buzzer, goad, device, implement, instrument or applicator, excepting only the ordinary whip and spur, which could be used for the purpose of affecting the speed or stamina of a horse, shall be deemed guilty of a misdemeanor and each offense shall be punished by a fine of not less than five hundred ($500.00) dollars and not more than one thousand ($1,000.00) dollars, or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment.

History: 1941 Comp., § 62-613, enacted by Laws 1947, ch. 94, § 2; 1953 Comp., § 60-6-13.

Delayed repeals. - See 60-1-26 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 26, 27.

86 C.J.S. Theaters and Shows § 4.

60-1-22. Testing specimens; forwarding to the health and social services department [department of health]. (Effective until July 1, 1994.)

The commission shall adopt rules and regulations for the testing of urine and other specimens taken from such racehorses as are designated by the commission. Provided that a sufficient amount of specimen is available, each specimen taken from a racehorse shall be divided into two or more portions. One portion shall be tested by the commission or its designated agent in order to detect the presence of any drug, dope, chemical agent, stimulant or depressant. A second portion shall be forwarded by the commission to the scientific laboratory system of the health and social services department [department of health]. After a questionable, cloudy or positive test result on the portion tested by the commission or its designated agent and upon the written request of the president or manager of the New Mexico horsemen's association on forms prepared and approved by the commission, the scientific laboratory system shall transmit the corresponding second portion to the New Mexico horsemen's association. The scientific laboratory system shall keep all other specimens in a safe place for a period of at least three months and shall, after the expiration of at least ten days from the date of receipt, perform random tests on the specimens in order to detect the presence of any drug, dope, chemical agent, stimulant or depressant. The results of all such tests performed by the laboratory under this section shall be transmitted immediately by the laboratory to the commission, but they shall have no evidentiary value in any hearing before the commission.

History: 1953 Comp., § 60-6-13.1, enacted by Laws 1975, ch. 190, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

Bracketed material. - Laws 1977, ch. 253, § 5, abolished the health and social services department, referred to in the catchline and the third sentence. Former 9-7-4 NMSA 1978 established the health and environment department. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978 and enacted a new 9-7-4 NMSA 1978 establishing the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

Use of out-of-state testing. - The legislative intent was not to prohibit the commission from using, for evidentiary purposes, the results of racehorse drug tests conducted in laboratories located outside the state. Neither 60-1-22 NMSA 1978 nor any other provision of this chapter requires that the official state chemist perform the official tests or that he directly supervise all tests to detect whether illegal drugs have been administered to a racehorse. Claridge v. New Mexico State Racing Comm'n, 107 N.M. 632, 763 P.2d 66 (Ct. App. 1988).

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. New Mexico State Racing Comm'n, 107 N.M. 632, 763 P.2d 66 (Ct. App. 1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 86 C.J.S. Theaters and Shows § 4.

60-1-23. Short title. (Effective until July 1, 1994.)

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

History: 1953 Comp., § 60-6-14, enacted by Laws 1973, ch. 323, § 10; 1990, ch. 130, § 5.

Delayed repeals. - See 60-1-26 NMSA 1978.

The 1990 amendment, effective March 7, 1990, added the catchline and substituted "Chapter 60, Article 1 NMSA 1978" for "Sections 60-6-1 through 60-6-14 NMSA 1953".

Severability clauses. - Laws 1990, ch. 130, § 6 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

60-1-24. Definitions. (Effective until July 1, 1994.)

Unless a contrary meaning is used in the Horse Racing Act [this article]:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate or any other legal entity;

B. "organized crime" means the supplying for profit of illegal goods and services, including but not limited to gambling, loan sharking, narcotics and other forms of vice and corruption, by members of a structured and disciplined organization; and

C. "horse" includes mule.

History: 1953 Comp., § 60-6-14.1, enacted by Laws 1973, ch. 323, § 11; 1988, ch. 29, § 1.

Delayed repeals. - See 60-1-26 NMSA 1978.

60-1-25. Simulcasting. (Effective until June 14, 1993.)

A. As used in this section, "simulcasting" means a live audio-visual broadcast of an actual horse race at the time it is run.

B. The state racing commission may permit simulcasting of races being run at licensed New Mexico racetracks to other jurisdictions outside the state, as well as to other licensed New Mexico racetracks, and of races being run at racetracks outside New Mexico to licensed racetracks in this state. Pari-mutuel wagering on simulcasted races shall be prohibited except at licensed New Mexico racetracks on days that such racetracks have race meets in progress or on days that such racetracks do not have race meets in progress but are simulcasting races from another licensed New Mexico racetrack; provided, however, that pari-mutuel wagering on simulcasted races shall only

be allowed at any licensed New Mexico racetrack within a radius of eighty miles of any other licensed New Mexico racetrack with race meets in progress if there is mutual agreement of the two licensees, and provided further that no licensed New Mexico racetrack shall be allowed to receive broadcasts of simulcast races unless that racetrack offers at least seventeen days per year of pari-mutuel wagering on on-track live horse races. The commission shall promulgate rules and regulations concerning the simulcasting of racing as provided in this section.

C. All simulcasting of races shall have prior approval of the state racing commission.

History: Laws 1985, ch. 216, § 1; 1989, ch. 240, § 1; 1990, ch. 130, § 4; 1991, ch. 7, § 5; 1991, ch. 195, § 5.

Delayed repeals. - Laws 1991, ch. 195, § 6 repeals 60-1-25 NMSA 1978, as amended by Laws 1991, ch. 195, § 5, effective June 14, 1993. See 1993 version of 60-1-25 NMSA 1978, and notes thereto, below.

The 1990 amendment, effective March 7, 1990, in Subsection A, substituted "means a live audio-visual broadcast of an actual horse race at the time it is run" for "means permitting pari-mutuel wagering on races televised live to a race track" and, in Subsection B, deleted "Notwithstanding the provision of Subsection A of Section 60-1-10 NMSA 1978" and added the proviso at the end of the next-to-last sentence.

1991 amendments. - Laws 1991, ch. 7, § 5, effective March 13, 1991, purporting to amend this section but making no change, was approved March 13, 1991. However, Laws 1991, ch. 195, § 5, effective June 14, 1991, substituting "other jurisdictions" for "racetracks" in the first sentence in Subsection B, was approved April 4, 1991. This section is set out as amended by Laws 1991, ch. 195, § 5. See 12-1-8 NMSA 1978.

60-1-25. Simulcasting. (Effective June 14, 1993, until July 1, 1994.)

A. As used in this section, "simulcasting" means a live audio-visual broadcast of an actual horse race at the time it is run.

B. The state racing commission may permit simulcasting of races being run at licensed New Mexico racetracks to racetracks outside the state, as well as to other licensed New Mexico racetracks, and of races being run at racetracks outside New Mexico to licensed racetracks in this state. Pari-mutuel wagering on simulcasted races shall be prohibited except at licensed New Mexico racetracks on days that such racetracks have race meets in progress or on days that such racetracks do not have race meets in progress but are simulcasting races from another licensed New Mexico racetrack; provided, however, that pari-mutuel wagering on simulcasted races shall only be allowed at any licensed New Mexico racetrack within a radius of eighty miles of any other licensed New Mexico racetrack with race meets in progress if there is mutual agreement of the two licensees, and provided further that no licensed New Mexico racetrack shall be allowed to receive broadcasts of simulcast races unless that racetrack offers at least seventeen

days per year of pari-mutuel wagering on on-track live horse races. The commission shall promulgate rules and regulations concerning the simulcasting of racing as provided in this section.

C. All simulcasting of races shall have prior approval of the state racing commission.

History: 1978 Comp., § 60-1-25, enacted by Laws 1991, ch. 195, § 6.

Delayed repeals. - See 60-1-26 NMSA 1978.

Repeals and reenactments. - Laws 1991, ch. 195, § 6 repeals former 60-1-25 NMSA 1978, as amended by Laws 1991, ch. 195, § 5, and enacts the above section, effective June 14, 1993.

Compiler's note. - Laws 1991, ch. 195, § 8 repeals 60-1-25 NMSA 1978, as enacted by Laws 1989, ch. 240, § 2, which was to become effective June 16, 1993, effective June 14, 1991.

60-1-25.1. Interstate common-pool wagering authorized. (Effective until July 1, 1994.)

A. Subject to the Interstate Horseracing Act, 15 U.S.C.A. Sections 3001 et seq. (1978), the state racing commission may permit a licensed New Mexico racetrack to participate in interstate common pools. All provisions of the Horse Racing Act [this article] that govern pari-mutuel betting apply to pari-mutuel betting in interstate common pools except as otherwise provided in this section.

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

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

(2) with the concurrence of the sending racetrack, an interstate common pool that excludes the sending racetrack may be formed among the licensee and other locations outside the state where the sending racetrack is located. When such an interstate common pool is formed, the commission may approve types of wagering, takeout, distribution of winnings, rules of racing and calculation of breakage that are different than those that would otherwise be in effect in New Mexico, provided that they are applied consistently to all persons in the interstate common pool;

(3) the licensee may deduct from retainage resulting from an interstate common pool any reasonable fee paid to the person conducting the horse race 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 broadcast of the race; and

(4) provisions of law or contract governing the distribution of pari-mutuel taxes, breeder or other awards and purses from the takeout of wagers placed in this state shall remain in effect for wagers placed in interstate common pools; 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 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 breeder or other awards or purses may be modified.

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

(1) a licensee may permit one or more of its races to be utilized for pari-mutuel wagering at, and may transmit audio-visual signals of races the licensee conducts to, one or more locations outside New Mexico. The licensee may also permit pari-mutuel pools in other locations to be combined with the 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 interstate common pools and their calculation of breakage;

(2) pari-mutuel taxes shall not be imposed upon any amounts wagered in an interstate common pool other than upon amounts wagered within this state;

(3) except as otherwise provided in this section, any provisions of law or contract governing the distribution of shares of the takeout as New Mexico pari-mutuel taxes, breeder or other awards and purses shall remain in effect for amounts wagered within this state in interstate common pools, provided that with the concurrence of the 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 breeder or other awards or purses may be modified; and

(4) with respect to the retainage on interstate common pooling received from a guest state by a licensee, the licensee shall allocate to the New Mexico horse breeder's association five percent of the daily retainage. Of the retainage remaining after the allocation to the New Mexico horse breeder's association, fifty percent shall be allocated to race purses and fifty percent shall be retained by the licensee.

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

E. The state racing commission is authorized to adopt rules and regulations necessary or appropriate to exercise its powers pursuant to this section.

F. For the purposes of this section:

(1) "guest state" means the jurisdiction within which a guest track is located;

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

(3) "host state" means the jurisdiction within which a host track is located;

(4) "host track", "sending racetrack" or "sending track" means the racetrack from which the horse race is run that is transmitted to members of and is subject to an interstate common pool; and

(5) "interstate common pool" means a pari-mutuel pool that combines comparable pari-mutuel pools of one or more locations accepting wagers on a horse race run at the host track for purposes of establishing payoff prices at the pool members' locations. Pool members from more than one state may simultaneously combine pari-mutuel pools into an interstate common pool."

History: Laws 1991, ch. 195, § 4.

Delayed repeals. - See 60-1-26 NMSA 1978.

Effective dates. - Laws 1991, ch. 195 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 14, 1991.

60-1-26. Termination of agency life; delayed repeal. (Effective until July 1, 1994.)

The state racing commission is terminated on July 1, 1993 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 60, Article 1 NMSA 1978 until July 1, 1994. Effective July 1, 1994, Chapter 60, Article 1 NMSA 1978 is repealed.

History: 1978 Comp., § 60-1-2.1, enacted by Laws 1987, ch. 333, § 3.

ARTICLE 2
BOXING AND WRESTLING MATCHES

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

ANNOTATIONS

Repeals. - Laws 1980, ch. 90, § 32, repeals 60-2-1 to 60-2-5 NMSA 1978, relating to boxing and wrestling matches, effective July 1, 1980. For present provisions relating to professional athletic competition, see 60-2A-1 to 60-2A-30 NMSA 1978.

ARTICLE 2A
ATHLETIC COMPETITION

60-2A-1. Short title. (Effective until July 1, 1994.)

This act [60-2A-1 to 60-2A-30 NMSA 1978] may be cited as the "Professional Athletic Competition Act".

History: Laws 1980, ch. 90, § 1.

Delayed repeals. - See 60-2A-30 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions § 26 et seq.

86 C.J.S. Theaters and Shows § 3 et seq.

60-2A-2. Definitions. (Effective until July 1, 1994.)

As used in the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978]:

A. "board" means the medical advisory board;

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

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

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

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

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

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

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

I. "department" means the regulation and licensing department.

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

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

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

60-2A-3. Commission created; terms; restrictions. (Effective until July 1, 1994.)

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

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

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

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

Cross-references. - As to termination of athletic commission, see 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote Subsection A to delete provisions relating to initial appointments of members, terms and vacancies and to add the present second sentence; rewrote Subsection B, which read "Not more than two members of the commission shall be appointed from the same political party"; deleted former Subsection C, which read "Two members of the commission shall constitute a quorum for the exercise of the powers and duties of the commission"; and redesignated former Subsection D as present Subsection C.

60-2A-4. Chairman; rules. (Effective until July 1, 1994.)

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

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

C. The commission may adopt rules, subject to the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], for the administration of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978] not inconsistent with the provisions of the Professional Athletic Competition Act. The rules shall include but not be limited to the:

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

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

(3) qualifications of licensees.

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

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

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

60-2A-5. Executive secretary. (Effective until July 1, 1994.)

The commission may employ an executive secretary who shall not be a member of the commission and who may serve as a full-time employee. The executive secretary may employ such staff and clerical assistants, subject to approval of the commission, as deemed necessary to carry out his duties.

History: Laws 1980, ch. 90, § 5.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-6. Per diem and mileage. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 6.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-7. Medical advisory board. (Effective until July 1, 1994.)

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

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

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

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

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

History: Laws 1980, ch. 90, § 7.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-8. Jurisdiction of commission over professional contests. (Effective until July 1, 1994.)

The commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within New Mexico, and no professional contest shall be conducted, held or given in this state except in accordance with the provisions of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978].

History: Laws 1980, ch. 90, § 8.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-9. Licenses to conduct professional contests. (Effective until July 1, 1994.)

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

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

C. Before any license is granted to a promoter, the promoter must file a bond in an amount fixed by the commission but not less than two thousand dollars ($2,000) with good and sufficient surety and conditioned for the faithful performance by the promoter of the provisions of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978].

History: Laws 1980, ch. 90, § 9.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-10. Licenses for promoters, boxers, wrestlers, trainers, ring officials and others. (Effective until July 1, 1994.)

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

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

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

History: Laws 1980, ch. 90, § 10.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-11. Licenses for physicians. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 11.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-12. License fees. (Effective until July 1, 1994.)

The annual license fee shall not exceed the following amounts:

A. promoters $300.00

B. foreign co-promoters 500.00

C. referees 40.00

D. timekeepers and announcers 25.00

E. seconds and trainers 25.00

F. managers 50.00

G. professional boxers 25.00

H. professional wrestlers
..... 25.00

I. booking agents
..... 50.00

J. matchmakers
..... 50.00

K. judges
.....
25.00.

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

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

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

60-2A-13. Real party in interest. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 13.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-14. Suspension; revocation of licenses. (Effective until July 1, 1994.)

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

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

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

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

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

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

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

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

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

60-2A-15. Subpoena power. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 15.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-16. Contracts. (Effective until July 1, 1994.)

A. Every professional boxer or professional wrestler competing in a professional contest shall be entitled to receive a copy of a written contract or agreement approved as to form by the commission binding a licensee to pay the professional boxer or professional wrestler a certain fixed fee or percentage of the gate receipts.

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

History: Laws 1980, ch. 90, § 16.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-17. Insurance. (Effective until July 1, 1994.)

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

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

History: Laws 1980, ch. 90, § 17.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-18. Advances against contestant's purse. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 18.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-19. Withholding of purse. (Effective until July 1, 1994.)

A. The commission or its executive secretary may order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second if,

in the judgment of the commission or the executive secretary, the contestant is not competing honestly or to the best of his skill and ability or if the manager or second has violated any of the provisions of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978] or any rule promulgated thereunder.

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

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

History: Laws 1980, ch. 90, § 19.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-20. Attendance at weigh-ins; medical examinations; professional contests. (Effective until July 1, 1994.)

A. The executive secretary or a member of the commission shall be present at all weigh-ins, medical examinations and professional contests and shall see that the provisions of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978] and the rules made pursuant thereto are strictly enforced.

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

History: Laws 1980, ch. 90, § 20.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-21. Length of professional contests; rounds. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 21.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-22. Minors; participants. (Effective until July 1, 1994.)

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

History: Laws 1980, ch. 90, § 22.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-23. Privilege tax on promotions. (Effective until July 1, 1994.)

A. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting professional contests a tax at the rate of four percent of the total gross receipts of any professional contest conducted live in New Mexico.

B. The commission shall adopt rules and regulations for the administration, collection and enforcement of the tax imposed in this section.

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

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

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

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

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

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-24. Athletic commission fund. (Effective until July 1, 1994.)

The proceeds of the privilege tax on promotions and of the privilege tax on closed-circuit television or motion pictures, together with any license fees or other fees authorized under the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978], shall be deposited with the state treasurer to the credit of the "athletic commission fund" which is hereby created. Expenditures from the athletic commission fund shall only be made on vouchers issued and signed by the person designated by the commission upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1980, ch. 90, § 24.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-25. Time of payment of privilege tax. (Effective until July 1, 1994.)

A. Any person upon whom the privilege tax is imposed by Section 23 [60-2A-23 NMSA 1978] of the Professional Athletic Competition Act shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charge and received or a contribution is requested and received, furnish to the commission a written report, on forms prescribed by the commission, showing:

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

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

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

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

B. The commission or any of its authorized employees may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the privilege tax imposed in the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978].

History: Laws 1980, ch. 90, § 25.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-26. Privilege tax on closed-circuit telecasts or motion pictures; report to commission. (Effective until July 1, 1994.)

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

B. There is imposed a tax upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture a tax at the rate of five percent of the gross receipts derived therefrom.

C. The privilege tax imposed in this section shall be administered, collected, enforced and the proceeds deposited as provided in Section 60-2A-23 NMSA 1978.

History: Laws 1980, ch. 90, § 26; 1981, ch. 326, § 3.

Delayed repeals. - See 60-2A-30 NMSA 1978.

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

60-2A-27. Penalty[; nonpayment of tax]. (Effective until July 1, 1994.)

Any person who willfully attempts to evade or defeat any tax or the payment thereof imposed by the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978] is guilty of a fourth-degree felony.

History: Laws 1980, ch. 90, § 27.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-28. Civil penalty. (Effective until July 1, 1994.)

In the case of failure, due to negligence or disregard of rules and regulations of the commission, but without intent to defraud, to pay when due any amount of tax required to be paid by the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978], there shall be added to the amount two percent per month or a fraction thereof from the date the tax was due or from the date the report was required to be filed, not to exceed ten percent thereof.

History: Laws 1980, ch. 90, § 28.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-29. Penalty. (Effective until July 1, 1994.)

Any person violating the provisions of the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978] is guilty of a misdemeanor and upon conviction therefor shall be punished, in the discretion of the court, by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment.

History: Laws 1980, ch. 90, § 29.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-30. Termination of agency life; delayed repeal. (Effective until July 1, 1994.)

The New Mexico athletic commission is terminated on July 1, 1993 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 60, Article 2A NMSA 1978 until July 1, 1994. Effective July 1, 1994, Chapter 60, Article 2A NMSA 1978 is repealed.

History: Laws 1980, ch. 90, § 30; 1981, ch. 241, § 14; 1983, ch. 37, § 2; 1987, ch. 333, § 4.

60-2A-31. Boxing headgear required when under fifteen years of age; penalty. (Effective until July 1, 1994.)

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

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

History: Laws 1981, ch. 327, § 1.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-32. Protective headgear required in all amateur boxing. (Effective until July 1, 1994.)

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

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

History: Laws 1983, ch. 146, § 1.

Delayed repeals. - See 60-2A-30 NMSA 1978.

60-2A-33. Criminal offender character evaluation. (Effective until July 1, 1994.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Professional Athletic Competition Act [60-2A-1 to 60-2A-30 NMSA 1978].

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

Effective dates. - Laws 1991, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

ARTICLE 2B
BINGO AND RAFFLE

60-2B-1. Short title.

This act [60-2B-1 to 60-2B-14 NMSA 1978] may be cited as the "Bingo and Raffle Act".

History: Laws 1981, ch. 259, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gambling §§ 5, 41, 42.

38 C.J.S. Gaming § 1 et seq.; 54 C.J.S. Lotteries § 1 et seq.

60-2B-2. Purpose of act.

The purpose of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] is to make lawful and regulate the conducting of certain games of chance by certain nonprofit organizations.

History: Laws 1981, ch. 259, § 2.

60-2B-3. Definitions.

As used in the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978]:

A. "charitable organization" means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress or other condition of public concern in New Mexico and which has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act and which has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501 (c) of the United States Internal Revenue Code of 1954, as amended or renumbered;

B. "chartered branch, lodge or chapter of a national or state organization" means any branch, lodge or chapter which is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, articles of incorporation or bylaws to

engage in a fraternal, civic or service purpose in New Mexico and which has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act;

C. "educational organization" means any organization within the state, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction and which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

D. "fraternal organization" means any organization within the state, except college and high school fraternities, not for pecuniary profit, which is a branch, lodge or chapter of a national or state organization and exists for the common business, brotherhood or other interests of its members and which has existed in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

E. "labor organization" means any organization, not for pecuniary profit, within the state which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work and which has existed in New Mexico for that purpose and has been so engaged for three years immediately prior to making application for a license under the Bingo and Raffle Act;

F. "qualified organization" means any bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members which has been in existence in New Mexico continuously for a period of three years immediately prior to the making of an application for a license under the Bingo and Raffle Act and which has had, during the entire three-year period, a dues-paying membership engaged in carrying out the objects of the corporation or organization. A voluntary firemen's organization is a qualified organization and a labor organization is a qualified organization for the purpose of the Bingo and Raffle Act if it uses the proceeds from a game of chance solely for scholarship or charitable purposes;

G. "environmental organization" means any organization primarily concerned with the protection and preservation of the natural environment and which has existed in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

H. "religious organization" means any organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place, which organization, church, body of communicants, group or society has been so gathered or united in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

I. "veterans' organization" means any organization within the state or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

J. "voluntary firemen's organization" means any organization for firefighting within the state, not for pecuniary profit, established by the state or any of its political subdivisions, which has been in existence in New Mexico for three years immediately prior to making application for a license under the Bingo and Raffle Act;

K. "dues-paying membership" means those members of an organization who pay regular monthly, annual or other periodic dues or who are excused from paying such dues by the charter, articles of incorporation or bylaws of the organization and those who contribute voluntarily to the corporation or organization to which they belong for the support of the corporation or organization;

L. "equipment" means, with respect to bingo or lotto, the receptacle and numbered objects drawn from it; the master board upon which the numbered objects are placed as drawn; the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them; the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; the public address system; and all other articles essential to the operation, conduct and playing of bingo or lotto; or, with respect to raffles, implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence or right to participate in raffles;

M. "game of chance" means that specific kind of game of chance commonly known as bingo or lotto in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and that specific kind of game of chance commonly known as raffles which is conducted by drawing for prizes or the allotment of prizes by chance or by the selling of shares, tickets or rights to participate in the game;

N. "gross receipts" means receipts from the sale of shares, tickets or rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge, the sale of equipment or supplies and all other miscellaneous receipts;

O. "lawful purposes" means educational, charitable, patriotic, religious or public-spirited purposes, which terms are defined to be the benefiting of an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them in establishing themselves in life, by erecting or maintaining public buildings or works, by providing legal assistance to peace officers or firemen in defending civil or criminal

actions arising out of the performance of their duties or by otherwise lessening the burden of government. These terms include the erection, acquisition, improvement, maintenance, insurance or repair of property, real, personal or mixed, if the property is used for one or more of the purposes stated in this subsection;

P. "lawful use" means the devotion of the entire net proceeds of a game of chance exclusively to lawful purposes;

Q. "licensee" means any qualified organization to which a license has been issued by the licensing authority;

R. "licensing authority" means the regulation and licensing department;

S. "member" means an individual who has qualified for membership in a qualified organization pursuant to its charter, articles of incorporation, bylaws, rules or other written statement;

T. "net proceeds" means the receipts less the expenses, charges, fees and deductions as are specifically authorized under the Bingo and Raffle Act;

U. "occasion" means a single gathering or session at which a series of successive bingo or lotto games is played;

V. "person" means a natural person, firm, association, corporation or other legal entity; and

W. "premises" means any room, hall, enclosure or outdoor area used for the purpose of playing a game of chance.

History: Laws 1981, ch. 259, § 3; 1987, ch. 254, § 21.

Internal Revenue Code. - Section 501 (c) of the United States Internal Revenue Code of 1954, referred to in Subsection A, is compiled as 26 U.S.C. § 501 (c).

Games of chance. - Club's practice of awarding cash or merchandise prizes for free games won on electronic video machines did not constitute the operation of "games of chance." State ex rel. Rodriguez v. American Legion Post No. 99, 106 N.M. 784, 750 P.2d 1110 (Ct. App. 1987).

60-2B-4. Licensing authority; powers; duties.

A. The regulation and licensing department is designated as the "licensing authority" of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978]. The superintendent of regulation and licensing is the executive in charge of enforcement of the terms and provisions of that act and, as the state licensing authority, has the powers and duties as follows:

(1) to grant or refuse licenses under the Bingo and Raffle Act. In addition, the licensing authority has the power, on its own motion based on reasonable grounds or on complaint made and after investigation by the special investigations division of the public safety department and public hearing at which the licensee shall be afforded an opportunity to be heard, to assess administrative fines to the licensee and to suspend or revoke any license issued by the licensing authority for any violation by the licensee or any officer, director, agent, member or employee of the licensee of the provisions of that act or any rule or regulation authorized under that act. Notice of suspension or revocation, as well as notice of the hearing, shall be given by certified mail to the licensee at the address contained in the license. Any license may be temporarily suspended for a period not to exceed thirty days pending any prosecution, investigation or public hearing;

(2) to supervise the administration of the Bingo and Raffle Act and to adopt, amend and repeal rules and regulations governing the holding, operating and conducting of games of chance, the rental of premises and the purchase of equipment to the end that games of chance shall be held, operated and conducted only by licensees for the purposes and in conformity with the constitution of New Mexico and the provisions of that act;

(3) to hear and determine at public hearings all complaints against any licensee and to administer oaths and issue subpoenas to require the presence of persons and production of papers, books and records necessary to the determination of any hearing so held;

(4) to keep records of all actions and transactions of the licensing authority;

(5) to prepare and transmit annually, in the form and manner prescribed by the licensing authority pursuant to the provisions of law, a report accounting to the governor and the legislature for the efficient discharge of all responsibilities assigned by law or directive to the licensing authority; and

(6) to issue publications of the licensing authority intended for circulation in quantity outside the executive branch in accordance with fiscal rules promulgated by the licensing authority.

B. Proceedings brought against a licensee for a violation of the Bingo and Raffle Act shall be brought by the licensing authority by serving, in the manner provided in the rules of civil procedure, a complaint upon the licensee and notifying the licensee of the place and date, not less than twenty days after the date of service, at which a hearing shall be held. The complaint shall set forth, in the manner of complaints in civil action, the violations of the Bingo and Raffle Act or the rules and regulations of the licensing authority which the licensing authority alleges the licensee has committed. The licensing authority or the public safety department may stop the operation of a game of chance pending hearing, in which case the hearing shall be held within ten days after notice.

C. The licensing authority shall cause the notice of hearing to be served personally upon an officer of the licensee or the member in charge of the conduct of the game of chance or to be sent by registered or certified mail to the licensee at the address shown in the license.

D. When proceedings are brought against a licensee for a violation of the Bingo and Raffle Act, the licensing authority shall hear the matter and make written findings in support of its decision. The licensee shall be informed immediately of the decision and, in the event of a suspension or revocation, the effective date of the suspension or revocation.

E. For the first violation by a licensee of the Bingo and Raffle Act, the licensing authority may assess an administrative fine of not to exceed one thousand dollars ($1,000). For a second or subsequent violation by the licensee of that act, the licensing authority may assess an administrative fine of not to exceed two thousand five hundred dollars ($2,500). The amount of the administrative fine shall be determined by the severity and nature of the violation of the Bingo and Raffle Act and by the number of prior violations of that act.

F. When a license is ordered suspended or revoked, the licensee shall surrender the license to the licensing authority on or before the effective date of the suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not.

G. Upon the finding of a violation of the Bingo and Raffle Act or the rules and regulations, or both, that would warrant the suspension or revocation of a license, the licensing authority, in addition to any other penalties which may be imposed, may declare the violator ineligible to conduct a game of chance and to apply for a license under that act for a period not exceeding twelve months. The declaration of ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization or an organization otherwise affiliated with the violator when in the opinion of the licensing authority the circumstances of the violation warrant that action.

H. Upon receipt by a licensee of a complaint signed by the licensing authority and notice of a hearing, the licensee shall answer, in the manner of civil actions, the complaint and inform the licensing authority whether oral argument is desired and whether the licensee desires to produce witnesses.

I. At the request of any party and for good cause shown, the licensing authority or the public safety department shall issue subpoenas for the attendance of witnesses and the production of books, records and other documents, but in no case shall a subpoena be made returnable more than five days after service.

J. Whenever oral testimony of witnesses is taken at the hearing, the licensing authority or the public safety department shall have a certified reporter present to prepare a

record of the proceedings. The original transcript shall be filed with the licensing authority. Any party is entitled to secure a copy from the reporter at his own expense.

K. Hearings may be convened by the licensing authority from time to time at the request of any party, but only for good cause shown. Hearings shall be held and concluded with reasonable dispatch and without unnecessary delay. The licensing authority shall decide any matter within thirty days of the hearing.

L. Upon the determination of any matter heard, the licensing authority shall state its findings. All parties shall be notified by the licensing authority of the action of the licensing authority and shall be furnished a copy of the findings.

M. Applicants for a license or the licensee may be represented by counsel.

N. Any person appearing before the licensing authority in a representative capacity shall be required to show his authority to act in that capacity.

O. No person shall be excused from testifying or producing any book or document in any investigation or hearing when ordered to do so by the licensing authority upon the ground that testimony or documentary evidence required of him may tend to incriminate or subject him to penalty or forfeiture, but no person may be prosecuted, punished or subjected to any penalty or forfeiture on account of any matter or thing concerning which he, under oath, testified or produced documentary evidence, except that he shall not be exempt from prosecution or punishment for any perjury committed by him in his testimony.

P. If a person subpoenaed to attend in any investigation or hearing fails to obey the command of the subpoena without reasonable cause or if a person in attendance in any investigation or hearing refuses, without lawful cause, to be examined or to answer a legal or pertinent question or to exhibit any book, account, record or other document when ordered to do so by the representative of the licensing authority holding the hearing or by the public safety department performing the investigation, the licensing authority or the public safety department may apply to any judge of the district court, upon proof by affidavit of the facts, for an order returnable in not less than five nor more than ten days directing the person to show cause before the judge why he should not comply with the subpoena or order.

Q. Upon the return of the order, the judge before whom the matter comes for hearing shall examine the person under oath. If the judge determines after giving the person an opportunity to be heard that he refused without lawful excuse to comply with the subpoena or the order of the licensing authority or the public safety department holding the investigation, the judge may order the person to comply with the subpoena or order forthwith, and any failure to obey the order of the judge may be punished as a contempt of the district court.

R. Every witness is entitled to be paid for attendance or attendance and travel by the party on whose behalf he is subpoenaed, at the rates prescribed by law, before being required to testify.

S. The decision of the licensing authority in suspending or revoking any license under the Bingo and Raffle Act shall be subject to review. Any licensee aggrieved by a decision, within thirty days after receipt of a copy of the order of the licensing authority, may file a petition in the district court of Santa Fe county. That court has jurisdiction, after notice to the licensing authority, to hear and determine the petition and to affirm, reverse, vacate or modify the order of the licensing authority complained of if, upon consideration of the record, the court is of the opinion that the order was unlawful or unreasonable.

T. Upon any petition being filed, a copy shall be served upon the licensing authority by delivery of a copy to the licensing authority. In the petition, the petitioner shall be denominated as respondent. The petition shall set forth the errors complained of.

U. Upon service of a petition, the licensing authority within twenty days or within such further time as the court may grant, shall file an answer to the petition in the office of the clerk of the court. With its answer, the licensing authority shall file a transcript of the records and orders of the licensing authority and a transcript of all papers and of all evidence adduced upon the hearing before the licensing authority in the proceedings complained of. The court shall hear and determine the matter upon the petition, answer and transcripts.

V. No proceeding to vacate, reverse or modify any final order rendered by the licensing authority shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the licensing authority, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute his bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of his obligation as a licensee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

History: Laws 1981, ch. 259, § 4; 1983, ch. 248, § 1; 1987, ch. 254, § 22.

Cross-references. - For Rules of Civil Procedure, see Judicial Pamphlet 1.

60-2B-5. Organizations entitled to licenses; fees.

A. Any bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, labor, environmental, fraternal, educational or veterans' organization which operates without profit to its members and which has been in existence in New Mexico continuously for a period of three years immediately prior to

the making of application for a license under the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] and has had, during the making of application for a license under that act and during the entire three-year period, dues-paying members engaged in carrying out the objects of the corporation or organization, is eligible for a license to be issued by the licensing authority under the Bingo and Raffle Act. In the event any license is revoked, the licensee and holder thereof is not eligible to apply for another license under Subsection B of this section until after the expiration of the period of one year from the date of such revocation. Any voluntary firemen's organization established by the state or any political subdivision and which has been in existence in New Mexico for three years shall also be an organization entitled to a license under the provisions of that act.

B. The licenses provided by the Bingo and Raffle Act shall be issued by the licensing authority to applicants qualified under that act upon payment of a fee of one hundred dollars ($100). The licenses shall expire at the end of the calendar year in which they are issued by the licensing authority and may be renewed by the licensing authority upon the filing of an application for renewal provided by the licensing authority and the payment of a fee of one hundred dollars ($100) for the renewal. No license or renewal granted under that act shall be transferable.

History: Laws 1981, ch. 259, § 5.

60-2B-6. Application for license.

A. Each applicant for a license to be issued under the provisions of this section shall file with the licensing authority a written application in duplicate in the form prescribed by the licensing authority, duly executed and verified, and in which shall be stated:

(1) the name and address of the applicant;

(2) sufficient facts relating to its incorporation and organization to enable the licensing authority to determine whether or not it is a bona fide chartered branch, lodge or chapter of a national or state organization or a bona fide religious charitable, labor, environmental, fraternal, educational, voluntary firemen's or veterans' organization which operates without profits to its members and which has been in existence continuously in New Mexico for a period of three years immediately prior to the making of application for a license, and has had during the entire three-year period dues-paying members engaged in carrying out the objectives of the applicant;

(3) the names and addresses of its officers;

(4) the specific kind of games of chance intended to be held, operated and conducted by the applicant;

(5) the place where the games of chance are intended to be held, operated and conducted by the applicant under the license applied for;

(6) the items of expense intended to be incurred or paid in connection with the holding, operating and conducting of such games of chance and the names and addresses of the persons to whom and the purposes for which they are to be paid;

(7) a statement that no commission, salary, compensation, reward or recompense shall be paid to any person for holding, operating or conducting such games of chance or for assisting therein except as otherwise provided in the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978]; and

(8) such other information deemed advisable by the licensing authority to ensure that the applicant falls within the restrictions set forth by the Bingo and Raffle Act.

B. In each application there shall be designated active members of the applicant organization under whom the games of chance described in the application are to be held, operated and conducted, and to the application shall be appended a statement executed by the applicant and by the members so designated that they will be responsible for the holding, operation and conduct of games of chance in accordance with the terms of the license and the provisions of the Bingo and Raffle Act.

C. In the event any premises are to be leased or rented in connection with the holding, operating or conducting of any game of chance under the Bingo and Raffle Act, a written statement shall accompany the application signed and verified by the person stating his address and the amount of rent which will be paid for the premises and that the person, or its officers and directors if a corporation, is of good moral character and has not been convicted of any crime involving moral turpitude.

History: Laws 1981, ch. 259, § 6.

60-2B-7. Form of license; display.

Each license shall contain a statement of the name and address of the licensee, the names and addresses of the members of the licensee under whom the games of chance will be held, operated and conducted and the place where the bingo or lotto games or the drawing of the raffles are to be held. Each license issued for the conduct of any games of chance shall be conspicuously displayed at the place where the games are to be conducted or the drawings held.

History: Laws 1981, ch. 259, § 7.

60-2B-8. Persons permitted to conduct games; premises; equipment; expenses; compensation.

A. No person shall hold, operate or conduct any games of chance under any license issued under the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] except an active member of the organization to which the license is issued, and no person shall assist in the holding, operating or conducting of any games of chance under that license

except an active member or a member of an organization or association which is an auxiliary to the licensee, a member of an organization or association of which the licensee is an auxiliary or a member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association and except bookkeepers or accountants as provided in this section. No item of expense shall be incurred or paid in connection with the holding, operating or conducting of any game of chance held, operated or conducted pursuant to any license issued under that act except bona fide expenses in reasonable amount for goods, wares and merchandise furnished or services rendered, reasonably necessary for the holding, operating or conducting thereof. No games of chance shall be conducted with any equipment except that which is owned or leased by the licensee.

B. The officers of a licensee shall designate a bona fide, active member of the licensee to be in charge and primarily responsible for the conduct of the games of bingo or lotto on each occasion. The member in charge shall supervise all activities on the occasion for which he is in charge and be responsible for the making of the required report. The member in charge shall be familiar with the provisions of the state laws, the rules and regulations of the licensing authority and the provisions of the license. He shall be present on the premises continuously during the games and for a period of at least thirty minutes after the last game.

C. The officers of a licensee shall designate an officer to be in full charge and primarily responsible for the proper utilization of the entire net proceeds of any game in accordance with state law.

D. The entire net proceeds of any game shall be devoted to a lawful use or uses.

E. Each license issued for the conduct of games of chance shall be conspicuously displayed at the place where any game is being conducted at all times during the conduct of the game and for at least thirty minutes after the last game has been concluded.

F. The premises where any game of chance is being held, operated or conducted or where it is intended that any equipment be used shall at all times be open to inspection by the licensing authority, its agents and employees and by peace officers of any political subdivision of the state.

G. No licensee may hold, operate or conduct a game of bingo or lotto more often then on two hundred sixty occasions in any calendar year.

H. When any merchandise prize is awarded in a game of bingo, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash directly or indirectly.

I. Equipment, prizes and supplies for games of bingo shall not be purchased or sold at prices in excess of the usual price thereof.

J. The aggregate amount of all prizes offered or given in all games played on a single occasion shall not exceed one thousand five hundred dollars ($1,500) which shall be exclusive of pull tabs.

K. No games shall be conducted more than five times in any one calendar week, with no game lasting more than four hours on each occasion and not more than two occasions in one calendar day by any one licensee.

L. The net profits derived from the holding of games of chance must be devoted to the lawful purposes of the organization permitted to conduct the games. Any organization desiring to hold the net profits of games of chance for a period longer than one year must apply to the licensing authority for special permission and, upon good cause shown, the authority shall grant the request.

M. Any licensee which does not report, during any one-year period, net profits will be required to show cause before the licensing authority why its right to conduct games of bingo should not be revoked.

N. No person shall assist in the holding, operating or conducting of a bingo game under any license except bona fide active members of the licensee, active members of any organization which is an auxiliary to the licensee or active members of an organization which is affiliated with the licensee by being, with it, auxiliary to another organization.

O. The equipment used in the playing of bingo and the method of play shall be such that each card has an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game is begun. All members announced shall be plainly and clearly audible to all the players present. Where more than one room is used for any one game the receptacle and the caller must be present in the room where the greatest number of players are present, and all numbers announced shall be plainly audible to the players in the aforesaid room and also audible to the players in the other rooms. A fair and equal chance shall be given to all participants, and any licensee, its representative, agent or employees whose acts or action may tend to negate the "right of equal chance" shall constitute grounds for revoking such license.

P. The receptacle, the caller who removes the objects or balls from the receptacle must be visible to all the players at all times except where more than one room is used for any one game, in which case the provisions of Subsection O of this section shall prevail.

Q. The particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly described and announced to the players immediately before each game is begun.

R. Any player is entitled to call for a verification of all numbers drawn at the time a winner is determined and for a verification of the objects or balls remaining in the

receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge of the occasion, but if such member is also the caller, then in the immediate presence of any officer of the licensee.

S. In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

T. No person shall act as a caller in the conduct of any game of bingo unless he has been a member in good standing of the licensee conducting the game or one of its licensed auxiliaries for at least six months immediately prior to the date of such game, is of good moral character and has never been convicted of a felony.

U. No owner, co-owner or lessee of the premises or, if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten percent of the outstanding stock shall be a person responsible for or assisting in the holding, operating or conducting of any game of bingo.

History: Laws 1981, ch. 259, § 8.

60-2B-9. Reports required; criteria; definitions; tax imposed.

A. On April 15, July 15, October 15 and January 15 of each year, the licensee shall file with the licensing authority upon forms prescribed by the licensing authority a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during that period from games of chance, the expenses incurred or paid and a brief description of the classification of the expenses, the name and address of each person to whom has been paid two hundred fifty dollars ($250) or more and the purpose of the expenditure, the net proceeds derived from each game of chance and the uses to which the net proceeds have been or are to be applied. It is the duty of each licensee to maintain and keep the books and records necessary to substantiate the particulars of each report.

B. If a licensee fails to file reports within the time required or if the reports are not properly verified or not fully, accurately and truthfully completed, any existing license may be suspended until the default has been corrected.

C. All money collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of bingo shall be deposited in a special account of the licensee which shall contain only such money. All expenses for the game shall be withdrawn from the account by consecutively numbered checks duly signed by specified officers of the licensee and payable to a specific person or organization. There shall be written on the check the nature of the expense for which the check is drawn. No check shall be drawn to "cash" or a fictitious payee.

D. No part of the net profits, after they have been given over to another organization, shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of games of bingo by the donor organization.

E. No item of expense shall be incurred or paid in connection with holding, operating or conducting any game of chance pursuant to any license except bona fide expenses of a reasonable amount. Expenses may be incurred only for the following purposes:

(1) the purchase of goods, wares and merchandise furnished;

(2) payment for services rendered that are reasonably necessary for repairs of equipment, operating or conducting the game of bingo;

(3) for rent if the premises are rented or for janitorial services if not rented;

(4) for accountant's fees;

(5) for license fees; and

(6) for utilities.

F. For the purposes enumerated in Subsection E of this section:

(1) "goods, wares and merchandise" means prizes, equipment as defined in Section 60-2B-3 NMSA 1978, articles of a minor nature such as pencils, crayons, tickets, envelopes, paper clips and coupons necessary to the conduct of games of chance;

(2) "services rendered" means repair to equipment, reasonable compensation to bookkeepers or accountants, not more than two in the aggregate, for services in preparing financial reports for an amount not exceeding the total amount of thirty dollars ($30.00) for each occasion, rental of premises not exceeding the amount of fifty dollars ($50.00) for each occasion except upon prior approval of a greater amount by the licensing authority, a reasonable amount for janitorial service not exceeding a total amount of fifty dollars ($50.00) for each occasion, a reasonable amount for assisting in the operation not exceeding a total amount of two hundred fifty dollars ($250), and not exceeding twenty-five dollars ($25.00) for any one employee, for each occasion and a reasonable amount for security expense based on established need as determined by the licensing authority.

G. There shall be paid to the licensing authority a tax equal to three percent of the net proceeds of any game of chance held, operated or conducted under the provisions of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978], and no other state or local gross receipts tax shall apply to the gross receipts of any such game of chance.

History: Laws 1981, ch. 259, § 9; 1991, ch. 216, § 1.

The 1991 amendment, effective July 1, 1991, substituted "60-2B-3 NMSA 1978" for "2 of the Bingo and Raffle Act" in Paragraph (1) of Subsection F; and deleted the former second and third sentences in Subsection G, which read "The revenue collected is to be used for the administration of the Bingo and Raffle Act only. All administrative receipts, including license fees, collected by the state hereunder shall be deposited in the general fund".

60-2B-10. Examination of books and records.

The licensing authority and its agents have power to examine or cause to be examined the books and records of any licensee to which any license is issued insofar as they may relate to any transactions connected with the holding, operating and conducting of any game of chance.

History: Laws 1981, ch. 259, § 10.

60-2B-11. Forfeiture of license; ineligibility to apply for license.

Any person who makes any false statement in any application for any license or in any statement annexed thereto, fails to keep sufficient books and records to substantiate the quarterly reports required under Section 8 [9] [60-2B-9 NMSA 1978] of the Bingo and Raffle Act, falsifies any books or records insofar as they relate to any transaction connected with the holding, operating and conducting of any game of chance under any such license or violates any of the provisions of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] or of any term of the license, if convicted, in addition to suffering any other penalties which may be imposed, shall forfeit any license issued to him under that act and shall be ineligible to apply for a license under that act for at least one year thereafter.

History: Laws 1981, ch. 259, § 11.

Bracketed material. - The reference to "Section 8 of the Bingo and Raffle Act" in this section seems incorrect, as that section (60-2B-8 NMSA 1978) relates to conducting games of chance. Section 9 of the act (60-2B-9 NMSA 1978) relates to required reports. The bracketed material was not enacted by the legislature and is not part of the law.

60-2B-12. Enforcement.

It is the duty of all sheriffs and police officers to enforce the provisions of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978]. It is the duty of the district attorney of the county in which a violation is committed to prosecute such violation of that act in the manner and form as is now provided by law for the prosecutions of crimes and misdemeanors.

History: Laws 1981, ch. 259, § 12; 1983, ch. 248, § 2.

Cross-references. - As to division of state into judicial districts, see 34-6-1 NMSA 1978.

60-2B-13. Exemptions.

Nothing in the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] shall be construed to apply to:

A. any drawing or any prize at any fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions or for the benefit of any church, situated and being in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that church or charitable purpose, provided such fair or fiesta must have been held on an annual basis for not less than two years immediately preceding and for a period of not more than fourteen consecutive calendar days in each year; or

B. any bingo or raffle held by any group or organization as defined in Section 3 [60-2B-3 NMSA 1978] of the Bingo and Raffle Act which holds a bingo or raffle only once during three consecutive calendar months and not exceeding four occasions in one calendar year.

History: Laws 1981, ch. 259, § 13.

An individual cannot legally conduct bingo games for profit at the State Fair, since the exemptions contained in Subsection A were not designed to aid individuals to conduct what would otherwise be illegal gambling for profit. 1987 Op. Att'y Gen. No. 87-46.

60-2B-14. Penalties.

Every licensee and every officer, agent or employee of the licensee and every other person or corporation who willfully violates or who procures, aids or abets in the willful violation of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

History: Laws 1981, ch. 259, § 14.

ARTICLE 2C
FIREWORKS LICENSING AND SAFETY

60-2C-1. Short title.

Sections 1 through 11 [60-2C-1 to 60-2C-11 NMSA 1978] of this act may be cited as the "Fireworks Licensing and Safety Act".

History: Laws 1989, ch. 346, § 1.

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

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

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

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

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

56 Am. Jur. 2d Municipal Corporations § 204.

15 C.J.S. Commerce §§ 85, 94.

16B C.J.S. Constitutional Law § 861.

62 C.J.S. Municipal Corporations §§ 313, 699, 759, 773, 780, 799, 800, 822, 846.

60-2C-2. Definitions.

As used in the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978]:

A. "aerial device" means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include a firework that produces a shower of sparks;

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

C. "common fireworks" means any fireworks device suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the United States consumer product safety commission in Title 16, C.F.R. and that is classified as a class C explosive by the United States department of transportation;

D. "display distributor" means any person, firm or corporation selling special fireworks;

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

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

G. "firework" means any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks are further classified in the Fireworks Licensing and Safety Act as common fireworks and special fireworks, as defined by the United States department of transportation, C.F.R. Title 49, transportation, parts 173.88(d) and 173.00(r);

H. "ground audible device" means a fireworks device intended to function on the ground that produces an audible effect;

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

J. "permissible fireworks" means fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Licensing and Safety Act;

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

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

M. "special fireworks" means fireworks devices primarily intended for commercial displays which are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams (two grains) of explosive composition, aerial shells containing more than forty grams of chemical composition exclusive of lift charge and other exhibition display items that exceed the limits contained in the Fireworks Licensing and Safety Act for common fireworks;

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

O. "wholesaler" means any person, firm or corporation purchasing fireworks for resale to retailers.

History: Laws 1989, ch. 346, § 2; 1991, ch. 133, § 1.

The 1991 amendment, effective June 14, 1991, inserted present Subsection D; redesignated former Subsections D to G as present Subsections E to H; deleted former Subsection H, which read "'importer' means any person, firm or corporation importing or causing fireworks to be imported into New Mexico from another state or from a foreign country for subsequent sale"; and made minor stylistic changes in Subsections A and H.

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

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

B. The state fire marshal shall enforce the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978]. All license applications shall be submitted to the office of the state fire marshal. All retailers shall be required to purchase a retail fireworks permit for each retail location. The retail permit may be purchased from any licensed manufacturer, distributor, wholesaler or from the state fire marshal's office. These permits may be purchased at any time by the licensed manufacturer, distributor or wholesaler in books of twenty permits per book from the state fire marshal. Permits shall be numbered and it shall be the responsibility of the licensed manufacturer, distributor or wholesaler to keep records of the purchases of these permits and to submit these records to the state fire marshal semi-annually on January 31 and July 31 of each year. Each semi-annual report is to cover the preceding six-month period. Retail permits which are unsold may be exchanged for new permits.

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

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

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

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

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

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978] shall pay to the state fire marshal's office the following fees, which shall not be refundable:

(1) manufacturer license $1,500;

(2) distributor license 2,000;

(3) wholesaler license 1,000;

(4) display distributor 1,000;

(5) specialty retailer license ..... 750; or

(6) retailer permit ..... 100.

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed from May 10 through July 10 of each year.

C. Licenses issued under the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed fifty dollars ($50.00), for the sale of fireworks.

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

History: Laws 1989, ch. 346, § 4; 1991, ch. 133, § 3.

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

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

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

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

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

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

Nothing in the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978] shall prohibit licensed wholesalers, distributors, importers or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States department of transportation to any person or entity outside the state of New Mexico.

History: Laws 1989, ch. 346, § 6.

60-2C-7. Permissible fireworks.

Permissible fireworks for sale to the general public as that term is used in the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978] shall be understood to mean common fireworks except stick-type rockets having a tube less than one-quarter inch inside diameter. A municipality or county shall not by ordinance regulate and prohibit the sale or use of any permissible firework except aerial devices and ground audible devices.

History: Laws 1989, ch. 346, § 7; 1991, ch. 133, § 5.

The 1991 amendment, effective June 14, 1991, rewrote the second sentence, which read "A municipality may by ordinance regulate and prohibit the use of aerial devices and ground audible devices".

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

A. No fireworks may be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. It is unlawful to offer for sale or to sell any fireworks to children under the age of twelve years or to any intoxicated person.

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

D. No fireworks shall be stored, kept, sold or discharged within fifty feet of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

E. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories inc. rated capacity of at least 5 lb. ABC per five hundred square feet of space used for fireworks sales or storage.

F. A sales clerk who is at least sixteen years of age shall be on duty to serve consumers at the time of purchase or delivery. All fireworks sold and shipped to consumers within New Mexico shall be sold and shipped only by an individual firm, partnership or corporation holding the proper New Mexico fireworks license or permit.

G. No fireworks shall be discharged within one hundred fifty feet of any fireworks retail sales location.

H. No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.

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

J. Fireworks may be sold at retail between June 20 and July 6 of each year and three days preceding and including new year's day, Chinese new year and Cinco de Mayo of each year, except that fireworks may be sold all year in permanent retail stores whose primary business is tourism.

History: Laws 1989, ch. 346, § 8; 1991, ch. 133, § 6.

The 1991 amendment, effective June 14, 1991, substituted "shall" for "must" throughout the section, "Smoking, open flames and any ignition source are prohibited" for "Smoking is prohibited" at the beginning of the second sentence in Subsection C and

"5 lb. ABC per five hundred square feet of space used for fireworks sales or storage" for "4-ABC" at the end of Subsection E and made a minor stylistic change in Subsection F.

60-2C-9. Public display of fireworks.

Nothing in the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978] shall prohibit the public display of fireworks, except that any individual, association, partnership, corporation, organization, county or municipality shall secure a written permit from the governing body of the county or municipality where the public display is to be fired and the fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco and firearms at the United States department of the treasury.

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

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

60-2C-10. Penalty; criminal.

A. Any individual, firm, partnership or corporation that violates any provision of the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year, or both.

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

History: Laws 1989, ch. 346, § 10.

60-2C-11. Penalty; civil.

A. If a person is found guilty of violating any of the provisions of the Fireworks Licensing and Safety Act [60-2C-1 to 60-2C-11 NMSA 1978], that person's license or permit may be revoked or suspended by the state fire marshal, his deputies or designees.

B. No individual, firm, corporation or partnership shall possess any fireworks for sale within New Mexico, other than those authorized in the Fireworks Licensing and Safety Act. The state fire marshal, his deputies or designees may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with the Fireworks Licensing and Safety

Act. If any retailer has in his possession any fireworks in violation of that act, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in the Fireworks Licensing and Safety Act applies to the transportation of fireworks by regulated carriers.

History: Laws 1989, ch. 346, § 11.

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

ARTICLE 2D
BICYCLE RACING

60-2D-1. Short title. (Effective July 1, 1992.)

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

History: Laws 1991, ch. 233, § 1.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-2. Definitions. (Effective July 1, 1992.)

As used in the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978]:

A. "commission" means the bicycle racing commission;

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

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

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

History: Laws 1991, ch. 233, § 2.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-3. Commission created; appointments; qualifications. (Effective July 1, 1992.)

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

History: Laws 1991, ch. 233, § 3.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-4. Organization and officers; per diem. (Effective July 1, 1992.)

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

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

C. The expenses of the commission shall be paid out of the state's allocation of the proceeds from the bicycle-racing pari-mutuel tax as provided in Section 16 [60-2D-16 NMSA 1978] of the Bicycle Racing Act. Payment of expenses by the commission shall be on vouchers issued and signed by the person designated by the commission, upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1991, ch. 233, § 4.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-5. Powers and duties. (Effective July 1, 1992.)

The commission shall, in its discretion and subject to its rules and regulations:

A. license all persons desiring to participate, except as spectators, in bicycle racing at Keiren velodrome bicycle-racing tracks within this state approved by the commission;

B. supervise all licensees and all races, race meets and racetracks operating under its jurisdiction;

C. set the time, place and duration of all race meets under its jurisdiction;

D. suspend or revoke licenses for violation of the law or rules and regulations of the commission;

E. do all other things necessary and proper to fulfill its obligations under the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978];

F. have all places where bicycle-racing meets are held visited and inspected at least once a year by its members or employees;

G. require all pari-mutuel bicycle-racing meets to be held at Keiren velodrome bicycle-racing tracks in this state and in accordance with the rules and regulations of the commission;

H. supervise the operations of pari-mutuel machines and equipment and the operation of all money rooms, accounting rooms and seller's and cashier's windows;

I. supervise the weighing and inspection of bicycles; and

J. make saliva and urine tests on bicycle racers selected by the commission or its employees at every race.

History: Laws 1991, ch. 233, § 5.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-6. Employees. (Effective July 1, 1992.)

The commission shall hire an executive secretary and such other employees as are necessary to its duties, at salaries to be set by the commission.

History: Laws 1991, ch. 233, § 6.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-7. Rules and regulations. (Effective July 1, 1992.)

The commission shall promulgate reasonable rules and regulations governing bicycle racing in this state. These rules and regulations shall:

A. govern the application procedures for all licenses issued by the commission;

B. provide for the supervision, direction and discipline of licensees of the commission;

C. govern, subject to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the issuance, suspension and revocation of licenses issued by the commission;

D. provide for the barring from bicycle racing and bicycle-racing tracks of any persons, including those required to be licensed by the commission;

E. determine the distribution of the gross receipts of all pari-mutuel bicycle-racing wagers that shall be payable as pari-mutuel winnings, as race purses to the winning bicycle racers and as commissions to the licensee;

F. set standards for the holding, conducting and operating of all bicycle races, race meets and racetracks under the supervision of the commission; and

G. become effective only after they have been filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1991, ch. 233, § 7.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-8. Enforcement; investigation; subpoena. (Effective July 1, 1992.)

The commission shall enforce or secure the enforcement, through the proper officials, of all the laws, rules, regulations and orders of the commission. The commission shall investigate on its own motion, or upon receipt of any information or complaint concerning any violation of the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978] or any rule, regulation or order issued pursuant to that act or upon receipt of any application, any information contained or which should be contained in the application. In enforcement of the Bicycle Racing Act or in any investigation, the commission may exercise the power of subpoena. Any member of the commission may administer oaths or affirmations. If any person refuses to obey a subpoena, the commission may present its petition to the district court in Santa Fe county setting forth the facts, and the district court shall issue its subpoena to the person.

History: Laws 1991, ch. 233, § 8.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-9. Licenses; limitations; fees. (Effective July 1, 1992.)

A. The commission shall require licenses of all bicycle racers, trainers, starters, assistant starters, pari-mutuel employees, authorized racer's or owner's agents and any other person, whether operating under his own name or a trade or assumed name, who wishes to participate, except as a spectator, in a bicycle-racing meet in this state. This license shall be known as a "general bicycle-racing license" and shall state on its face the capacity in which the licensee will participate in bicycle racing in this state. The fee for a general bicycle-racing license shall be set by the commission in an amount not to exceed fifty dollars ($50.00) per year. The fee shall not be prorated for part of a year.

B. The commission shall require a license for any person to hold bicycle-racing meets with pari-mutuel wagering. This license shall be known as a "pari-mutuel bicycle-racing license" and shall state on its face the time, place and duration of all bicycle-racing meets authorized by that license and the number of races allowed per day. The fee for such a license shall be set by the commission and shall not exceed one thousand dollars ($1,000) for any one calendar year, regardless of the number of days of bicycle-racing meets covered by the license.

C. The commission may issue a pari-mutuel bicycle-racing license for:

(1) a bicycle-racing season; and

(2) one day, to be known as a charity day, on which day the licensee shall remit the taxes owed to the state, deduct an amount equal to the purses and the cost of conducting the racing on that day and donate the balance to nonprofit organizations engaged in charitable, benevolent or eleemosynary activities selected by the licensee and approved by the commission.

History: Laws 1991, ch. 233, § 9.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-10. Applications for pari-mutuel bicycle-racing licenses. (Effective July 1, 1992.)

A. Each initial application for a pari-mutuel bicycle-racing license shall:

(1) be made under oath on a form supplied by the commission and shall be filed on a date set by the commission by regulation;

(2) set forth the time, place and number of days of the proposed bicycle-racing meet;

(3) state the full name and address of the applicant and, if a corporation, the names and addresses of all its officers and directors and of all the holders of each class of its stock and the amount of stock of each class owned by each stockholder;

(4) present a current financial statement of the applicant;

(5) identify the bicycle-racing track where the proposed bicycle-racing meet will be held and the names and addresses of the owners of all property to be used;

(6) give a description of the land uses within a radius of two miles of the proposed meet; and

(7) state any other information deemed necessary by the commission or required by its regulations.

B. Upon receipt of the initial application, the commission shall set a date for a hearing on the application and require the applicant to give public notice of the hearing, in a form set by the commission, giving the time, place and purpose of the hearing by publication in a newspaper in general circulation in the area of the proposed meet, once a week for three consecutive weeks, and by posting a notice on the site of the proposed bicycle-racing meet, in a form and size set by the commission.

C. The commission shall conduct the public hearing, and any interested person may be heard. Among other things, the commission may hear evidence concerning:

(1) the number of licenses already granted;

(2) the location of tracks previously licensed; and

(3) the desires of the residents of the county.

History: Laws 1991, ch. 233, § 10.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-11. Renewal licenses. (Effective July 1, 1992.)

Pari-mutuel bicycle-racing licenses may be renewed upon application of the licensee annually for the same dates or for other dates the licensee requests, but for not less than the total number of days allotted during the preceding year. The application for a renewal shall be in the same form as the original application, shall contain the same information, brought up to date, and shall contain the same attachments, but shall not require a public hearing.

History: Laws 1991, ch. 233, § 11.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-12. Liability insurance; bond; pari-mutuel bicycle-racing licensee. (Effective July 1, 1992.)

Every pari-mutuel bicycle-racing licensee shall, as a condition to receiving a license to conduct bicycle-racing meets:

A. carry public liability insurance in a form, in an amount and with a company approved by the commission, for the protection of the public, exhibitors, contestants, visitors, other licensees and spectators; and

B. provide and deliver to the commission a bond in a form required by the commission, in favor of the state, in a penal sum of not less than fifty thousand dollars ($50,000) and any further amount required by the commission, conditioned upon:

(1) the payment by the licensee to the state all money due it under the provisions of the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978];

(2) the licensee's discharging all obligations to his employees, exhibitors, contestants and persons furnishing labor and material in connection with any race meet or in connection with the construction, maintenance, repair or operation of the racetrack or buildings or grounds connected therewith; and

(3) generally, that the licensee will conduct the bicycle-racing meet strictly in accordance with the provisions of the Bicycle Racing Act and the rules and regulations of the commission and will not violate any other law of this state while operating under a license issued by the commission.

History: Laws 1991, ch. 233, § 12.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-13. License; refusal to issue. (Effective July 1, 1992.)

The commission, using the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]:

A. when dealing with a general bicycle-racing license, shall refuse to issue a license if the applicant:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States

or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) fails to pay the required fees or any other payment required by the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978];

B. when dealing with a pari-mutuel bicycle-racing license, shall refuse to issue the license for the reasons given in Subsection A of this section or, in addition, if the applicant:

(1) is not a bona-fide resident of New Mexico;

(2) is a foreign corporation;

(3) is a corporation and does not have a provision in its charter that none of the voting stock of the corporation shall be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation any of the voting stock of which is held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(5) refuses to agree that he will not thereafter sell, mortgage or otherwise pledge or dispose of any of the assets listed and described on the application for license without giving the commission ten days' written notice;

C. when dealing with a general bicycle-racing license, may refuse to issue the license if the applicant makes any false or fraudulent statement of a material nature in the application; or

D. when dealing with a pari-mutuel bicycle-racing license, may refuse to issue the license for the reason given in Subsection C of this section or if:

(1) the financial standing of the applicant and his ability or, if a partnership, joint venture or corporation, the financial standing of the partnership, joint venture or corporation or the ability of the partners, joint venturers, officers or directors of the corporation are such that in the opinion of the commission it is not in the best interest of the state to grant the license;

(2) the sentiments of the residents of the area and the county in which it is proposed to conduct the bicycle-racing meet are against the license; or

(3) for any other reason it is not in the best interest of the state, the racing industry and the area and county in which it is proposed to conduct the bicycle-racing meets to grant the license.

History: Laws 1991, ch. 233, § 13.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-14. Revocation and suspension. (Effective July 1, 1992.)

The commission, using the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]:

A. when dealing with a general bicycle-racing license, may revoke or suspend the license if the licensee:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) has made any false or fraudulent statement of a material nature in his application; or

B. when dealing with a pari-mutuel bicycle-racing license, may revoke or suspend the license for any reason given in Subsection A of this section or if the licensee:

(1) incorporates as a foreign corporation;

(2) loses his residence in New Mexico;

(3) is a corporation and amends its charter to allow its voting stock to be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation and sells, mortgages or otherwise pledges or transfers any of the voting stock of the corporation without ten days' prior written notice to the commission;

(5) is a corporation and allows any of its voting stock to be held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(6) sells, mortgages or otherwise pledges or disposes of any of the assets listed and described on the application for license without approval of the commission.

History: Laws 1991, ch. 233, § 14.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-15. Pari-mutuel wagering; breakage; uncashed tickets. (Effective July 1, 1992.)

A. A pari-mutuel bicycle-racing licensee may conduct pari-mutuel wagering. In the conduct of such wagering, all breakage shall be split equally between the state and the licensee. Breakage shall be those odd cents remaining after paying winning ticket holders a minimum of ten cents ($.10) for each one dollar ($1.00) wagered. If during any bicycle-racing meet conducted under the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978] there are underpayments of the amount actually due to the wagerers, the amount of the excess of such underpayments, over and above overpayments to wagerers on the expiration of thirty days after the end of the meet, shall be paid to the state treasurer. Uncashed tickets may be presented to the licensee for payment at any time.

B. If a governmental agency imposes a levy on the licensee of a tax on the money wagered and upon its receipts, the licensee may collect, in addition to the percentage and breakage allowed in this section, the amount of the tax so levied. The tax and breakage and license fees provided in the Bicycle Racing Act shall be in lieu of all other license and excise taxes levied by the state or any of its political subdivisions for the privilege of conducting bicycle-racing meets licensed under the Bicycle Racing Act.

History: Laws 1991, ch. 233, § 15.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-16. Pari-mutuel wagering; taxes. (Effective July 1, 1992.)

Each licensee holding a pari-mutuel bicycle-racing license shall withhold fifteen percent from the pari-mutuel bicycle-racing wagers made and pay daily:

A. thirteen percent of the gross receipts of all pari-mutuel bicycle-racing wagers at a meet to the state treasurer, which shall be deposited in the general fund; and

B. two percent of the gross receipts of all pari-mutuel bicycle-racing wagers made at a meet to the county treasurer of the county in which the meet is held.

These amounts shall constitute the "bicycle-racing pari-mutuel tax".

History: Laws 1991, ch. 233, § 16.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-17. Violations. (Effective July 1, 1992.)

It is unlawful:

A. for any licensee or any trainer of any person licensed to enter any racing contest supervised by the commission to fail to comply with all rules, regulations and orders issued by the commission;

B. for any person to participate except as a spectator in any racing contest supervised by the commission without first obtaining the required license;

C. for any person to hold a bicycle-racing meet with pari-mutuel wagering without obtaining the required license;

D. for any person holding or participating in any racing contest supervised by the commission to fail to inform the commission or its employees of any violation of any law, rule, regulation or order of the commission;

E. for any licensee to permit any person who has not reached his twenty-first birthday to wager at a bicycle-racing meet;

F. to conduct pool-selling bookmaking or to conduct handbooks or to bet or wager on any bicycle-racing meet licensed by the commission, other than by the pari-mutuel method; or

G. for any pari-mutuel bicycle-racing licensee to compute breaks in the pari-mutuel system other than at ten cents ($.10).

History: Laws 1991, ch. 233, § 17.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

60-2D-18. Penalty. (Effective July 1, 1992.)

Any person who violates any of the provisions of the Bicycle Racing Act [60-2D-1 to 60-2D-18 NMSA 1978] is guilty of a petty misdemeanor.

History: Laws 1991, ch. 233, § 18.

Effective dates. - Laws 1991, ch. 233, § 20 makes the Bicycle Racing Act effective on July 1, 1992.

Severability clauses. - Laws 1991, ch. 233, § 19 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 3
GENERAL PROVISIONS

60-3-1 to 60-3-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-3-1 to 60-3-2 NMSA 1978, relating to general provisions concerning the Liquor Control Act effective July 1, 1981. For present provisions, see 60-3A-1 to 60-3A-5 NMSA 1978.

ARTICLE 3A
GENERAL PROVISIONS

60-3A-1. Short title.

Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B and 8A of Chapter 60 NMSA 1978 may be cited as the "Liquor Control Act."

History: Laws 1981, ch. 39, § 1; 1984, ch. 85, § 9.

Temporary provisions. - Laws 1989, ch. 306, effective April 6, 1989, creates a joint interim legislative committee, to be composed of eight members, to be known as the Liquor Reform Review Committee which is to function from the date of its appointment until the first day of December prior to the second session of the thirty-ninth legislature. The committee is to examine the statutes, constitutional provisions, regulations, court decisions and legislative reforms implemented pursuant to the Liquor Control Act and recommend legislation or changes if any are found to be necessary to the second session of the thirty-ninth legislature.

Veto of severability clause unconstitutional. - The governor's veto of Laws 1981, ch. 39, § 129, the severability clause of the Liquor Control Act, was unconstitutional under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For note, "Constitutional Law - Regulating Nude Dancing in Liquor Establishments - The Preferred Position of the Twenty-First Amendment - Nall v. Baca," see 12 N.M.L. Rev. 611 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

60-3A-2. Liquor policy of state; investigation of applicants; responsibility of licensees.

A. It is the policy of the Liquor Control Act that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state; and it is the responsibility of the director to investigate the qualifications of all applicants for licenses under that act, to investigate the conditions existing in the community in which the premises for which any license is sought are located before the license is issued, to the end that licenses shall not be issued to persons or for locations when the issuance is prohibited by law or contrary to the public health, safety or morals.

B. It is the intent of the Liquor Control Act that each person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act and for all taxes charged against the license.

History: Laws 1981, ch. 39, § 2.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Purpose of liquor control legislation is to regulate and restrain and not to promote, and any loosening of that policy is the business of the legislature, not of the courts. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970); 1979 Op. Att'y Gen. No. 79-3.

The Liquor Control Act is a police regulation and its purpose is, as stated therein, to protect the public health, safety and morals of every community in the state. 1975 Op. Att'y Gen. No. 75-68.

New Mexico Liquor Control Act is exercise of police power of the state, for the welfare, health, peace, temperance and safety of its people. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Power to control distribution, sale and consumption of alcoholic liquors is vested in legislature. In exercising its power, the New Mexico legislature has enacted laws providing a uniform, comprehensive regulatory scheme governing those areas where the state's interest is preeminent. 1980 Op. Att'y Gen. No. 80-23.

License not property right, but privilege in constitutional sense. - A liquor license is a privilege and not property within the meaning of the due process and contract clauses of the constitutions of this state and the nation, and in them licensees have no vested property rights. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

The licensee has no vested property right in a liquor license as it is a privilege and not property. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Sale of liquor not inherent privilege of United States or state citizenship. - Retail sale of intoxicating liquor is not reckoned among the inherent privileges of a citizen of the United States or the state, but is a business which is attended with dangers to the community so that it may be entirely prohibited or authorized under such conditions as will limit its evil propensities to the utmost degree. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

As between state and licensee, liquor license is mere revocable privilege vesting no property rights in the licensee. Nelson v. Naranjo, 74 N.M. 502, 395 P.2d 228 (1964).

Liability of lessors. - Lessors of a liquor license are fully liable and accountable for debts incurred by the lessee in the course of his use of the license. Gavin Maloof & Co. v. Southwest Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

In a case against an absent owner-lessor of a liquor license, arising out of the lessee's service of alcohol to an intoxicated patron who injured third parties (the plaintiffs), 41-11-1A NMSA 1978, enacted in 1983, under which the absent owner-lessor is liable for the acts of a lessee not in the employ of the licensee, was not applicable. At the time of the injury in 1982 the cause of action created by Subsection B of this section inured to the plaintiffs as a vested right, and the court could not apply 41-11-1A NMSA 1978 retroactively against the plaintiffs and divest them of that right. Ashbaugh v. Williams, 106 N.M. 598, 747 P.2d 244 (1987).

Law reviews. - For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markup," see 4 Nat. Resources J. 189 (1964).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 114.

"Owner," scope and import of term, in statutes requiring consent to granting of liquor license, 2 A.L.R. 800, 95 A.L.R. 1085.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Civil liability of one taking out license for sale of liquor for benefit of another, 2 A.L.R. 1516.

Test of intoxicating character of liquor, 4 A.L.R. 1137, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Federal constitutional or legislative provisions as to intoxicating liquors as affecting state legislation, 10 A.L.R. 1587, 11 A.L.R. 1320, 26 A.L.R. 661, 70 A.L.R. 132.

Validity of statute vesting discretion as to license for sale of liquor in public officials without prescribing a rule of action, 12 A.L.R. 1453, 54 A.L.R. 1104, 92 A.L.R. 400.

Private individual or corporation, power to impose license fee or a fine for benefit of, 13 A.L.R. 831, 19 A.L.R. 205.

Contracts of unlicensed dealers, validity and enforceability of, 30 A.L.R. 868, 42 A.L.R. 1226, 118 A.L.R. 646.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Validity of statute leaving number of licenses to be granted to discretion of licensing authority, 163 A.L.R. 581.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Grandfather clause, construction of, 4 A.L.R.2d 691.

Women, provisions as to sale of liquor to, as affecting validity of regulatory statute, 9 A.L.R.2d 541.

State power to regulate price of intoxicating liquors, 14 A.L.R.2d 699.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

48 C.J.S. Intoxicating Liquors § 193.

60-3A-3. Definitions.

As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters;

B. "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

C. "brewer" means any person who owns or operates a business for the manufacture of beer;

D. "club" means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars ($5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) the proposed licensee has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1954, as amended or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier which maintains or operates a clubroom at an international airport terminal. For the purposes of this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the civil aeronautics board;

E. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

F. "department" means the special investigations division of the public safety department when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and

licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "director" means the director of the special investigations division of the public safety department when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "dispenser" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises;

I. "distiller" means any person engaged in manufacturing spirituous liquors;

J. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

K. "hotel" means any establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five sleeping rooms;

L. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure which are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, hotel or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel or racetrack;

M. "local option district" means any county which has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality which falls within a county which has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality of over five thousand population which has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

N. "manufacturer" means a distiller, rectifier, brewer or winer;

O. "minor means any person under twenty-one years of age;

P. "package" means any immediate container of alcoholic beverages which is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

Q. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

R. "rectifier" means any person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

S. "restaurant" means any establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in regulations promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

T. "retailer" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell any alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises;

U. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and ale;

V. "wholesaler" means any person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale any alcoholic beverages for resale by the purchaser;

W. "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

X. "wine bottler" means any New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale; and

Y. "winer" means any person who owns or operates a business for the manufacture of wine.

History: Laws 1981, ch. 39, § 3; 1984, ch. 58, § 1; 1987, ch. 254, § 23.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Internal Revenue Code. - Section 501(a) of the Internal Revenue Code of 1954, referred to in Subsection D(1)(b), appears as 26 U.S.C. § 501.

Meaning of "beverage". - Fitness for beverage purposes is an essential attribute of intoxicating liquor, and, notwithstanding a liquor contains the requisite amount of alcohol, it is not an intoxicating liquor if it is unfit for beverage purposes. The word "beverage," as used in the statutes relating to intoxicating liquors, means a liquor that is capable of being drunk, and, in determining whether a liquor is capable of being used as a beverage, the test applied is not limited to the case of an average individual with average tastes. 1959-60 Op. Att'y Gen. No. 59-190.

Alcoholic concoction within scope of liquor laws if "beverage". - In order to permit salted (cooking) wines to be sold in food store outlets without the payment of excise tax, the question must first be, either judicially or administratively, determined: "is the concoction in question capable of being used as a beverage?" If the answer is in the affirmative, then because of its alcoholic content, it would definitely be within the scope of the law pertaining to the sale of alcoholic liquors. If the question is answered in the negative, then no liquor tax would have to be paid on it and the product could be marketed in food stores without a license. 1959-60 Op. Att'y Gen. No. 59-190.

Section classifies "beverages" as alcoholic without regard to minimum contents. - This section classifies all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, as alcoholic liquors without regard to minimum alcoholic contents. "Beer" is classified as any alcoholic beverage obtained by fermentation. State v. Spahr, 64 N.M. 395, 328 P.2d 1093 (1958).

Finding beyond reasonable doubt that beer met definition not required. - Trial court committed no fundamental error when it failed on its own motion to instruct the jury they must find beyond a reasonable doubt the beer claimed to have been sold contained more than one-half of one percent of alcohol which is the statutory definition of alcoholic liquor as it relates to beer. State v. Baize, 64 N.M. 168, 326 P.2d 367 (1958).

Nor instruction to find beyond reasonable doubt required. - The refusal of the court to instruct the jury they must find beyond a reasonable doubt that beer alleged to have been sold contained more than one-half of one percent alcohol was not error. State v. Spahr, 64 N.M. 395, 328 P.2d 1093 (1958).

Veterans' clubs qualify for "club" license. - Legally constituted chapters of the American Legion and the Veterans of Foreign Wars do qualify for the issuance of a "club" license under this section. 1959-60 Op. Att'y Gen. No. 59-118.

Meaning of "dispenser". - Dispenser is any person "selling, offering for sale or having in his possession with intent to sell, alcoholic liquors by the drink or in packages" and a

dispenser "sells" by the drink, not just "serves," and the word "sell" is not limited to liquor in packages. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

"Licensed premises". - Since this section limits the use of the license only to the "licensed premises," this section will not permit the licensing of two or more totally independent structures under a single liquor license where one of the structures is already licensed as a full service lounge and the licensee proposes to operate a restaurant which would provide full service liquor sales in another structure located several hundred yards away from the lounge. 1987 Op. Att'y Gen. No. 87-10.

Electoral history determines whether city and county separate "local option districts". - In order for a city to constitute a separate local option district, it is essential that the city have a population in excess of five thousand residents and that the city have voted in favor of the sale of alcoholic liquors within its distinct limits, and will depend on the electoral history of the governmental subdivisions with respect to the approval of the sale of alcoholic liquors within their respective geographical limits. 1971 Op. Att'y Gen. No. 71-116.

Meaning of "package". - In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 4, 22.

Right of state to interfere with shipment of liquor through its territory, 27 A.L.R. 108.

Forbidding prescription, or restricting the amount, of intoxicating liquor for medicinal purposes, 49 A.L.R. 588.

What is a "meal" within contemplation of constitutional or statutory provisions relating to intoxicating liquors, 93 A.L.R. 962.

What amounts to "restaurant" or "restaurant business" within intoxicating liquor law, 105 A.L.R. 566.

State statute or ordinance prohibiting or regulating transportation of intoxicating liquor as interference with interstate commerce, 110 A.L.R. 931, 138 A.L.R. 1150.

Reasonableness of statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school or other institution, 119 A.L.R. 643.

Constitutionality of statute providing for sale of intoxicating liquor by a state or state agencies, 121 A.L.R. 300.

Constitutionality, construction, and application of statutes designed to prevent or limit control of retail liquor dealers by manufacturers, wholesalers, or importers, 136 A.L.R. 1238.

Validity, construction, and application of statute or ordinance requiring closing, during certain hours, of places where intoxicating liquor is sold, as affected by fact that such places are also used for other business, 139 A.L.R. 756.

Regulations regarding bringing into state intoxicating liquor intended for personal use of consignee or carrier, 155 A.L.R. 816.

Construction and application of constitutional or statutory provision respecting taxation or regulation of sale or purchase of food or drink for consumption off the premises, 167 A.L.R. 206.

"Grandfather clause" of statute or ordinance, 4 A.L.R.2d 667.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R.2d 1216.

Sale of liquor to women, 9 A.L.R.2d 541.

Zoning regulations, 9 A.L.R.2d 877.

Price regulation, 14 A.L.R.2d 699.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like, within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer, 89 A.L.R.2d 950, 80 A.L.R.3d 740.

Regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them, 99 A.L.R.2d 1216.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold, 46 A.L.R.3d 369.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R.3d 1071.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxication liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors §§ 1, 29, 35.

60-3A-4. Storage permitted.

Nothing in the Liquor Control Act shall be construed to prohibit the storage of alcoholic beverages in bona fide public warehouses or guardian warehouses by nonresident licensees or wholesalers for usual and ordinary commercial purposes.

History: Laws 1981, ch. 39, § 72.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-3A-5. Exemptions from act.

Nothing in the Liquor Control Act applies to:

A. the transportation of alcoholic beverages through New Mexico;

B. the transportation of alcoholic beverages into a United States customs bonded warehouse located in New Mexico; or

C. ethyl alcohol intended for or used for any of the following purposes:

(1) scientific, mechanical, industrial, medical, chemical or culinary purposes;

(2) use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder; or

(3) in the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder.

History: Laws 1981, ch. 39, § 112.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 63.

48 C.J.S. Intoxicating Liquors § 222.

60-3A-6. Authority of public safety department.

The public safety department has authority over all investigations and enforcement activities required under the Liquor Control Act except for those provisions relating to the issuance, denial, suspension or revocation of licenses unless its assistance is requested by the superintendent of regulation and licensing.

History: 1978 Comp., § 60-3A-6, enacted by Laws 1987, ch. 254, § 24.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-3A-7. [Authority of regulation and licensing department; investigatory and enforcement support.]

The regulation and licensing department has the authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The superintendent of the regulation and licensing department may request the public safety department to provide investigatory and enforcement support as deemed necessary.

History: 1978 Comp., § 60-3A-7, enacted by Laws 1987, ch. 254, § 25.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

ARTICLE 4
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

60-4-1 to 60-4-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-4-1 through 60-4-10 NMSA 1978, relating to the department of alcoholic beverage control, effective July 1, 1981. For present provisions, see 60-4B-1 through 60-4B-8 NMSA 1978.

ARTICLE 4A
CONFLICT OF INTEREST IN DEPARTMENT

60-4A-1, 60-4A-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-4A-1, 60-4A-2 NMSA 1978, relating to conflict of interest, effective July 1, 1981.

ARTICLE 4B
SPECIAL INVESTIGATIONS DIVISION

60-4B-1. Special investigations division; director.

A. There is created the "special investigations division" of the public safety department.

B. The director of the special investigations division shall be appointed by the secretary of public safety with the approval of the governor. He shall serve at the pleasure of the secretary.

History: Laws 1981, ch. 39, § 4; 1987, ch. 254, § 26.

60-4B-2. Powers and duties of the director.

A. The director is responsible for the operation of the department. It is his duty to supervise all operations of the department and to:

(1) administer and enforce the laws the administration of which the department is charged;

(2) exercise general supervisory authority over all employees of the department;

(3) organize the department into such units to enable it to function most effectively;

(4) confer authority and delegate responsibility as is necessary and appropriate;

(5) employ, within the limitations of current appropriations and personnel laws, such persons as are required to discharge his duties;

(6) undertake studies and conduct courses of instruction for department employees which will improve the operations of the department and advance its purposes;

(7) require compliance by employees of the department with his verbal and written instructions by whatever disciplinary means appropriate; and

(8) purchase or lease personal property and lease real property for use by the department.

B. The director, his agents, auditors and employees are commissioned as peace officers in the performance of their duties.

History: Laws 1981, ch. 39, § 5.

Superintendent's powers circumscribed by legislature. - The chief of liquor control (now superintendent of regulation and licensing), an administrative officer, has only such powers as are granted by the legislature. His powers are specifically described and limited, and he is specially prohibited from granting liquor licenses and has no power to do so until he has performed certain acts made mandatory by this section. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

The director's powers are specifically prescribed and he cannot take action not provided for by statue. 1980 Op. Att'y Gen. 80-23.

Superintendent has broader ranges of action than local governing bodies. - It cannot reasonably be held, in the light of the state's preemption in the field of the regulation of liquor businesses, that the legislature intended local governing bodies to have a broader range of permitted action than the chief of the division (now superintendent of regulation and licensing). Without any statutory standard whatever, a local governing body cannot give vent to whatever whims they might choose. Safeway Stores v. City of Las Cruces, 82 N.M. 499, 484 P.2d 341 (1971).

And may exercise wide discretion in selecting applicants. - In the matter of granting and refusing liquor license applications, a wide discretion has been vested in the chief of the liquor control division (now superintendent of regulation and licensing). Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Superintendent, in selecting licenses, not performing in judicial capacity. - The power and duty of chief of division of liquor control (now superintendent of regulation and licensing) in passing upon liquor license applications is not in the nature of, or related to, any judicial function. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Generally, courts cannot modify or overrule superintendent's orders. - As long as the chief of the division of liquor control (now superintendent of regulation and licensing) acts within the provisions of the law, courts cannot modify or overrule his administrative orders, or otherwise question the expediency or wisdom shown in issuing or revoking of liquor licenses. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now superintendent of regulation and licensing) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Since superintendent must determine facts which authorize cancellation. - Before cancelling a license pursuant to this duty, the chief of division (now superintendent of regulation and licensing) must, of necessity, determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Law reviews. - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For note, "Constitutional Law - Regulating Nude Dancing in Liquor Establishments - The Preferred Position of the Twenty-First Amendment - Nall v. Baca," see 12 N.M.L. Rev. 611 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 26.

48 C.J.S. Intoxicating Liquors § 38.

60-4B-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 204, § 26 repeals 60-4B-3 NMSA 1978, as enacted by Laws 1981, ch. 39, § 6, relating to the legal advisor, effective July 1, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

60-4B-4. Investigative authority and powers.

A. For the purpose of enforcing the provisions of the Liquor Control Act, the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. Any subpoena issued by the director shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if any person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The director may exchange identification records and information with law enforcement agencies for official use. Any identification records received from the United States department of justice, including identification records based on

fingerprints, shall be used only to effectuate the licensing purposes and provisions of the Liquor Control Act. The department shall not disseminate such information except to other law enforcement agencies for official use only.

History: Laws 1981, ch. 39, § 7.

Cross-references. - As to identification of criminals generally, see 29-3-1 to 29-3-9 NMSA 1978.

As to subpoenas generally, see Rule 1-045.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Director's power to investigate for public interest. - Authority rests in the chief of the liquor control division (now director) to make investigations, personally or through his employees, and he may reach his determination upon what he thus learns and upon what he deems to be to the public interest. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Types of evidence considered during investigations. - In his investigations the chief of the division of liquor control (now director) is not limited in his determinations to considering what would constitute admissible evidence in a court of law. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Determination of facts required prior to license cancellation. - Before cancelling a license pursuant to his duty to cancel, the chief of division (now director), must, of necessity, determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 177.

60-4B-5. Administrative regulations and orders; presumption of correctness.

A. The director shall issue and file as required by law all regulations and orders necessary to implement and enforce the provisions of the Liquor Control Act.

B. Directives issued by the director shall be in form substantially as follows:

(1) regulations are written statements of the director, of general application to licensees, interpreting and exemplifying the statues to which they relate;

(2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and

(3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, any regulation issued by the director shall be reviewed and approved by the commission and reviewed and approved as to form and compliance with law by the attorney general prior to being filed as required by law, and the fact of its review and approval shall be indicated thereon.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the director. Distribution of the regulation shall be made to interested persons and their comments shall be invited. After the proposed regulation has been on file for sixty days and a public hearing has been held the director may issue it as a final regulation by filing as required by law.

E. The director shall furnish a copy of the regulations to all licensees and other interested persons at a nominal cost.

F. Any regulation or order issued by the director is presumed to be a proper implementation of the provisions of the Liquor Control Act.

G. All regulations and orders shall be applied prospectively only.

History: Laws 1981, ch. 39, § 8.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Authority to prevent advertising of suggested retail prices. - The director has authority to prevent liquor dealers from advertising "suggested" retail prices of liquor merchandise. 1970 Op. Att'y Gen. No. 70-35.

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 26.

48 C.J.S. Intoxicating Liquors § 38.

60-4B-6. Director; written decision.

Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license or other disposition of a charge against a licensee shall be accompanied by a written opinion containing findings of fact and the specific grounds relied upon for the decision.

History: Laws 1981, ch. 39, § 9.

License cannot be canceled by operation of law as to do so would relieve the chief of division (now director) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

60-4B-7. Report to the governor.

The director shall make a biennial report to the governor concerning the status of the department.

History: Laws 1981, ch. 39, § 10.

60-4B-8, 60-4B-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 204, § 26 repeals 60-4B-8 and 60-4B-9 NMSA 1978, as enacted by Laws 1981, ch. 39, § 11 and Laws 1987, ch. 333, § 5, relating to training of alcoholic beverage control agents and termination of agency life, effective July 1, 1989. For provisions of former sections, see 1987 Replacement Pamphlet.

ARTICLE 4C
ALCOHOLIC BEVERAGE CONTROL COMMISSION

60-4C-1 to 60-4C-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 254, § 27 repeals 60-4C-1 through 60-4C-3 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 12-14, relating to the alcoholic beverage control commission, effective July 1, 1987. For provisions of former sections, see 1981 replacement pamphlet.

ARTICLE 5
LOCAL OPTION

60-5-1, 60-5-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-5-1, 60-5-2 NMSA 1978, relating to elections for local option, effective July 1, 1981. For present provisions, see 60-5A-1, 60-5A-2 NMSA 1978.

ARTICLE 5A
LOCAL OPTION

60-5A-1. Elections for local option.

Any municipality containing over five thousand population according to the latest United States census, whether the county in which that municipality is situated has adopted the local option provisions of the Liquor Control Act or any former act or not, or any county in the state may adopt local option in the county or municipality upon the following terms and conditions:

A. at any time after the effective date of the Liquor Control Act, the registered qualified electors of any proposed local option district may petition the governing body by filing one or more petitions in the appropriate office to hold an election for the purpose of determining whether the county or municipality shall adopt the local option provisions of the Liquor Control Act. If the aggregate of the signatures of such elector on all the petitions equals or exceeds five percent of the number of registered voters of the district, the governing body shall call an election within seventy-five days of the verification of the petition. The date of the filing of the petition shall be the date of the filing of the last petition which brings the number of signatures up to the required five percent; provided, however, that the governing body shall refuse to recognize the petition if more than three months have elapsed between the date of the first signature and the filing of the last petition necessary to bring the number of signatures on the petition up to five percent;

B. the election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections within the municipality, except as otherwise provided in this section;

C. the votes at the election shall be counted, returned and canvassed as provided for in the case of general elections within the county or special municipal elections within the municipality;

D. except as otherwise provided in this section, contests, recounts and rechecks shall be permitted as provided for in the case of candidates for county office in general elections or as provided for in the case of special municipal elections within the municipality. Applications for contests, recounts or rechecks may be filed by any person who voted in the election, and service shall be made upon the county clerk or municipal clerk as the case may be;

E. if a majority of all the votes cast at the election are cast in favor of the sale, service or public consumption of alcoholic beverages in the county or municipality, the chairman of the governing body shall declare by order entered upon the records of the county or municipality that the county or municipality has adopted the local option provisions of the Liquor Control Act and shall notify the department of such results;

F. no election held pursuant to this section shall be held within forty-two days of any primary, general, municipal or school district election. If, within sixty days from the verification of any petition as provided in Subsection A of this section, a primary, general, municipal or school election is held, the governing body may call an election for a day not less than sixty days after the primary, general, municipal or school election;

G. if an election is held under the provisions of the Liquor Control Act in any county which contains within its limits any municipality of more than five thousand persons according to the last United States census, it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of adopting the local option provisions of the Liquor Control Act by the municipality. The election in the county shall be conducted so as to separate the votes in the municipality from those in the remaining parts of the county. If a majority of the voters in the county, including the voters in the municipality, vote against the sale, service or public consumption of alcoholic beverages in the county, the county shall not adopt the local option provisions of the Liquor Control Act; but if a majority of the votes in the municipality are in favor of the sale, service or public consumption of alcoholic beverages, the municipality shall have adopted the local option provisions of the Liquor Control Act. Nothing contained in this subsection shall prevent any municipality from having a separate election under the terms of this section;

H. any county or municipality composing a local option district under the provisions of the Liquor Control Act or any former act may vote to discontinue the sale, service or public consumption of alcoholic beverages in the local option district; the discontinuance shall become effective on the ninetieth day after the local option election is held; and

I. nothing in this section shall invalidate any local option election held pursuant to any former act prior to July 1, 1981.

History: Laws 1981, ch. 39, § 15; 1985, ch. 208, § 124; 1987, ch. 323, § 27.

Cross-references. - For registration for elections, see 1-4-1 NMSA 1978 et seq.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effective date of the Liquor Control Act. - The effective date of the Liquor Control Act, referred to near the beginning of Subsection A, means the effective date of Laws 1981, ch. 39, which is July 1, 1981.

"Local option district" defined. - The term "local option district" must be read to mean any county which has voted to approve the sale of alcoholic beverages, or any incorporated municipality which falls within such a county, or any incorporated municipality over 5,000 which has independently approved the sale of alcoholic beverages. 1981 Op. Att'y Gen. No. 81-9.

For the purpose of placing the question of Sunday sales on the general election ballots, each county except Roosevelt and Curry, which have rejected local option district status, and the incorporated municipalities of Clovis and Portales, which have independently voted to become local option districts, are considered "local option districts." 1982 Op. Att'y Gen. No. 82-15.

Election invalid when it conflicts with state or municipal election. - The provision of Subsection A which requires election to be called within 60 (now 75) days after filing of the petition is invalidated when it conflicts with a state or municipal election, since it was evident intention of the legislature not to have a local option election conflict therewith. 1943-44 Op. Att'y Gen. No. 4477.

Where initial petition bears insufficient signatures, the board of county commissioners must accept additional names submitted and consider the aggregate of petitions submitted within the three-month period. 1951-52 Op. Att'y Gen. No. 5379.

"General election" defined. - The term "general election" has been defined as the biennial election held throughout the state for choosing state and county officers and national representatives in the congress. 1977 Op. Att'y Gen. No. 77-17.

Election under this section may be held in conjunction with county bond election so long as the scheduling and other requirements of the two elections are compatible. 1981 Op. Att'y Gen. No. 81-9.

"Manner" defined. - "Manner" is defined as the mode or method in which something is done or happens: a mode of procedure or way of acting. 1977 Op. Att'y Gen. No. 77-17.

Absent Voter Act applicable. - The Absent Voter Act, 1-6-1 to 1-6-18 NMSA 1978, is applicable to local option district elections, thereby directing the absentee voting procedures to be followed in such elections. 1977 Op. Att'y Gen. No. 77-17.

Contest and recount provisions of election code are inapplicable to local option elections. State ex rel. Denton v. Vinyard, 55 N.M. 205, 230 P.2d 238 (1951).

Law reviews. - For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 87.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation, 26 A.L.R. 672, 70 A.L.R. 132.

Submission of question to electors of municipality as only way in which sale of intoxicants may be entirely prohibited, under state liquor control act, 113 A.L.R. 1386.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation, 134 A.L.R. 434.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense, 8 A.L.R.2d 750.

Change of "wet" or "dry" status fixed by local option election by change of name, character or boundaries of voting unit without later election, 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing time for giving notice of local option election which must be given a certain number of days before a known future date, 98 A.L.R.2d 1387.

48 C.J.S. Intoxicating Liquors § 71.

60-5A-2. Resubmission of local option question.

In any local option district in which the local option provisions of the Liquor Control Act or former act have been rejected by the voters, it shall be permissible after the expiration of two years from the date of the election at which the local option provisions of the Liquor Control Act or any former act were rejected, to have another local option election in the district by following the procedure provided for in Section 15 [60-5A-1 NMSA 1978] of the Liquor Control Act. At the option of the petitioners referred to in Subsection A of Section 15 of that act, it shall be permissible to resubmit to the voters of one district not only the question of the sale, service or public consumption of alcoholic beverages, but it shall also be permissible to petition for a local option election for the purpose of submitting to the voters of the district the question of permitting the sale of alcoholic beverages by retailers only in the district.

History: Laws 1981, ch. 39, § 16.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 111.

48 C.J.S. Intoxicating Liquors § 73.

ARTICLE 6
POWERS OF MUNICIPALITIES AND COUNTIES TO REGULATE SALES

60-6-1. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-6-1 NMSA 1978, relating to the power of municipalities and counties to regulate sales, effective July 1, 1981.

ARTICLE 6A
STATE LICENSES

60-6A-1. Wholesaler's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license or a governmental licensee or its lessee.

D. Nothing contained in this section shall prevent the sale, transportation or shipment by a wholesaler to any person outside the state when shipped under permit from the department.

History: Laws 1981, ch. 39, § 18.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Out-of-state shipment requires permit. - If the state excise tax has been paid on alcoholic liquors which a wholesaler ships out of New Mexico, a refund can be made pursuant to 7-17-11 NMSA 1978 upon adequate proof of out-of-state shipment. Further, shipment out of the state requires a permit from the division (now superintendent of regulation and licensing) even though the state excise tax has been paid. 1963-64 Op. Att'y Gen. No. 63-1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 127.

48 C.J.S. Intoxicating Liquors § 128.

60-6A-2. Retailer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a retailer's license for the retail sale of alcoholic beverages.

B. A retailer's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 19.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Director cannot authorize transfer of license from county to county. - The director has no power to authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 245.

48 C.J.S. Intoxicating Liquors § 121.

60-6A-3. Dispenser's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a dispenser's license for the sale of alcoholic beverages.

B. A dispenser's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 20.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Director cannot authorize transfer of license from county to county. - The director has no power to authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 131.

Hotel or inn, what constitutes, within meaning of liquor statute, 19 A.L.R. 531, 53 A.L.R. 988.

48 C.J.S. Intoxicating Liquors § 135.

60-6A-4. Restaurant license.

A. At any time after the effective date of the Liquor Control Act, a local option district may approve the issuance of restaurant licenses for the sale of beer and wine by

holding an election on that question pursuant to the procedures set out in Section 15 [60-5A-1 NMSA 1978] of that act.

B. After the approval of restaurant licenses by the registered qualified electors of the local option district and upon completion of all requirements in the Liquor Control Act for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant license to sell, serve or allow the consumption of beer and wine subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that he has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from meals and not from the sale of beer and wine;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of meals;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of meals and from beer and wine sales;

(5) restaurant licensees shall not sell beer and wine for consumption off the licensed premises;

(6) all sales, services and consumption of beer and wine authorized by a restaurant license shall cease at the time meals [meal] sales and services cease or at 11:00 p.m., whichever time is earlier;

(7) if Sunday sales have been approved in the local option district, a restaurant licensee may serve beer and wine on Sundays until the time meals [meal] sales and services cease or 11:00 p.m., whichever time is earlier; and

(8) a restaurant license shall not be transferable from person to person or from one location to another.

C. The provisions of Section 35 [60-6A-18 NMSA 1978] of the Liquor Control Act shall not apply to restaurant licenses.

D. Nothing in this section shall prevent a restaurant licensee from receiving other licenses pursuant to the Liquor Control Act.

History: Laws 1981, ch. 39, § 21.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-5. Club licenses.

A. In any local option district, a club qualified under the provisions of the Liquor Control Act may apply for and be issued a club license.

B. Club licenses shall not be transferred from one owner to another. A club license may be transferred from one location to another upon compliance with the provisions of the Liquor Control Act. A club license shall not be leased.

C. The provisions of Section 35 [60-6A-18 NMSA 1978] of the Liquor Control Act shall not apply to club licenses.

History: Laws 1981, ch. 39, § 22.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 174.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

48 C.J.S. Intoxicating Liquors § 123.

60-6A-6. Manufacturer's license.

In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a manufacturer's license.

History: Laws 1981, ch. 39, § 23.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 127.

48 C.J.S. Intoxicating Liquors § 125.

60-6A-7. Nonresident license.

A. A nonresident manufacturer or wholesaler who qualifies may apply for and be issued a nonresident license.

B. No nonresident wholesaler or manufacturer shall, directly or indirectly or through an affiliate or subsidiary, apply for, be granted or hold a license under the provisions of the Liquor Control Act as a New Mexico wholesaler, manufacturer, dispenser or retailer;

provided that a nonresident wholesaler may be granted and hold a New Mexico wholesaler's license only if the business operated, and the New Mexico wholesaler's license, was purchased from an existing wholesaler and is operated as a separate and distinct business from all other businesses of the nonresident wholesaler, including for the purpose of Section 60-8A-6 NMSA 1978, and no alcoholic beverages are transshipped between any of the other businesses and the business operated under that license.

C. Nonresident licensees may sell, offer for sale or ship into the state alcoholic beverages only to licensed New Mexico manufacturers and wholesalers.

D. Every nonresident licensee or every New Mexico wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler shall mail to the department one duplicate invoice covering all shipments into or sales in the state, stating the prices, together with all terms, concessions, allowances, forbearances and deductions. In cases of shipments, a copy of the bill of lading or way bill shall accompany the invoice mailed to the department. On each invoice for alcoholic beverages, the total number of cases and the total number of liters of alcoholic beverage shall also be noted by the shipper or vendor. The invoice of all shipments or sales shall also state the brand, labels and size of containers of each item, unless shipped or sold in bulk to be bottled by a licensed rectifier or wine bottler using his own label and brand; provided, however, this section shall not apply to intrastate sales and shipments from one New Mexico wholesaler to another wholesaler.

E. The director may suspend or revoke the license of a nonresident licensee or wholesaler who does not comply with the provisions of Subsections B through D of this section.

History: Laws 1981, ch. 39, § 24; 1984, ch. 54, § 1.

Compiler's note. - Subsection B reads as amended by Laws 1984, ch. 54, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effect of one wholesaler dominating market. - Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. Levers v. Anderson, 153 F.2d 1008 (10th Cir. 1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits § 31.

Nonresidents, discrimination against issuance of license, 61 A.L.R. 340, 112 A.L.R. 63.

48 C.J.S. Intoxicating Liquors § 113.

60-6A-8. Wine bottler's license.

Before any wholesaler whose license permits the sale of wine for resale packages wine for resale, he shall procure from the department a wine bottler's license.

History: Laws 1981, ch. 39, § 25; 1988, ch. 60, § 2.

The 1988 amendment, effective May 18, 1988, deleted "winer or" preceding "wholesaler".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 125.

60-6A-9. Public service license.

A. Every person selling alcoholic beverages to travelers on trains or airplanes within the state shall secure a public service license from the department on or before July 1 of each year.

B. A photostatic copy of the license shall be posted in each train car from which alcoholic beverages are sold, or on the premises at each airport where alcoholic beverages are stored and issued to airplanes.

History: Laws 1981, ch. 39, § 26.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 133.

48 C.J.S. Intoxicating Liquors § 20.

60-6A-10. Governmental license.

A. A governmental entity may sell alcoholic beverages directly or through its lessee at a governmental facility if the governing body applies to the director for a governmental license. The governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for his operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises.

C. Each governmental entity holding a governmental license shall annually and not less than sixty days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental

license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, he shall notify the governing body of his decision and shall conduct a hearing as provided by law. If the director finds that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license.

D. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to governmental licenses.

E. For the purposes of this section:

(1) "governmental entity" means a municipality, county or state fair which is held for less than ten days per year or a state university;

(2) "governmental facility" means locations on property owned or operated by a governmental entity and includes county fairs, state fairs held for less than ten days per year, convention centers, airports, civic centers, auditoriums, facilities used for athletic competitions, golf courses and other facilities used for cultural or artistic performances, but the term does not include tennis facilities; and

(3) "lessee" means any individual, corporation, partnership, firm or association if it fulfills the requirements set forth in Subsections A through D of Section 60-6B-2 NMSA 1978.

F. The provisions of Section 60-6B-10 NMSA 1978 as regards to golf courses owned by a governmental entity shall not apply to governmental licenses.

History: Laws 1981, ch. 39, § 27; 1989, ch. 379, § 1.

Compiler's note. - Pursuant to Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983), this section has been set out with the provisions in Subsection E, which were unconstitutionally vetoed in 1981. The added provisions are: "or county" following "municipality" in Paragraph (1) and, in Paragraph (2), "locations on property owned or operated by a governmental entity and includes county fairs" following "means," "facilities used for athletic competitions and other facilities used for cultural or artistic performance" following "auditoriums" and "or county" following "municipal" in two places.

Quota limitations enforced when licenses issued. - The director of the department of alcoholic beverage control cannot legally issue a liquor license to a city without regard to the quota limitation imposed under former 60-7-29 NMSA 1978. 1975 Op. Att'y Gen. No. 75-41.

Leasing not prohibited by 60-6B-3A. - Section 60-6B-3A NMSA 1978 will not prohibit the leasing of governmental liquor licenses after June 30, 1991. 1987 Op. Att'y Gen. No. 87-77.

60-6A-11. Winegrower's license.

A. Exempt from the procurement of any other license under the terms of the Liquor Control Act, but not from the procurement of a winegrower's license is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to regulations adopted by the director.

B. Any person issued a winegrower's license pursuant to Subsection A of this section may do any of the following:

(1) produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, winer's, wine wholesaler's, wholesaler's or wine exporter's license;

(4) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing such a purchase of wine;

(5) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(6) conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises; and

(7) at no more than two off-premises locations conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department regulations for new liquor license locations.

C. Except as limited by Subsections C and D of Section 60-7A-1 NMSA 1978, sales of wine as provided in Paragraphs (6) and (7) of Subsection B of this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday and, in local option districts in which Sunday sales are permitted, the holder of a winegrower's license may conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license, upon

the payment of ten dollars ($10.00) to the department for a "winegrower's public celebration permit", to be issued under rules adopted by the director, may conduct tastings, sell in unbroken packages for consumption at other than the public celebration, but not for resale, and sell for consumption at a public celebration, wine of his own production. Upon request, the department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other permittees. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event or sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars ($25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars ($100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars ($250) per year.

History: Laws 1981, ch. 39, § 28; 1985, ch. 15, § 1; 1987, ch. 98, § 2; 1988, ch. 60, § 3.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Sunday sales. - Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 195.

48 C.J.S. Intoxicating Liquors § 129.

60-6A-12. Special dispenser's permits; state and local fees.

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving a concession from the board or other governing body in charge of the public celebration and upon the payment of ten dollars ($10.00) to the department for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed ten dollars ($10.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of ten dollars ($10.00) together with such information as the director may require by regulation. The permittee shall be subject to all state laws and regulations governing dispenser's privileges and disabilities except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted under the Liquor Control Act may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the board or other governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section.

History: Laws 1981, ch. 39, § 29; 1989, ch. 144, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R.2d 1216.

60-6A-13. Registration to transport.

On July 1 of each year, every common carrier transporting alcoholic beverages into and for delivery within the state shall register with the department and pay a registration fee of fifteen dollars ($15.00).

History: Laws 1981, ch. 39, § 30.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 132.

48 C.J.S. Intoxicating Liquors § 208.

60-6A-14. Sacramental wine.

No license shall be required of any person to sell wine for use in this state which is to be used exclusively for sacramental or religious purposes when the wine is consigned to any bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel of any religious faith or denomination and the container, barrel, case or carton is plainly and legibly labeled: "Wine To Be Used Exclusively For Sacramental And Religious Purposes"; no licenses or transportation permit or other permit shall be required for the importation, delivery, transportation or distribution of any such wine when it is consigned to any such bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel, and the container, barrel, case or carton thereof is plainly and legibly labeled as provided in this section.

History: Laws 1981, ch. 39, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 77.

48 C.J.S. Intoxicating Liquors §§ 129, 200.

60-6A-15. License fees.

A. Every application for the issuance or annual renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

(1) manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars ($3,000);

(2) manufacturer's license as a brewer, three thousand dollars ($3,000);

(3) manufacturer's license as a rectifier, one thousand fifty dollars ($1,050);

(4) wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars ($2,500);

(5) wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars ($1,750);

(6) wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars ($1,500);

(7) wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars ($1,500);

(8) wholesaler's license to sell beer for resale only, one thousand dollars ($1,000);

(9) wholesaler's license to sell wine for resale only, seven hundred fifty dollars ($750);

(10) retailer's license, seven hundred fifty dollars ($750);

(11) dispenser's license, seven hundred fifty dollars ($750);

(12) canopy license, seven hundred fifty dollars ($750);

(13) restaurant license, seven hundred fifty dollars ($750);

(14) club license, one hundred dollars ($100);

(15) wine bottler's license to sell to wholesalers only, five hundred dollars ($500);

(16) public service license, one thousand dollars ($1,000);

(17) nonresident licenses, for a total billing to New Mexico wholesalers in excess of:

$3,000,000 annually $3,500;

1,000,000 annually 1,750;

500,000 annually 1,250;

200,000 annually 900;

100,000 annually ..... 600; and

50,000 or less annually ..... 300; and

(18) wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars ($25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars ($100).

B. Notwithstanding the provisions of Subsection A of this section, the annual license renewal fee for a dispenser's or retailer's license initially issued under any former act shall be fifty dollars ($50.00) for each license year to and including 1990-1991. Subsequent to license year 1990-1991, all dispenser's and retailer's licensees shall pay the fee established in Subsection A of this section.

History: Laws 1981, ch. 39, § 32; 1983, ch. 280, § 1; 1988, ch. 60, § 5; 1989, ch. 241, § 1.

Director unable to apply fee for canceled license to new license. - Liquor chief (now director) is without power to cancel a license issued under one paragraph and then apply the amount paid on such license to the fee requisite to obtaining a license under another paragraph, the full amount being payable for the latter regardless of the number of other licenses which may be held by the particular licensee. 1943-44 Op. Att'y Gen. No. 4430.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 208.

Liability for license fee of one who has conducted business without required license, 5 A.L.R. 1312, 107 A.L.R. 652.

48 C.J.S. Intoxicating Liquors § 182.

60-6A-16. Proration of fees.

A. The license fees required of retailers, dispensers, restaurants, clubs and public service licensees shall be prorated so that licenses issued prior to October 1 of any year shall be subject to the full amount of the annual license fee. Licenses issued on or subsequent to October 1 and prior to January 1 shall be subject to three-fourths of the annual license fee. Licenses issued on or subsequent to January 1 and prior to April 1 of a year shall be subject to one-half of the annual license fee. Licenses issued on or subsequent to April 1 shall be subject to one-fourth of the annual license fee.

B. All licenses issued to manufacturers, wine bottlers, nonresident licensees and wholesalers shall be paid for at the yearly rate regardless of the date issued and shall expire on June 30 of the fiscal year for which the licenses are issued.

History: Laws 1981, ch. 39, § 33.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 183.

60-6A-17. Issuance of licenses and collection of fees.

All licenses provided for pursuant to the Liquor Control Act shall be issued by the director in strict compliance with the provisions of that act, and license fees shall be collected by the director and remitted to the state treasurer.

History: Laws 1981, ch. 39, § 34.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Law reviews. - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 187.

60-6A-18. Limitation on number of licenses; exceptions.

A. The maximum number of licenses to be issued under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978 shall be as follows:

(1) in incorporated municipalities, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof; and

(2) in unincorporated areas of each county, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof, excluding the population of incorporated municipalities within the county.

B. For the purpose of this section, the number of inhabitants of a local option district shall be determined by annual population estimates published by the economic development department.

C. Subsection A of this section shall not be construed to prevent any licensee holding a valid license issued under the Liquor Control Act [Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B and 8A of Chapter 60 NMSA 1978], or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Liquor Control Act and department regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted in Subsection A of this section.

History: Laws 1981, ch. 39, § 35; 1988, ch. 12, § 1; 1991, ch. 21, § 39.

The 1991 amendment, effective March 27, 1991, deleted "and tourism" following "development" in Subsection B.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Section constitutional. - This section, as now constituted, is clearly constitutional. The police power of the state to regulate and/or prohibit the possession, sale and dispensing of alcoholic beverages has been upheld against constitutional attack so many times that it is unnecessary to cite authority so holding. 1959-60 Op. Att'y Gen. No. 59-137.

Intent of quota. - The quota provisions of this section are intended to limit the number of liquor licenses allowed in the state. 1979 Op. Att'y Gen. No. 79-3.

Section inapplicable to transfer of existing licenses. - A liquor dispenser's license may not be transferred from one municipality to another even though limitations as to the number of licenses per population apply only to the issuance of new licenses and not to the transfer of existing licenses. A transfer from one municipality to another would be without restriction in this regard but would result in thwarting the legislative intent of limiting the number of licenses that can be issued to any one municipality. 1970 Op. Att'y Gen. No. 70-56.

Quota limitation enforced when licenses issued. - The director cannot legally issue a liquor license to a city without regard to the quota limitation imposed under this section. 1975 Op. Att'y Gen. 75-41.

"Major fraction thereof" could only mean more than one half. 1955-56 Op. Att'y Gen. No. 6384.

Each incorporated municipality is eligible for one license even though the population of the municipality is less than a major fraction of 2000. 1961-62 Op. Att'y Gen. No. 61-48.

Splitting of single liquor license under lease agreement not permitted. - Splitting of a single liquor license under a lease agreement in order to circumvent this section is not permitted. The state ABC board regulations intend to prevent such splits, and these regulations manifest the public policy of the state; any contracts in violation of the public policy are void. DiGesu v. Weingardt, 91 N.M. 441, 575 P.2d 950 (1978).

Hearings within scope of director's administrative powers. - It is entirely within the administrative powers of the chief of the division of liquor control (now director) to proceed with hearing to determine whether liquor license had originally been issued without authority under the statute. Petroleum Club Inn Co. v. Franklin, 72 N.M. 347, 383 P.2d 824 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 134.

Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825, 163 A.L.R. 581.

Validity of statutory classifications based on population - intoxicating liquor statutes, 100 A.L.R.3d 850.

48 C.J.S. Intoxicating Liquors § 100.

60-6A-19. No property right in license; exception.

A. The holder of any license issued under the Liquor Control Act or any former act has no vested property right in the license, which is the property of the state; provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978:

(1) shall be considered property subject to execution, attachment, a security transaction, liens, receivership and all other incidents of tangible personal property under the laws of this state, except as otherwise provided in the Liquor Control Act;

(2) may be assigned, transferred from person to person or leased, provided all requirements of the Liquor Control Act and department regulations are fulfilled; and

(3) shall be transferred as personal property upon attachment, execution, repossession by a secured party or lienor, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee. The director may by rule or regulation determine any application or notice requirement for a person who temporarily holds a license pursuant to this subsection.

B. Any license issued under the Liquor Control Act may be transferred to any location not otherwise contrary to law within the same local option district where the license is then located, provided all requirements of the Liquor Control Act and department regulations are fulfilled.

History: Laws 1981, ch. 39, § 36; 1991, ch. 257, § 1.

The 1991 amendment, effective June 14, 1991, designated the previously undesignated provisions as Subsection A and Paragraph (1) thereof; in Subsection A, substituted "provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978" for "provided that until June 30, 1991 licenses issued prior to the effective date of the Liquor Control Act" at the end of the introductory paragraph and added Paragraphs (2) and (3); and added Subsection B.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Constitutionality. - This section is constitutional. It does not take existing property interests without due process and it does not unreasonably deprive the owner of a liquor license of all or substantially all of the beneficial use of his license. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

A liquor license is a privilege subject to regulation and not a property right. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6A-20. Vested rights of licensees operating breweries, distilleries, rectifying plants or wineries.

If a permit or license is issued to a person for the operation of a brewery, distillery, rectifying plant or winery, and the permittee or licensee has commenced the operation of the brewery, distillery, rectifying plant or winery under the terms of the permit or license, the permit or license shall be construed to constitute a contract vesting in the licensee, for a period of fifty years from the date of the original issuance of the license or permit, a right to operate the business, which right shall not be impaired by any subsequent legislation or local option election. This section shall not be construed to permit the licensee or permittee to sell its products in this state contrary to the current laws of this state.

History: Laws 1981, ch. 39, § 17.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 108.

60-6A-21. Short title.

Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery Act."

History: 1978 Comp., § 60-6A-21, enacted by Laws 1983, ch. 280, § 2.

60-6A-22. Definitions.

As used in the Domestic Winery and Small Brewery Act:

A. "brandy" means an alcoholic liquor distilled from wine or from fermented fruit juice;

B. "beer" means any fermented beverage containing more than one-half percent alcohol obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereal in water, and includes porter, beer, ale and stout;

C. "small brewer" means any person who owns or operates a business for the manufacture of beer but does not manufacture more than two hundred thousand barrels of beer per year;

D. "public celebration" means any state fair, county fair, community fiesta, cultural or artistic performance;

E. "wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar, or

any such alcoholic beverage to which is added grape brandy, fruit brandy or spirits of wine which is distilled from the particular agricultural products of which the wine is made, and other rectified wine products by whatever name which do not contain more than fifteen percent added flavoring, coloring and blending material and which contain not more than twenty-four percent of alcohol by volume, and includes vermouth;

F. "wine blender" means a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the internal revenue laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities; provided that any person who produces or blends not to exceed three hundred gallons of wine per year shall not, because of such production or blending, be considered a wine blender; and

G. "winer" means any person who has facilities and equipment for the conversion in New Mexico, of grapes, berries or other fruit into wine and is engaged in the commercial production of wine; provided that any person who produces not to exceed two hundred gallons of wine per year for his own consumption shall not, because of such production, be considered a winer.

History: 1978 Comp., § 60-6A-22, enacted by Laws 1983, ch. 280, § 3; 1985, ch. 217, § 1.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Internal revenue laws. - The reference to the "internal revenue laws" in Subsection F seems to refer to the Internal Revenue Code, which appears as 26 U.S.C. § 1 et seq.

60-6A-23. Winer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a winer's license.

B. A winer's license authorizes the person to whom it is issued to do any of the following:

(1) become a manufacturer or producer of wine;

(2) to package, rectify, blend, mix, flavor, color, label and export wine, whether manufactured or produced by him or any other person;

(3) to sell only such wine as is packaged by or for him, to a person holding a New Mexico wine wholesaler's, wholesaler's, winegrower's, winer's or wine exporter's license or to a winer's agent;

(4) to deal in warehouse receipts for wine;

(5) on the winer's premises, to conduct wine tastings, sell wine by the glass or in unbroken packages, wine produced and bottled by or for the winer;

(6) at no more than two other locations off the winer's premises, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department regulations for new liquor license locations and has issued a winer's off-premises permit for each off-premises location, to conduct wine tastings and sell in unbroken packages for consumption off the winer's off-premises location, but not for resale, wine produced and bottled by or for the winer;

(7) at public celebrations off the winer's premises, after the winer has paid the applicable fee specified in Subsection F of Section 60-6A-27 NMSA 1978 for a winer's public celebrations permit, to conduct wine tastings and sell by the glass or in unbroken packages, but not for resale, wine produced and bottled by or for the winer; and

(8) to be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

C. Except as limited by Subsections C and D of Section 60-7A-1 NMSA 1978, sales of wine as authorized by Subsections A and B of this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday and, in local option districts in which Sunday sales are permitted, the holder of a winer's license may conduct wine tastings and sell by the glass or in unbroken packages, wine produced and bottled by or for him on the winer's premises between the hours of noon and midnight on Sunday.

History: 1978 Comp., § 60-6A-23, enacted by Laws 1983, ch. 280, § 4; 1985, ch. 217, § 2; 1988, ch. 60, § 4.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-24. Wine blender's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a wine blender's license.

B. A wine blender's license authorizes the person to whom it is issued to exercise all the privileges of a winer's license except:

(1) to crush, ferment and produce wine from grapes, berries and other fruits;

(2) to obtain or be issued a winer's license, a retailer's license or a dispenser's license;

(3) to buy, sell, receive or deliver wine from persons other than authorized licensees; or

(4) to conduct wine tasting or sell for consumption off premises, at retail, or to sponsor wine tastings, either on or off the wine blender's premises.

History: 1978 Comp., § 60-6A-24, enacted by Laws 1983, ch. 280, § 5; 1985, ch. 217, § 3.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-25. Brandy manufacturer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a brandy manufacturer's license.

B. A brandy manufacturer is authorized to engage in the manufacture of brandy only and no other distilled spirits.

C. A brandy manufacturer shall sell only such brandy as is manufactured by him to persons holding a wholesaler's license or a winer's license or to a licensed wine exporter.

History: 1978 Comp., § 60-6A-25, enacted by Laws 1983, ch. 280, § 6; 1985, ch. 217, § 4.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-26. Wine exporter's license.

A wine exporter's license authorizes the person to whom it is issued, and under regulations prescribed by the director, to sell, deliver or consign wine or brandy manufactured or produced within this state for delivery, use or sale without the state.

History: 1978 Comp., § 60-6A-26, enacted by Laws 1983, ch. 280, § 7.

Cross-references. - For definition of "director," see 60-3A-3G NMSA 1978.

60-6A-26.1. Small brewer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to do any of the following:

(1) become a manufacturer or producer of beer;

(2) to package, label and export beer, whether manufactured or produced by him or any other person;

(3) to sell only such beer as is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) to deal in warehouse receipts for beer;

(5) to conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, such licensee on the small brewer's premises; and

(6) to be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: 1978 Comp., § 60-6A-26.1, enacted by Laws 1985, ch. 217, § 5.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-27. License fees.

Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

A. brandy manufacturer's license, seven hundred fifty dollars ($750);

B. small brewer's license, seven hundred fifty dollars ($750);

C. winer's license, seven hundred fifty dollars ($750);

D. wine blender's license, seven hundred fifty dollars ($750);

E. wine exporter's license, five hundred dollars ($500);

F. winer's off-premises permit, two hundred dollars ($200) for each off-premises location; and

G. winer's public celebrations permit, ten dollars ($10) for each public celebration.

History: 1978 Comp., § 60-6A-27, enacted by Laws 1983, ch. 280, § 8; 1985, ch. 217, § 6.

60-6A-28. Nonresident licenses.

Notwithstanding the provisions of Sections 60-6B-1 and 60-6B-2 NMSA 1978, a person not a citizen of the United States may apply for and be granted, subject to other qualifications required by the Liquor Control Act, any license established by the provisions of the Domestic Winery and Small Brewery Act; provided that the director of the department of alcoholic beverage control, in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act.

History: 1978 Comp., § 60-6A-28, enacted by Laws 1983, ch. 280, § 9; 1985, ch. 217, § 7.

Cross-references. - For definition of "director," see 60-3A-3G NMSA 1978.

Compiler's note. - The reference to the Domestic Winery and Small Brewery Act, added by Laws 1985, ch. 217, probably should be to the Domestic Winery Act. See 60-6A-21 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-29. Wine wholesaler's license.

A. In any local option district, a winegrower or winer licensed under the Liquor Control Act may apply for and be issued a license as a wine wholesaler of wines produced by New Mexico winegrowers or winers.

B. No wine wholesaler shall sell, offer for sale or ship wine not received at and shipped from the premises specified in the wine wholesaler's license.

C. No wine wholesaler shall sell or offer for sale wine to any person other than the holder of a New Mexico wine wholesaler's, wholesaler's, retailer's, dispenser's, canopy, restaurant or club license or a governmental licensee or its lessee.

D. Nothing contained in this section shall prevent the sale, transportation or shipment of wine by a wine wholesaler to any person outside the state when shipped under permit from the department.

History: Laws 1988, ch. 60, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6A-30. Posting of warnings.

Any licensee holding a license pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978 or Section 60-6B-16 NMSA 1978 shall post in a conspicuous place a sign in both English and Spanish that reads as follows:

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

The director shall prescribe the form of such warning and shall make warning signs available to all such license holders.

History: Laws 1991, ch. 68, § 1.

Effective dates. - Laws 1991, ch. 68 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

ARTICLE 6B
LICENSE PROVISIONS

60-6B-1. Persons prohibited from receiving or holding licenses.

The following classes of persons shall be prohibited from receiving or holding licenses under the provisions of the Liquor Control Act:

A. a person who has been convicted of two separate misdemeanor or petty misdemeanor violations of the Liquor Control Act in any calendar year or of any felony,

unless the person is restored to the privilege of receiving and holding licenses by the governor or unless the director determines that the person merits the public trust, in which case the person shall receive licenses under reasonable terms and conditions fixed by the director, which shall include that the person pay an administrative penalty of two thousand five hundred dollars ($2,500) for each license held by that person;

B. a minor; or

C. a corporation which is not duly qualified to do business in New Mexico, unless the licensee holds a public service license or a nonresident license issued under Section 60-6A-7 NMSA 1978; provided, however, that a corporation which owns stock in a corporation which owns a New Mexico liquor license does not need to be qualified to do business in New Mexico regardless of the size of the ownership interest.

History: Laws 1981, ch. 39, § 37; 1987, ch. 198, § 1; 1989, ch. 292, § 1; 1991, ch. 119, § 6.

The 1991 amendment, effective June 14, 1991, inserted "or petty misdemeanor" in Subsection A.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Persons convicted of felonies. - The director of the department of alcoholic beverage control has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-2.

A bar and liquor license had been held in trust by a father for his son, a convicted felon. Upon the son's death, the doctrine of unclean hands did not preclude judgment in favor of the son's heirs, who sued to enforce the trust. Granado v. Granado, 107 N.M. 456, 760 P.2d 148 (1988).

Two misdemeanors in same year preclude license renewal. - Two personal misdemeanor violations of the liquor act within one calendar year are requisite before prohibition on receiving a renewal license becomes applicable. 1945-46 Op. Att'y Gen. No. 4680.

Conviction, subsequent arrest on another charge, insufficient for section's prohibition. - Two convictions, and not merely one conviction and a subsequent arrest on another charge, must occur in the same calendar year in order for the prohibition of this section to become operative. 1965 Op. Att'y Gen. No. 65-215.

One-year sentence imposed by court-martial not felony. - Imposition of a sentence of more than one year by a duly appointed court-martial is not to be considered a felony per se as contemplated by the language of this section. 1957-58 Op. Att'y Gen. No. 58-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 147 to 152, 156 to 158.

48 C.J.S. Intoxicating Liquors § 135.

60-6B-1.1. Licenses held by noncitizens.

A person not a citizen of the United States may apply for and be granted any license, subject to other qualifications required by the Liquor Control Act; provided that the director of the department of alcoholic beverage control in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act.

History: 1978 Comp., § 60-6B-1.1, enacted by Laws 1989, ch. 292, § 2.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6B-2. Applications.

A. Before any new license authorized by the Liquor Control Act may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of one hundred fifty dollars ($150);

(2) submit to the director for his approval a description, including floor plans, in a form prescribed by the director, which shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than ten percent of the stock would not be eligible to hold a license pursuant to the Liquor Control Act, except that the provision of Subsection B [C] of Section 60-6B-1 NMSA 1978 shall not apply if the stock is listed with a national securities exchange;

(c) the name of the resident agent of the corporation authorized to accept service of process for all purposes, including orders and notices of the director, which agent must be approved by the director with respect to his character;

(d) a duly executed power of attorney authorizing the agent described in Subparagraph (c) of this paragraph to exercise full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the sale of alcoholic beverages under authority of the license requested; and

(e) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(4) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. No limited partnership shall receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility; and

(5) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership. Licenses may be issued by the department pending the results of any investigation based on the fingerprints submitted.

C. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

D. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection H of this section.

E. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. No person shall file more than one application for each available license and no more than three applications per calendar year.

F. After the deadline set in accordance with Subsection E of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection H of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

G. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

H. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. Based upon evidence taken at the hearing, the director shall, within thirty days after the hearing, disapprove the issuance or give preliminary approval of the issuance of the license.

I. Before any new retailer's or dispenser's license is issued for a location where alcoholic beverages are not then being sold, the director shall cause a notice of the

application therefor to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to the hearing for the preliminary approval of the license.

J. No license shall be issued until the posting requirements of Subsection I of this section have been met.

K. All costs of publication and posting shall be paid by the applicant.

L. It is unlawful for any person to remove or deface any notice posted in accordance with this section. Any person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment in the county jail for not more than one hundred twenty days, or by both.

M. Any person aggrieved by any decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court of jurisdiction by filing a petition in the court within thirty days from the date of the decision of the director, and a hearing on the matter may be held in the district court. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court. Any appeal from the decision of the district court to the supreme court shall be permitted as in other cases of appeals from the district court to the supreme court.

History: Laws 1981, ch. 39, § 38; 1983, ch. 6, § 1; 1989, ch. 118, § 1.

Cross-references. - For definitions of "department" and "director," see 60-3A-3 NMSA 1978.

Compiler's note. - The reference in Subsection A(3)(b) to Subsection B of Section 60-6B-1 NMSA 1978 is apparently erroneous. The apparent intended reference is to Subsection C of 60-6B-1 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Posting requirements must be satisfied before license issued. - This section clearly shows that there is no authority on the part of the chief of liquor control (now superintendent of regulation and licensing) to issue any license until the provisions in the statute with reference to posting are fulfilled. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Posting conspicuous notice mandatory. - Former Subsection C (now Subsection I) specifies how and where the notice of application shall be posted. It is precise and clear. This statute is mandatory. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

"Conspicuous" defined. - The word "conspicuous" means: "Obvious to the eye or mind; plainly visible, manifest, attracting or tending to attract attention, as by reason of size, brilliance, contrast or station." Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Meaning of "such posting". - The language "such posting" in the last sentence of former Subsection C (now Subsection I) means that it must be conspicuous and it must be on the front entrance of the immediate premises. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

When notice not posted "conspicuously". - A notice was not posted conspicuously where it was posted back on unimproved property at a distance sufficient so that it could not be read by anyone at the edge of the highway and at the fence at the front of the premises but could be read only by those who took the trouble to climb over, or crawl through and go back to the post to read the notice thereon placed. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Purpose of posting requirement. - The purpose behind the requirement that there be a posting of the liquor license application is to give notice to any interested person who may wish to protest it. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

And protests acceptable in either oral or written form. - As no provision is made for a hearing of the protest of individuals, it seems that this section concerning posting of notice contemplates protests may be in writing or oral. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953); Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

Right of appeal from director's decision limited. - Since a right of appeal exists only with reference to the issuance or refusal to issue of liquor licenses, and appeal does not lie from a decision of the chief of the division of liquor control (now superintendent of regulation and licensing) denying application for the change of location in authorized use of the existing license. Taggader v. Montoya, 54 N.M. 18, 212 P.2d 1049 (1950).

Generally, court cannot modify or overrule director's orders. - As long as the chief of the division of liquor control (now superintendent of regulation and licensing) acts within the provisions of the law, courts cannot modify or overrule his administrative orders, or otherwise question the expediency or wisdom shown in issuing or revoking of liquor licenses. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

District court cannot usurp administrative functions. - The district court does not have the administrative function of determining whether or not a liquor permit should be granted. The Liquor Control Act gives the court authority only to determine whether, upon the facts and law, the action of the official in cancelling the license was based

upon an error of law or was unsupported by substantial evidence or clearly arbitrary or capricious; otherwise it would be a delegation of administrative authority to the district court in violation of the constitution. Floeck v. Bureau of Revenue, 44 N.M. 194, 100 P.2d 225 (1940); Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Or pass upon legislative policy. - It is not for the courts to pass upon the wisdom of a legislative policy which removes from the municipality or county a segment of home rule which has long been associated with the liquor traffic. Sprunk v. Ward, 51 N.M. 403, 186 P.2d 382 (1947).

Court's authority under section is limited to determining whether under the facts and law, the action of the chief (now superintendent of regulation and licensing) was based on error of law, was not supported by substantial evidence or was patently arbitrary or capricious. Yarbrough v. Montoya, 54 N.M. 91, 214 P.2d 769 (1950).

License renewal pending approval. - Where the liquor chief (now superintendent of regulation and licensing) had suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case the district court's judgment should be reversed, on appeal. State v. Romero, 49 N.M. 127, 158 P.2d 850 (1944).

Aggrieved person needs direct interest to obtain relief. - A person aggrieved must be a person having a direct interest, pecuniary or otherwise, one different from the public as a whole. Padilla v. Franklin, 70 N.M. 243, 372 P.2d 820 (1962).

And must differ from interests of public. - Individual and institutional appellants who did not set forth nor show such a direct or pecuniary interest in the matter in controversy as to make them "aggrieved persons" were not entitled to relief under this section, since their interests in the public health, safety and morals of a community were no different than the interests of the public as a whole. Runyan v. Jaramillo, 90 N.M. 629, 567 P.2d 478 (1977).

Standing necessary for appeal. - Present owner of a liquor license which he claimed was within the 10-mile limit which could prevent the issuance of a new license to opposing party, had a direct pecuniary interest as distinguished from the public as a whole, and was an aggrieved person who had standing to appeal the decision of the chief of division of liquor control (now superintendent of regulation and licensing). Runyan v. Jaramillo, 90 N.M. 629, 567 P.2d 478 (1977).

One appealing solely as remonstrant lacks standing. - One who appeals solely as a remonstrant challenging the jurisdiction of the chief of division (now superintendent of regulation and licensing) in regard to the issuance of licenses to other applicants has no standing under this section. Padilla v. Franklin, 70 N.M. 243, 372 P.2d 820 (1962).

Writ of mandamus available as remedy when no right to appeal. - The fact that a city has no right to an appeal does not mean that it cannot bring an action for a writ of mandamus. City of Santa Rosa v. Jaramillo, 85 N.M. 747, 517 P.2d 69 (1973).

When issuance of writ of mandamus erroneous. - Where a letter from the division of liquor control (now superintendent of regulation and licensing) clearly shows that the application had been considered and in fact that the application cannot be processed because the quota of one license to each 2000 people has been more than filled in Rio Arriba county, there can be no doubt this amounted to a final decision on the division's (department's) part to refuse the application. A decision is a determination arrived at after consideration, an opinion formed, or a course of action decided upon. The applicant's remedy upon being advised of the decision was by appeal to the district court of Santa Fe county as expressly provided by Subsection E (now Subsection M). It follows that the district court erred in entering its judgment ordering the issuance of a peremptory writ of mandamus. Armijo v. Armijo, 77 N.M. 742, 427 P.2d 258 (1967).

Law reviews. - For comment on Continental Oil Co. v. Oil Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 153, 174, 175, 177, 178, 180 to 182.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Transfer of retail liquor license or permit from one location to another, 98 A.L.R.2d 1123.

48 C.J.S. Intoxicating Liquors §§ 116, 138, 142, 168.

60-6B-3. Wholesaler's lien.

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

History: 1978 Comp., § 60-6B-3, enacted by Laws 1991, ch. 257, § 2.

Cross-references. - For definition of "director," see 60-3A-3G NMSA 1978.

Repeals and reenactments. - Laws 1991, ch. 257, § 2 repeals former 60-6B-3 NMSA 1978, as amended by Laws 1984, ch. 58, § 2, relating to transfer of licenses, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

General lien law not applicable. - General lien law does not apply to a claim made under this section. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Notice of lien. - This section does not require that notice of the lien be recorded to effectuate the liquor wholesaler's lien. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

This section does not require notice of the lien to be filed to perfect the liquor wholesaler's lien. Automatic perfection of the wholesaler's lien occurs on the date the debt is incurred. The statute allows a wholesale liquor distributor to forego the requirement of filing a financing statement each time a credit sale is made to a retail distributor. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Priority of lien. - A lien pursuant to this section has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under 7-1-38 NMSA 1978 or under applicable general law prior to the date the licensee incurred debts owed to wholesaler creditors. In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986).

Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the New Mexico State Taxation and Revenue Department, if the tax lien is perfected pursuant to 7-1-38 NMSA 1978. The tax lien is effective as of the date the notice is filed. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by this section were prior to a bank's perfected security interest even if there was a violation of 60-7A-9 NMSA 1978, governing credit extension by wholesalers. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

This section does not allow the wholesaler to claim priority for each subsequent sale as of the date of the first transaction. Instead, each separate credit sale creates a separate lien. All liens other than tax liens become subordinate to the wholesaler's liens regardless of the date of perfection. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6B-4. Issuance or transfer of license; approval of appropriate governing body.

A. Prior to the approval of the issuance of a new license, and prior to the approval of any transfer permitted by Section 39 or 113 [60-6B-3 or 60-6B-12 NMSA 1978] of the Liquor Control Act, the director shall notify the governing body of his preliminary

approval of the issuance or transfer of the license. Notice to the governing body shall be by certified mail.

B. A governing body which has received a notice of preliminary approval of the issuance or transfer of a license from the department may approve or disapprove the issuance or transfer of the license in accordance with the provisions of this section.

C. Within forty-five days after receipt of a notice of preliminary approval from the department, the governing body shall hold a public hearing on the question of whether the department should approve the proposed issuance or transfer.

D. Notice of the public hearing required by Subsection C of this section shall be given by the governing body by:

(1) publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body. The notice shall set forth:

(a) the name and address of the licensee;

(b) the action proposed to be taken by the department;

(c) the location of the licensee's premises; and

(d) such other information as may be required by the department; and

(2) sending a notice by certified mail to the applicant of the date, time and place of the public hearing.

E. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

F. The governing body may disapprove the issuance or transfer of the license if:

(1) the proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico;

(2) the issuance or transfer would be in violation of a zoning or other ordinance of the governing body; or

(3) the issuance or transfer would be detrimental to the public health, safety or morals of the residents of the local option district.

G. Within thirty days after the public hearing, the governing body shall notify the department as to whether the governing body has approved or disapproved the proposed issuance or transfer of the license. If the governing body fails to either

approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

H. If the governing body disapproves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the department by the governing body with the notice of disapproval. If the governing body disapproves of the issuance or transfer of the license, the director shall disapprove the issuance or transfer of the license.

I. If the governing body approves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section of its approval. If the governing body approves of the issuance or transfer of the license, the director shall approve the issuance or transfer of the license.

History: Laws 1981, ch. 39, § 40.

Motion to intervene held timely. - Indian tribe political chapter's motion to intervene on appeal in a liquor license transfer case was timely filed, where the proposed transfer site was located within the geographical boundaries of the chapter, and the chapter wished to argue on behalf of the state's position on appeal. Thriftway Mktg. Corp. v. State, 111 N.M. 763, 810 P.2d 349 (Ct. App. 1990).

No authority to restrict licensee's operation as condition for approval of waiver. - This section confers no express authority on local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by the predecessor of 60-6B-10 NMSA 1978, nor can such authority be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

Delegation of liquor law functions to local governments strictly construed. - Although there is no present question concerning the propriety of certain statutes delegating liquor law functions to local governments, such statutes must be strictly construed against any greater delegation of legislative power than clearly appears in the language used. 1980 Op. Att'y Gen. No. 80-23.

60-6B-5. Expiration and renewal of licenses.

All licenses provided for in the Liquor Control Act shall expire on June 30 of each year and may be renewed from year to year under the rules and regulations of the department. The director shall determine whether any of the licensees under his jurisdiction are delinquent in any taxes administered by the taxation and revenue department as of June 1 of each year. The director shall also determine whether or not there exists any other reason why a license should not be renewed. If the director determines that the license should not be renewed, he shall enter an order requiring the

licensee, after notice, to show cause why his license should be renewed, and he shall conduct a hearing on the matter. If, after the hearing, the director finds that the licensee is qualified, he shall renew the license.

History: Laws 1981, ch. 39, § 41.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

License of person convicted of felony. - The director of the department of alcoholic beverage control has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-2.

60-6B-6. Corporate licensees; limited partnership licensees; reporting.

A. A corporation which holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the officers, directors or holders of more than ten percent of the voting stock of the corporation, giving the names and addresses of the new officers, directors or stockholders. A corporate licensee shall also notify the director immediately of a change of agent by filing a new power of attorney. The director shall by regulation define what corporate changes, including but not limited to transfer of stock, merger and consolidation, constitute transfers of ownership of corporate licenses and shall, upon making such a determination, order appropriate compliance with the Liquor Control Act.

B. A limited partnership which holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change of general partners or of limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The director shall by regulation define what limited partnership changes constitute transfers of ownership of limited partnership licenses and shall, upon making such determination, order appropriate compliance with the Liquor Control Act.

C. A legal entity which is not a corporation or limited partnership and which holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the trustees or partners or owners of more than a ten percent interest in the entity, giving the names and addresses of the new trustees, partners or owners. The director shall by regulation define what entity changes constitute a transfer of ownership of such entity's license and shall, upon making such determination, order appropriate compliance with the Liquor Control Act.

History: Laws 1981, ch. 39, § 42; 1984, ch. 58, § 3.

Cross-references. - For definition of "director," see 60-3A-3G NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6B-7. Cancellation of license for failure to engage in business.

A. Any license issued under the provisions of the Liquor Control Act shall be canceled if the licensee fails to commence operation of the licensed business within one hundred twenty days after the license is issued and to continuously operate during customary hours and days of operation for that type of business; provided, however, the director may extend such period when construction or major renovation of a proposed licensed premises is planned by the licensee.

B. If, after the one-hundred-twenty-day period specified in Subsection A of this section, the licensee ceases to operate the licensed business during customary hours and days for that type of business for more than ten days, he shall notify the director in writing within five days of the cessation.

C. The director may grant temporary suspensions in the operation of the licensed business upon receipt of the notice provided in Subsection B of this section. However, no licensee shall be granted a single temporary suspension in the operation of the licensed business for any period in excess of ninety days and no more than two such ninety-day temporary suspensions in any one license year, unless the director determines that circumstances warrant the granting of a longer period of temporary suspension.

D. The license of any person failing to comply with any provision of this section shall be canceled after notice and hearing complying with the provisions of Section 60-6C-4 NMSA 1978.

History: Laws 1981, ch. 39, § 43; 1984, ch. 58, § 4.

Cross-references. - For definition of "director," see 60-3A-3G NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Legislative intent. - The clear wording of this section indicates that the legislature intended that, except in rare instances, liquor licensees should keep the usual hours on the usual days that bars and package stores are customarily open. 1963-64 Op. Att'y Gen. No. 63-121.

Provisions of section are mandatory. 1975 Op. Att'y Gen. No. 75-32.

Meaning of "shall". - This section is mandatory and the word "shall" means "must." 1967 Op. Att'y Gen. No. 67-140.

Determination of facts required prior to cancellation. - Before cancelling a license pursuant to this section, the chief of division (now superintendent of regulation and

licensing) must determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now superintendent of regulation and licensing) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

When mandamus lies to compel cancellation. - Where the director has a clear and present legal duty to cancel the liquor license in question because of nonuse in compliance with this statute, he has no discretionary matters to consider, and mandamus will lie to compel action by the director. City of Santa Rosa v. Jaramillo, 85 N.M. 747, 517 P.2d 69 (1973).

Law reviews. - For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Cancellation of Instruments § 6; 45 Am. Jur. 2d Intoxicating Liquors § 183.

48 C.J.S. Intoxicating Liquors § 175.

60-6B-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 257, § 5 repeals 60-6B-8 NMSA 1978, as enacted by Laws 1981, ch. 39, § 44, relating to death of licensee or dissolution or termination of the licensed business, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

60-6B-9. Discontinuance of business or death of licensee; judicial sales.

A. If a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee discontinues business for any reason or the licensee dies, the stock of alcoholic beverages owned at the time of the discontinuation of business or the death of the licensee may be sold in whole or in part to any other retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee or to a New Mexico wholesaler without the selling incurring criminal or civil liability under the provisions of the Liquor Control Act.

B. If the stock of alcoholic beverages is sold under execution or attachment or by order of a court, the stock shall be sold only to other New Mexico retailers, dispensers, canopy licensees, restaurant licensees, club licensees, governmental licensees or their lessees or to a New Mexico wholesaler.

History: Laws 1981, ch. 39, § 75.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 117.

48 C.J.S. Intoxicating Liquors § 115.

60-6B-10. Locations near church or school; restrictions on licensing.

No license shall be issued by the director for the sale of alcoholic beverages at a licensed premises where alcoholic beverages were not sold prior to July 1, 1981 which is within three hundred feet of any church or school. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the director a notice of intention to apply for transfer of a license to the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a waiver from a local option district governing body for the proposed licensed premises before the effective date of the Liquor Control Act. A waiver may be granted after the effective date of the Liquor Control Act but only for a licensed premises in a class A county located on the top floor of a building of at least fifteen stories, the construction of which building began prior to February 1, 1985 but was not completed on that date. The application to the governing body for the waiver shall be made prior to October 1, 1986. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall be the straight line distance from the property line of the licensed premises to the property line of the church or school. This provision shall not apply to any church which has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation.

History: Laws 1981, ch. 39, § 45; 1986, ch. 29, § 1.

Cross-references. - As to cultural properties review committee, see 18-6-4 NMSA 1978.

Effective date of Liquor Control Act. - The phrase "effective date of the Liquor Control Act", referred to at the end of the third sentence and in the fourth sentence, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

Standards for waiver must be defined and uniformly applied. - Any action taken by a home rule municipality to condition its consent to waive the distance requirement of this section must have uniform application to all persons requesting the waiver and must

contain definable standards for the imposition of those conditions. 1980 Op. Att'y Gen. No. 80-23.

Waiver may not be conditioned on restriction of operations. - There is no express authority for a local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by this section, nor can such authority be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

To determine proximity of proposed liquor establishment to an established church or school, the measurement should be made between the limits of the real property of the church or school within which the ordinary and usual activities incident to such institutions are conducted and that portion of the structure in which alcoholic beverages are actually to be sold. 1974 Op. Att'y Gen. No. 74-18.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 140 to 142, 144 to 146.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Measurement of distance for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

48 C.J.S. Intoxicating Liquors § 136.

60-6B-11. Locations near military installations; restrictions on licensing.

Except for licenses issued prior to July 1, 1981, the director shall not issue retailer's or dispenser's licenses where the licensed premises would be within one and one-half miles in any direction measured from the exterior boundaries of a United States military installation where United States military troops are domiciled. Provided, however, such licenses may be issued or transferred subject to the discretion of the director for operation in an area within the one-and-one-half-mile limitation if a portion of the area lies within the incorporated limits of any municipality, but no license shall be issued for or transferred to a location within two hundred yards of any entrance to the military installation.

History: Laws 1981, ch. 39, § 46.

Cross-references. - As to prohibition of liquor sales within one mile of a national guard camp, see 20-9-3 NMSA 1978.

"Restricted area" surrounding army posts intended by legislature. - A construction of this section by which existing licenses, lying both within and outside the one-and-one-half-mile zone, could be renewed and transferred to within such zone, gives no effect or purpose to the section. 1957-58 Op. Att'y Gen. No. 57-259.

And no new or additional licenses within restricted area. - It was the intent of the legislature that no new or additional liquor licenses were to be approved for areas extending one and one-half miles from the exterior boundary of a military installation or reservation where federal troops are stationed. 1959-60 Op. Att'y Gen. No. 59-58.

Meaning of "domiciled". - It must be concluded that the term "domiciled," as used in the statute, refers to the assigned or stationed status of the personnel on the post. And further, troops who are bivouacked on the range are domiciled thereon regardless of the length of their stay. 1959-60 Op. Att'y Gen. No. 59-58.

Measurement contemplated under section is in straight line from the nearest point on the boundary of the army post. 1943-44 Op. Att'y Gen. No. 4627.

And from outermost reaches of reservation. - The legislation intended that the outermost reaches of a military reservation where troops are stationed must be looked to in determining and fixing the one-and-one-half-mile area restricted from selling of intoxicating beverages. 1959-60 Op. Att'y Gen. No. 59-58.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Measurement and computation of distances for purpose of statute or ordinance prohibiting license for sale of intoxicating liquor within given distance from certain institutions or property, 4 A.L.R.3d 1250.

48 C.J.S. Intoxicating Liquors § 136.

60-6B-12. Inter-local option district transfers.

A. All dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law subject to the approval of transferring locations of such liquor licenses of the governing body for that location, and, provided all the requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled, and, provided further:

(1) the transfer of location does not lower the number of dispenser's and retailer's licenses below that number allowed by law in the local option district from which a license will be transferred;

(2) no more than five dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year;

(3) the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection E of Section 60-6B-2 NMSA 1978; and

(4) the dispenser's or retailer's licenses shall be operated by the person who transfers the license to the local option district for at least a period of one year from the date of the approval of the transfer by the department.

B. Transfers of location of each liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district during the period of economic adjustment. Notice of such election shall be published as provided in Section 3-8-35 NMSA 1978, and the election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that district, unless a petition is filed requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

C. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises.

D. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; provided they shall not be transferred to any location within ten miles of another licensed premises; and provided further that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled.

History: Laws 1981, ch. 39, § 113; 1984, ch. 58, § 5; 1985, ch. 183, § 1; 1991, ch. 257, § 3.

Cross-references. - For definition of "department," see 60-3A-3F NMSA 1978.

The 1991 amendment, effective June 14, 1991, deleted "Period of economic adjustment" at the beginning of the catchline; deleted former Subsections A to C and H, relating to the period of economic adjustment; redesignated former Subsections D to G as present Subsections A to D; in Subsection A, rewrote the introductory paragraph, added present Paragraph (2), redesignated former Paragraphs (2) and (3) as present Paragraphs (3) and (4) and deleted former Paragraph (4); in Subsection B, substituted "3-8-35" for "3-8-2" in the fourth sentence; substituted "transfer of licenses" for "issuance of new licenses" near the end of Subsection D; and made related changes and minor stylistic changes throughout the section.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effective date of the Liquor Control Act. - The effective date of the Liquor Control Act, referred to in Subsection B, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

60-6B-13. Prohibited acquisitions.

A. On or after the effective date of the Liquor Control Act and notwithstanding any other provisions of that act, for a period of three years from the date of the sale:

(1) a dispenser or retailer who sells his license to another shall not acquire a restaurant license for the premises licensed immediately prior to the sale; and

(2) a dispenser or retailer who sells his license to another shall not acquire a license for the premises licensed immediately prior to the sale if the acquired license was used in any other local option district immediately prior to the acquisition.

B. For the purpose of this section, "sale" means to transfer a license to another person for money or any other thing of value.

History: Laws 1981, ch. 39, § 115.

Effective date of the Liquor Control Act. - The effective date of the Liquor Control Act, referred to in Subsection A, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

60-6B-14. Canopy license definition.

As used in the Liquor Control Act, "canopy license" means a license which was initially issued prior to January 1, 1988 pursuant to Laws 1981, Chapter 39, Section 117 and which permits the licensee to dispense alcoholic beverages in the same manner as permitted by a dispenser's license, subject to the provisions of Section 60-6B-16 NMSA 1978.

History: 1978 Comp., § 60-6B-14, enacted by Laws 1988, ch. 12, § 2.

Repeals and reenactments. - Laws 1988, ch. 12, § 2, repeals former 60-6B-14 NMSA 1978, as enacted by Laws 1981, ch. 39, § 116, and enacts the above section, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Compiler's note. - Laws 1981, Chapter 39, Section 117, referred to in this section, was codified as the prior version of 60-6B-15 NMSA 1978, the provisions of which are in the 1987 Replacement Pamphlet.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6B-15. Purpose.

The legislature determines that the economic development of the state will be best served by not terminating the existing eighty-six canopy licenses but rather by replacing the canopy licenses with dispenser's licenses as provided in this act in order to increase state revenues, to avoid the loss of state and local tax and license fee revenues, to avoid the loss of many jobs and to help promote a stable business climate in the state.

History: 1978 Comp., § 60-6B-15, enacted by Laws 1988, ch. 12, § 3.

Repeals and reenactments. - Laws 1988, ch. 12, § 3, repeals former 60-6B-15 NMSA 1978, regarding issuance of canopy licenses, as enacted by Laws 1981, ch. 39, § 117, and enacts the above section, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1988, Chapter 12, which appears as 60-6A-18 and 60-6B-14 to 60-6B-16 NMSA 1978.

60-6B-16. Special provisions for replacement of canopy licenses; transfer tax.

A. On July 1, 1988, notwithstanding the provisions of Section 60-6A-18 NMSA 1978, each canopy license, upon the payment to the department of a one-time transfer tax of five thousand dollars ($5,000) and the applicable annual license renewal fee, shall become a dispenser's license.

B. The location of a dispenser's license issued pursuant to this section may only be transferred within the local option district in which the replaced canopy license was located on January 1, 1988 subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of location as provided in this subsection, the license shall be operated by the person who transfers the location of the license for a period of at least one year from the date of approval of the transfer by the department.

C. Ownership of a dispenser's license issued pursuant to this section may be transferred in the same manner as provided for the transfer of ownership of dispenser's licenses issued under any former act to the Liquor Control Act subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of ownership as provided in this subsection, the location of the license shall not be transferred for a period of at least one year from the date of approval of the transfer of ownership by the department.

D. A dispenser's license issued pursuant to this section may be leased in the same manner as provided for the lease of dispenser's licenses issued under any former act to the Liquor Control Act subject to approval of the department and the limitations set forth in Subsection E of this section.

E. If the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 by a person who applies to the department to acquire ownership of the license after January 1, 1988 or if the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 pursuant to a lease agreement entered into after January 1, 1988, the license shall only entitle the licensee or his lessee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises. Sale of alcoholic beverages in unbroken packages for consumption off the licensed premises shall not be permitted after a transfer described in this subsection.

F. Any canopy license for which the transfer tax imposed by this section is not paid to the department by August 31, 1988 shall be subject to cancellation by the director as provided in Section 60-6B-5 NMSA 1978.

G. The department shall deposit all transfer taxes collected as provided in this section in the general fund.

History: 1978 Comp., § 60-6B-16, enacted by Laws 1988, ch. 12, § 4.

Repeals and reenactments. - Laws 1988, ch. 12, § 4, repeals former 60-6B-16 NMSA 1978, as enacted by Laws 1981, ch. 39, § 118, and enacts the above section, effective May 19, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-6B-17, 60-6B-18. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 12, § 5 repeals 60-6B-17 and 60-6B-18 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 119 and 120, relating to renewal of canopy license fees and to dispenser's or retailer's licenses which had co-users, effective May 18, 1988. For provisions of former sections, see the 1987 Replacement Pamphlet.

ARTICLE 6C
SUSPENSION AND REVOCATION OF LICENSES

60-6C-1. Grounds for suspension or revocation; reporting requirement.

A. A liquor control hearing officer may suspend or revoke the license or fine the licensee, or both when he finds that any licensee has:

(1) violated any provision of the Liquor Control Act or any regulation or order promulgated pursuant to that act;

(2) made any material false statement in his application for the license granted him under the provisions of the Liquor Control Act; or

(3) suffered or permitted his licensed premises to remain a public nuisance in the neighborhood where it is located after written notice from the director that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.

B. Any charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the state police and local law enforcement agencies whose jurisdiction [jurisdictions] include the licensed establishment.

History: Laws 1981, ch. 39, § 97.

Cross-references. - For cancellation of license for nonuse, failure to engage in business, see 60-6B-7 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Superintendent has inherent power to cancel and revoke licenses. - The chief of the division (now superintendent of regulation and licensing), having power to grant liquor licenses under the provisions of the Liquor Control Act has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes governing and limiting the issuance thereof. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Presumption that valid license originally issued. - This section, in setting up grounds for revocation of a license, obviously implies that a prior valid license had been issued and the grounds of revocation enumerated in the statute relate to misconduct of one kind or another on the part of the licensee. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

Mistake of facts in issuing license ground for revocation. - A license issued under a mistake of facts necessary to authorize its issuance may be revoked; and the officer issuing it is not estopped by his conduct in issuing it to revoke or cancel it. Such a proceeding does not come under the statute authorizing a revocation of a license because of misconduct of the holder. Baca v. Grisolano, 57 N.M. 176, 256 P.2d 792 (1953).

As sale of liquor during prohibited hours. - Where proprietor permits his employees to sell liquor during prohibited hours, he would be liable under the statute for the violation and his license would be subject to revocation. 1945-46 Op. Att'y Gen. No. 4680.

And sale of liquor on Sunday. - Making a sale of intoxicating liquor on Sunday was grounds for revocation of dispenser's license. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

But failure to pay wholesaler not. - No retailer, dispenser or club licensee subjects himself to a suspension or revocation of his license by failing to pay his bills to a licensed wholesaler within 30 days from the date of delivery. 1957-58 Op. Att'y Gen. No. 58-153.

Premises remaining public nuisance. - A hearing officer may revoke a liquor license after hearing where the licensee permits his premises to remain a public nuisance after written notice from the director. 1987 Op. Att'y Gen. No. 87-15.

Revocation needs evidential support. - Action of chief of division (now superintendent of regulation and licensing) in revoking a license on the ground that it was issued illegally must be supported by some evidence of probative value, or else the decision of the liquor authority must be set aside. Baca v. Chaffin, 57 N.M. 17, 253 P.2d 309 (1953).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 187.

Showing as to diversion or other misconduct which will support revocation of liquor permit, 76 A.L.R. 1245.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Revocation of license for violation of regulation forbidding employee or entertainer from drinking or mingling with patrons at bar or tavern, or soliciting drinks from them, 99 A.L.R.2d 1216.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license, 51 A.L.R.3d 1130.

48 C.J.S. Intoxicating Liquors § 175.

60-6C-2. Hearings; location; open to public.

All hearings held pursuant to the provisions of the Liquor Control Act shall be conducted by a liquor control hearing officer unless otherwise provided for by that act and shall be held in the county in which the licensed premises that are the subject matter of the hearing are located except for hearings held under the provisions of Section 60-6B-2 NMSA 1978. All such hearings shall be open to the public.

History: Laws 1981, ch. 39, § 98; 1987, c. 255, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Liquor control hearing officer presides only at hearings that result from formal charges looking toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now superintendent of regulation and licensing). 1963-64 Op. Att'y Gen. No. 63-103.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 190.

Right to hearing before revocation or suspension of liquor license, 35 A.L.R.2d 1067.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-3. Liquor control hearing officer; appointment and qualification.

A. The governor shall appoint a liquor control hearing officer to preside over any hearing required under the provisions of the Liquor Control Act. Different hearing officers may be appointed from time to time to serve at the pleasure of the governor. The hearing officer shall receive compensation at the rate of one hundred dollars ($100) each day or fraction thereof that he presides. The maximum compensation allowed anyone hearing officer in any fiscal year shall be ten thousand dollars ($10,000). The hearing officer shall also receive mileage and per diem expenses while in the performance of his duties at the rate provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

B. A liquor control hearing officer shall be an attorney licensed to practice law in the state who has engaged actively in the practice of law in this state for a period of not less than three years prior to his appointment. No public officer or employee shall be eligible for appointment as a hearing officer. The hearing officer shall be impartial.

History: Laws 1981, ch. 39, § 99.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

60-6C-4. Proceedings on complaints; investigation; order to show cause; service; hearings.

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act, the director shall assign an inspector or agent to investigate the complaint.

B. The inspector agent shall investigate the complaint and make a written report to the director, stating whether probable cause exists for filing charges for the revocation or suspension of the license or fine of the licensee, or both.

C. If the director believes from the report that probable cause exists for filing charges against the licensee for the revocation or suspension of his license or for fining him, or for both, he or his designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. The director shall keep the original of the charge on file in his office.

E. After charges have been filed, the director shall issue an order for the licensee to appear to show cause why the license should not be revoked or suspended or why he should not be fined, or both on any ground set out in the charge. The director shall attach the original of the order to show cause to the original of the charge. The director shall send a true copy of the order to show cause to the governor with a request for the appointment of a liquor control hearing officer to preside over the hearing. The governor shall appoint a hearing officer within five days from the date of the receipt of the request.

F. The director shall have served upon the licensee, in the same manner as is provided for service of process pursuant to the Rules of Civil Procedure for the District Courts, a copy of the charge and a copy of the order to show cause at least ten days before the the date set for the appearance of the licensee to show cause why his license should not be revoked or suspended, or why he should not be fined, or both.

G. The person serving the charge and order to show cause shall make a return on the back of a copy of each in the following form:

"RETURN

On this ..... day of ....., 19 ....., I, ..., the

..... did deliver a copy of this document to .....,

(state official capacity, if any)

at or about ..... o'clock .....M., at the city of .... in the county of ....., New Mexico.

.....

Signature of official."

H. After service of the documents, and after making out the returns as required by Subsection G of this section, the person making the service shall convey the copies on which the returns of service are made to the director for filing with the originals.

I. The department shall prosecute the complaint.

J. At any hearing on an order to show cause, the liquor control hearing officer shall cause a record of hearing to be made which shall record:

(1) the style of the proceeding;

(2) the nature of the proceedings including a copy of the charge and a copy of the order to show cause, each showing the return of service;

(3) the place, date and time of the hearing and all continuances or recesses of the hearing;

(4) the appearance or nonappearance of the licensee;

(5) if the licensee appears with an attorney, the name and address of the attorney;

(6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;

(7) the findings of fact and law of the liquor control hearing officer as to whether or not the licensee has violated the Liquor Control Act as set out in the charge; and

(8) the decision of the liquor control hearing officer.

K. If the licensee fails to appear without good cause at the place designated in the order to show cause within one hour after the time set for the hearing, the liquor control hearing officer shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license revoked or suspended or the licensee fined, or both on all the grounds alleged in the charge, and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings.

L. If the licensee admits guilt on all grounds set out in the charge, the liquor control hearing officer shall order the revocation or suspension of the license or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of his order of revocation or suspension of the license or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

M. If the licensee appears at the hearing and remains mute or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the liquor control hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the hearing officer shall allow the licensee or his attorney to cross-examine all witnesses;

(2) the licensee shall be allowed to present testimony and evidence he may have in denial or in mitigation on the grounds set out in the charge;

(3) the department shall have the right to cross-examine the licensee or any witness testifying in his favor;

(4) the department shall present any evidence or testimony in rebuttal of that produced by the licensee;

(5) the liquor control hearing officer shall make a finding on each ground alleged and a finding of the guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any ground alleged and proved, the liquor control hearing officer shall make his order of revocation or suspension of the license or fine of the licensee, or both; and

(7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

N. No admission of guilt, admission against interest or transcript of testimony made or given in any hearing pursuant to Subsection N [M] of this section shall be received or used in any criminal proceedings wherein the licensee is a defendant; provided, however, if the licensee commits perjury in a hearing, the evidence shall be admissible in a perjury trial if otherwise competent and relevant.

O. The director shall adopt reasonable regulations setting forth uniform standards of penalties concerning fines and suspensions imposed by the director and the liquor control hearing officer.

History: Laws 1981, ch. 39, § 100.

Cross-references. - For service of process, see Rule 1-004.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Purpose of proceeding. - The object of an administrative proceeding to revoke a liquor license is not intended as a punishment of the licensee. The purpose is to ensure so far as possible the decent and orderly conduct of a business affecting the public health, morals, safety and welfare. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Proceeding in nature of civil action. - A proceeding before the chief of division of liquor control (now superintendent of regulation and licensing) to revoke a liquor license is not a criminal proceeding; rather it is an administrative proceeding in the nature of a civil action. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958); Lake v. Garcia, 91 N.M. 608, 577 P.2d 1254 (1978).

Section requires the director to sign order to show cause issued to licensee. Absent the director's signature, the process is void. Any order issued pursuant to defective process is null and void for lack of jurisdiction. Lasley v. Baca, 95 N.M. 791, 626 P.2d 1288 (1981).

Revocation proceedings are not governed by rules of criminal prosecutions. In such proceedings the offense need not be established beyond a reasonable doubt. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

And certain constitutional defenses not available. - The constitutional defenses of unreasonable search and seizure and self-incrimination are not available in revocation proceedings. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Testimony of entrapped witnesses competent. - In proceedings before the chief of division of liquor control (now superintendent of regulation and licensing), even assuming that the action of the state police officers constituted entrapment, this fact alone does not render witnesses' testimony unsubstantial, incompetent, irrelevant or incredible. The mere circumstance, standing alone, that the state's witnesses were engaged in a species of entrapment does not render their testimony unworthy of belief. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Liquor control hearing officer presides only at hearings that result from formal charges looking toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now superintendent of regulation and licensing). 1963-64 Op. Att'y Gen. No. 63-103.

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now superintendent of regulation and licensing) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

Determination of facts required prior to cancellation. - Before cancelling a license pursuant to this duty, the chief of division (now superintendent of regulation and licensing) must, of necessity, determine the facts which would authorize the cancellation. Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

When order suspending license fatally defective. - Order suspending liquor license was fatally defective in that the record did not contain a copy of the charge and a copy of the order to show cause, as required by this section. Jumbo, Inc. v. State ex rel. Branch, 81 N.M. 223, 465 P.2d 280 (1970).

Law reviews. - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 190.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged, 5 A.L.R.4th 1128.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-5. Administration of oaths; production of documents; witnesses.

The liquor control hearing officer shall have the power to administer oaths and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing held under the provisions of the Liquor Control Act by the issuance and service of subpoenas and subpoenas duces tecum. All witnesses

subpoenaed shall be paid attendance fees and mileage in like amount and manner as if appearing in a criminal proceeding in a district court of this state. The hearing officer shall have authority to rule upon offers of proof and receive relevant evidence, take, allow or cause depositions to be taken, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests or similar matters and reopen the hearing for the taking of additional evidence at any time prior to the taking of an appeal.

History: Laws 1981, ch. 39, § 101.

Cross-references. - For witnesses' fees, see 38-6-4 NMSA 1978.

For subpoena for production of documentary evidence, see Rule 1-045.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 189.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-6. No injunction or mandamus permitted; appeal; preference; notice of appeal.

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. Any licensee aggrieved or adversely affected by any order of revocation, suspension or fine shall have the right to appeal to the district court of the county in which the licensed premises are located for a judicial review of the order within thirty days of the entry of the order. The appeal shall be taken by filing a petition for review setting forth the grounds of complaint against the order of suspension, revocation or fine. The matter on appeal shall be heard by the court without a jury, and the court shall grant the matter a preference on the docket. The court shall set aside any order of suspension, revocation or fine found to be:

(1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(2) in excess of statutory jurisdiction, authority or limitations or short of statutory right; or

(3) unsupported by substantial evidence.

B. In making the determinations, the court shall review the entire record or such portions as may be cited by any party. The director shall be given at least ten days' notice before hearing on an appeal may be held. A complete copy of the record of hearing shall be filed in the office of the clerk of the court before the hearing on the appeal, which copy shall be furnished by the department at the request of the licensee or his attorney.

C. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

D. Appeals from the decision of the court to the supreme court of the state may be made in accordance with the rules of the supreme court.

History: Laws 1981, ch. 39, § 102; 1987, ch. 255, § 2.

Cross-references. - As to writ of mandamus, see 44-2-1 NMSA 1978.

For Rules of Appellate Procedure, see Judicial Pamphlet 12.

Effect of new evidence appeal. - Any new evidence admitted must relate itself to whether the chief of the division of liquor control (now superintendent of regulation and licensing) acted arbitrarily, capriciously or fraudulently, since the proceeding under this section is not de novo. Chiordi v. Jernigan, 46 N.M. 396, 129 P.2d 640 (1942)(decided under former law).

Where district court did not have jurisdiction to entertain appeal by city for the transfer of a liquor license by director of the department of alcoholic beverage control (now superintendent of regulation and licensing) since no statute allows an appeal from the action of director (superintendent) in transferring a liquor license. City of Truth or Consequences v. State, Dep't of ABC, 84 N.M. 589, 506 P.2d 333 (1973).

Supreme court decides if order sustained by substantial evidence. - Upon review, the supreme court must determine whether the order or findings of the chief of division of liquor control (now superintendent of regulation and licensing) were sustained by substantial, competent, relevant and credible evidence. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958).

Law reviews. - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 191.

48 C.J.S. Intoxicating Liquors § 178.

60-6C-7. Summary suspensions.

Where the director has reasonable grounds to believe and finds that a licensee has been guilty of a deliberate and willful violation of the Liquor Control Act or any regulation or order of the department or that the public health, safety or welfare requires emergency action, the director may summarily suspend the license without notice or hearing for a period of three days. Immediately thereafter, the director shall comply with the provisions of Section 100 [60-6C-4 NMSA 1978] of the Liquor Control Act.

History: Laws 1981, ch. 39, § 103.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Section unconstitutional. - Because the director may summarily suspend a license without giving notice or requiring a hearing, this section violates procedural due process. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

60-6C-8. Restriction on license after revocation.

If a license is revoked under the provisions of the Liquor Control Act, the licensee shall not be issued or be the transferee of a license within two years of the date of the revocation.

History: Laws 1981, ch. 39, § 104.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effect of setting aside order on appeal. - Where the liquor chief (now superintendent of regulation and licensing) has suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case the district court's judgment should be reversed. State v. Romero, 49 N.M. 127, 158 P.2d 850 (1944).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 176.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-9. Compromising liability.

The director is authorized to compromise the penalty for any violations of the Liquor Control Act or of any department regulation or order when he deems it is in the best interest of the state.

History: Laws 1981, ch. 39, § 105.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

ARTICLE 7
STATE LICENSES

60-7-1 to 60-7-33. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-7-1 to 60-7-33 NMSA 1978, relating to the issuance of licenses, effective July 1, 1981. For present provisions, see 60-6A-1 to 60-6A-20, 60-6B-1 to 60-6B-18.

ARTICLE 7A
OFFENSES

60-7A-1. Hours and days of business; Sunday sales; election.

A. Alcoholic beverages shall be sold, served, delivered or consumed on licensed premises only during the following hours and days:

(1) on Mondays from 7:00 a.m. until midnight;

(2) on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsection F of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections B and F of this section; provided, however, nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels.

B. Subject to the provisions of Subsection E of this section, a dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars ($100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection C of this section. The permit shall expire on June 30 of each year and may be renewed from year to year upon

application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection shall be called "Sunday sales".

C. Retailers, dispensers, canopy licensees, restaurant licensees, club licensees and governmental licensees or its lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises during voting hours on the days of the primary election, general election, elections for officers of a municipality and any other election as prescribed by the rules and regulations of the director.

D. Retailers, dispensers, canopy licensees, restaurant licensees, club licensees and governmental licensees or its lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after Christmas.

E. At the 1984 general election, the secretary of state shall order placed on the ballot in each local option district the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?". If the secretary of state determines a need, he may authorize the use of paper ballots for the purpose of the election provided for pursuant to this subsection. Until such election, Sunday sales shall be permitted on the same basis in any local option district as provided under any former act, and the election held at the first general election following the effective date of the Liquor Control Act of 1981 shall have no effect on whether Sunday sales are permitted in any local option district. If the question is disapproved by a majority of those voting upon the question in the local option district, Sunday sales shall be unlawful in that local option district upon certification of the election returns, and the question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

(2) a petition is filed with the local governing body bearing the signatures of registered qualified electors of the local option district equal in number to ten percent of the number of votes cast and counted in the local option district for governor in the last preceding general election in which a governor was elected. The signatures on the petition shall be verified by the clerk of the county in which the local option district is situated.

F. The local governing body of a local option district in an eligible county shall:

(1) adopt a resolution within sixty days of April 7, 1989 calling for an election to place on the ballot the question "Shall a retailer or dispenser be allowed to sell or deliver alcoholic beverages at any time from a drive-up window?";

(2) arrange for the election to be held within sixty days after the date the resolution is adopted; and

(3) ensure that the election is called, conducted, counted and canvassed in the manner provided by law for elections within the county.

As used in this subsection, "eligible county" means any county that, according to motor vehicle statistics reported to the state highway and transportation department during the years 1985 and 1986, convicted more than twenty-five persons for each one thousand licensed drivers of driving while intoxicated offenses.

History: Laws 1981, ch. 39, § 47; 1984, ch. 58, § 6; 1987, ch. 321, § 1; 1989, ch. 331, § 1; 1989, ch. 332, § 1; 1991, ch. 255, § 1.

Cross-references. - For definitions of "director" and "local option district," see 60-3A-3 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "April 7, 1989" for "the effective date of this act" in Paragraph (1) in Subsection F and, in the last paragraph in Subsection F, substituted "1985 and 1986" for "1984 through 1986" and made a minor stylistic change.

Effective date of the Liquor Control Act. - The phrase "effective date of the Liquor Control Act," referred to in this section, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

Constitutionality. - This section is a proper exercise of legislative power and does not violate equal protection of the laws, under U.S. Const., amend. XIV, § 1 and N.M. Const., art. II, § 18, nor the prohibitions of the furtherance and establishment of religion clause of U.S. Const., amend. I and N.M. Const., art. II, § 11. Pruey v. Department of ABC, 104 N.M. 10, 715 P.2d 458 (1986).

Subsection F does not violate the equal protection clauses of the federal and state constitutions. Thompson v. McKinley County, 112 N.M. 494, 816 P.2d 494 (1991).

Subsection F is constitutional special legislation within the meaning of N.M. Const., art. IV, § 24. Thompson v. McKinley County, 112 N.M. 494, 816 P.2d 494 (1991).

The title of the act which enacted Subsection F was not unconstitutionally misleading. It fairly gave reasonable notice of the subject matter of the bill - to allow local elections to determine the fate of drive-up windows vending alcohol. Thompson v. McKinley County, 112 N.M. 494, 816 P.2d 494 (1991).

Predecessor to Subsection E held unconstitutional. - Where the title of Laws 1971, ch. 30, which enacted a former version of this section, and which purported, in part, to provide for local option elections concerning the sale of alcoholic beverages on Sunday, recited that it related to alcoholic liquors, that it repealed certain statutory provisions (unrelated to such local option elections) and pertained to "hours and days of business," it was held that the title was restrictive in nature, containing nothing germane to the

elections contemplated and therefore the predecessor to Subsection E of this section was unconstitutional under N.M. Const., art. IV, § 16. Martinez v. Jaramillo, 86 N.M. 506, 525 P.2d 866 (1974).

Sale of liquor on Sunday is grounds for revocation of dispenser's license. Kearns v. Aragon, 65 N.M. 119, 333 P.2d 607 (1958)(decided under former law).

Election on Sunday sales mandatory. - Because of the express authorization for the continuation of Sunday sales as permitted under any former law until the question is reconsidered at the next general election, it is clear that the legislature fully intended that such reconsideration take place. The election on Sunday sales shall thus be a mandatory one administered by the secretary of state pursuant to the Election Code. 1981 Op. Att'y Gen. No. 81-9 (rendered prior to 1984 amendment).

"General state election" defined. - The words "general state election" mean any election authorized by the legislature of the state of New Mexico, under auspices of the secretary of state of the state of New Mexico and under the election laws and in which every precinct must hold an election. The bars must be closed (now during voting hours) in any election which is statewide and which is conducted pursuant to an act of the legislature authorizing the specific election and is certified to the secretary of state and the New Mexico state canvassing board. 1955-56 Op. Att'y Gen. No. 6312 (opinion rendered under former law).

Licensed premises may remain open during bond elections. - A bond election, called by either the municipal or county government, would not be a general election, and licensed premises may remain open for the sale of alcoholic beverages on days designated for holding bond elections. 1957-58 Op. Att'y Gen. No. 57-295 (opinion rendered under former law).

"Local option districts" construed. - For the purpose of placing the question of Sunday sales on the general election ballots, each county except Roosevelt and Curry, which have rejected local option district status, and the incorporated municipalities of Clovis and Portales, which have independently voted to become local option districts, are considered "local option districts." 1982 Op. Att'y Gen. No. 82-15.

A governmental licensee may engage in Sunday sales of alcoholic beverages. 1987 Op. Att'y Gen. No. 87-28.

Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 276.

Validity, construction, and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

48 C.J.S. Intoxicating Liquors § 256.

60-7A-2. Sunday sales at racetracks.

Notwithstanding other provisions of the Liquor Control Act, it is lawful for a dispenser, whose licensed premises are located on a public horseracing track licensed by the state racing commission, to sell, serve or permit the consumption of alcoholic beverages by the drink on Sunday during the racing season between the hours of 12:00 noon and 11:00 p.m.

History: Laws 1981, ch. 39, § 48.

Cross-references. - For termination date of racing commission, see 12-9-15 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

For constitutionality of section. - See State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

60-7A-3. Transportation into state without permit; exportation of alcoholic beverages without permit; importation for private use; reciprocal shipping; when unlawful.

A. Except as provided in Subsection E of this section, it is a violation of the Liquor Control Act for any registered common carrier to knowingly deliver any shipment of alcoholic beverages from another state to any person in this state without receiving at the time of delivery a permit issued by the department covering the quantity and class of alcoholic beverages to be delivered, and requiring the shipment be transported from the shipper designated in the permit to the designated consignee and from the designated point of origin to the destination designated in the permit.

B. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for any person other than a registered common carrier to knowingly transport from another state and deliver in this state any alcoholic beverages unless the person has in his possession on entering New Mexico a permit from the department for the quantity and class of alcoholic beverages to be delivered, designating the name of the shipper and consignee and the point of origin and destination of the alcoholic beverages.

C. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for any person to transport out of state any alcoholic beverages on

which the excise tax has not been paid unless the shipment is accompanied by a permit issued by the department for the exact quantity and class transported, showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic beverages.

D. Any individual not a minor may transport into or out of the state any reasonable amount of alcoholic beverages for the exclusive purpose of his private use or consumption, and nothing in the Liquor Control Act limits or applies to such private actions.

E. Any individual or licensee in a state which affords New Mexico licensees or individuals an equal reciprocal shipping privilege may ship for personal use and not for resale not more than two cases of wine, each case containing no more than nine liters, per month to any individual not a minor in this state. Delivery of a shipment pursuant to this subsection shall not be deemed to constitute a sale in this state and nothing in the Liquor Control Act limits or applies to such shipments. The shipping container of any wine sent into or out of this state under this subsection shall be labeled clearly to indicate that the package cannot be delivered to a minor or to an intoxicated person.

F. As used in this section, "in this state" means within the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 49; 1987, ch. 96, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Transportation permit required to ship beer or liquor to military base. - The transportation of beer or other alcoholic liquors to a post exchange or NCO club or officers' club on a ceded military reservation requires a transportation permit. 1953-54 Op. Att'y Gen. No. 5825.

Sale of beer to post exchange. - Beer, which is the only beverage authorized to be sold at a post exchange under federal law, would come within the provisions of this section. Although the state cannot exact an excise tax upon the sale of beer to post exchanges, under its police power it can provide and enforce reasonable regulations and control of the transportation of beer into the state for sale or delivery to post exchanges in federal areas. 1953-54 Op. Att'y Gen. No. 5825.

Wholesaler, who holds liquor imported duty free "in bond," may be issued a permit to transport this liquor out of the state even though no state excise tax has been paid thereon. 1963-64 Op. Att'y Gen. No. 63-1.

Minor cannot legally bring alcoholic beverages into state. - A minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the state of New Mexico. 1961-62 Op. Att'y Gen. No. 62-21.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Transportation of concealed liquor as an offense within presence of officer authorizing an arrest without a warrant, 44 A.L.R. 132.

What amounts to transportation of intoxicating liquor, 65 A.L.R. 983.

Conviction or acquittal in one district as bar to prosecution in another, based on continuous transportation of intoxicating liquor, 73 A.L.R. 1511.

Possessing liquor and transporting liquor as a single offense or as separate offenses, 74 A.L.R. 411.

48 C.J.S. Intoxicating Liquors § 234.

60-7A-4. Sale, shipment and delivery unlawful.

A. It is unlawful for any person on his own behalf or as the agent of another person, except a licensed New Mexico wholesaler or manufacturer or the agent of either, to directly or indirectly sell or offer for sale for shipment into the state or ship into the state, except as provided in Section 60-7A-3 NMSA 1978, any alcoholic beverages unless such person or his principals has secured a nonresident license as provided in Section 60-7A-7 NMSA 1978.

B. It is a violation of the Liquor Control Act to deliver any alcoholic beverages transported into the state unless the delivery is made in accordance with Section 60-7A-3 NMSA 1978.

C. As used in this section, "into the state of New Mexico" means into the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 50; 1987, ch. 96, § 2.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Section does not prevent bringing liquor into state for personal consumption. State v. Martinez, 48 N.M. 232, 149 P.2d 124 (1944).

Only licensed nonresident suppliers shall be permitted to import alcoholic beverages into New Mexico. Such importations may be made only to licensed New Mexico wholesalers or distilleries, and further, such importations shall be permitted only when approved by the division of liquor control (now superintendent of regulation and licensing). 1957-58 Op. Att'y Gen. No. 57-198.

Wholesaler's license required by one storing liquor in warehouse. - If a person uses a warehouse in New Mexico solely for the purpose of storing liquor, all of which is to be transported out of the state, such person must be licensed by the division of liquor

control (now superintendent of regulation and licensing), such person must obtain a wholesaler's license. 1961-62 Op. Att'y Gen. No. 62-110.

And required to deliver alcoholic beverages to military reservations. - All deliveries of alcoholic beverages to post exchanges and open messes located on and within the confines of ceded military reservations in New Mexico must be made by licensed New Mexico wholesalers or distributors. 1957-58 Op. Att'y Gen. No. 57-198.

Transportation permit required to ship beer to military base. - Transportation of beer or other alcoholic liquors to a post exchange or NCO club or officers' club on a ceded military reservation requires a transportation permit. 1953-54 Op. Att'y Gen. No. 5825.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 38.

48 C.J.S. Intoxicating Liquors §§ 234, 238.

60-7A-4.1. Unlawful sale of alcoholic beverages; penalty; forfeiture.

A. It is unlawful for any person to sell or attempt to sell alcoholic beverages at any place other than a licensed premises or as otherwise provided by the Liquor Control Act.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony.

C. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages or money which is the fruit or instrumentality of the crime may be seized and in the discretion of the court, be forfeited under the procedures set forth in Section 30-31-35 NMSA 1978. When the property is forfeited, the special investigations division of the public safety department shall take custody of the property for use by enforcement officers of the special investigations division or for disposition in accordance with the provisions of Section 30-31-35 NMSA 1978.

History: 1978 Comp., § 60-7A-4.1, enacted by Laws 1985, ch. 179, § 1; 1989, ch. 254, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-7A-5. Manufacture, sale or possession for sale when not permitted by act.

It is unlawful for any person to manufacture for the purpose of sale, possess for the purpose of sale, offer for sale or sell any alcoholic beverages in the state except under the terms and conditions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 51.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Illegal sales in dry area punishable. - Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be sold within these areas without punishment. State v. Bryant, 53 N.M. 229, 205 P.2d 213 (1949).

Violator entitled to trial by jury. - At the time of the adoption of the constitution and immediately prior thereto a person charged with selling alcoholic liquor without a license had the right to a trial by jury. State v. Jackson, 78 N.M. 29, 427 P.2d 46 (Ct. App. 1967).

The defendant charged with selling liquor without a license upon his demand should be accorded a trial by jury. State v. Jackson, 78 N.M. 29, 427 P.2d 46 (Ct. App. 1967).

Conviction not sustained where insufficient evidence in record regarding possession. - Where search revealed one pint of whiskey in defendant's bedroom and 11 fifths of whiskey in three brands found on the floor of the living room behind window drapes, and defendant's locality was within a local "dry" area and defendant had no license to sell liquor, this was insufficient evidence concerning defendant's possession for the purpose of sale and a conviction cannot be sustained. State v. Easterwood, 68 N.M. 464, 362 P.2d 997 (1961).

Illegal sale of alcohol not nuisance. - Where there is no statute which declares the illegal sale of alcoholic beverages to be a nuisance, the legislature intended that something more than the sale of alcoholic liquor must be shown before such act could be restrained as a public nuisance. State v. Davis, 65 N.M. 128, 333 P.2d 613 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 233.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality of statute prohibiting the manufacture of intoxicating liquor, 3 A.L.R. 285.

Test of intoxicating character of liquor, 4 A.L.R. 1137, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Right of one charged with unlawful sale of intoxicating liquor to be informed before trial of name or identity of purchaser, 5 A.L.R. 409.

What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 A.L.R. 225.

Forfeiture of property for violation of liquor laws, before trial of individual offender, 3 A.L.R.2d 742.

Operation and effect, in dry territory, of general statute making sale or possession for sale of intoxicating liquor without a license an offense, 8 A.L.R.2d 750.

State's power to regulate price of intoxicating liquors, 14 A.L.R.2d 699.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors §§ 250, 251.

60-7A-6. Possession of liquor manufactured or shipped in violation of law.

It is a violation of the Liquor Control Act for any person to have in his possession any alcoholic beverages which to that person's knowledge have been manufactured or transported into the state in violation of the laws of this state.

History: Laws 1981, ch. 39, § 52.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 222.

60-7A-7. Manufacture of spirituous liquors; felony.

It is a felony for any person other than a licensed distiller or rectifier to manufacture any spirituous liquors in the state.

History: Laws 1981, ch. 39, § 53.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 220.

60-7A-8. Sales to wholesalers.

Unless he has a wholesaler's license, no New Mexico manufacturer shall sell or offer for sale any alcoholic beverages manufactured within this state to any person in New Mexico other than wholesalers licensed under the provisions of the Liquor Control Act.

History: Laws 1981, ch. 39, § 59.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effect of one wholesaler dominating market. - Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. Levers v. Anderson, 153 F.2d 1008 (10th Cir. 1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 261.

48 C.J.S. Intoxicating Liquors § 129.

60-7A-9. Credit extension by wholesalers.

It is a violation of the Liquor Control Act for any wholesaler to extend credit or to agree to extend credit for the sale of alcoholic beverages to any retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for any period more than thirty calendar days from the date of the invoice required under the provisions of Section 60-8A-3 NMSA 1978. A violation of this section does not bar recovery by the wholesaler for the total indebtedness of the retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee.

History: Laws 1981, ch. 39, § 71; 1985, ch. 39, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Credit extended during initial 30 days. - Credit sales made within the initial 30-day period before the retailer falls behind in payments on his account are not declared violations of this section, and 60-8A-5 NMSA 1978 does not bar a wholesaler from bringing an action to collect debts arising from such credit sales. Pucci Distrib. Co. v. Stephens, 106 N.M. 228, 741 P.2d 831 (1987).

Time period for credit sales. - Since 15 days is a reasonable amount of time for a wholesale liquor distributor to determine what bills are past due from purchasers, any credit sales of liquor made to debtor by the wholesale liquor distributors within the first 45 days from the date of the first unpaid invoice are in conformance with the requirements of this section and are collectable, while any credit sales made after this forty-five day period demonstrate an implicit agreement to extend credit and, thus, are in violation of this section and uncollectable. Sholer v. Bank of Albuquerque (In re Gallegos), 68 Bankr. 584 (Bankr. D.N.M. 1986)(decided under former 60-10-8 NMSA 1978).

Conduct violative of section. - Where, from a review of the invoices submitted, it is obvious that wholesale liquor distributors were extending credit long after the debtor had been in arrears in excess of 30 days, such implied agreement to extend credit is

conduct prohibited by this section. Sholer v. Bank of Albuquerque (In re Gallegos), 68 Bankr. 584 (Bankr. D.N.M. 1986)(decided under former 60-10-8 NMSA 1978).

To violate this section, a liquor wholesaler must continue to make credit sales to a liquor retailer knowing at the time that the retailer is more than 30 calendar days behind in its credit payments to the wholesaler. Gavin Maloof & Co. v. Southwest Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

Wholesaler may collect despite violation. - The purpose of the 1985 amendment was to eliminate the forfeiture and allow the wholesaler to collect its debt even though there may be a violation of this section. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by 60-6B-3E NMSA 1978 were prior to a bank's perfected security interest even if there was a violation of this section. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

C.O.D. sales allowable. - When a credit sale is not paid for within 30 days, a liquor wholesaler may cut off credit and continue to do business with the delinquent retailer on a C.O.D. basis while the wholesaler attempts to collect the past due accounts. Gavin Maloof & Co. v. Southwest Distrib. Co., 106 N.M. 413, 744 P.2d 541 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 123.

Construction and effect of liquor regulation forbidding or restricting sales on credit or other than for cash, 17 A.L.R.3d 396.

48 C.J.S. Intoxicating Liquors § 243.

60-7A-10. Wholesalers prohibited from owning retailer's or dispenser's establishment.

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act for a wholesaler, directly or indirectly or through an affiliate, to own, either in whole or in part, a business operated under a retailer's or dispenser's license.

B. This section shall not prevent a wholesaler from owning a dispenser's license directly or indirectly or through an affiliate and operating a business itself or through an affiliate or a lessee under a dispenser's license if:

(1) the wholesaler directly or indirectly operates or controls an interest in an establishment or complex maintaining a minimum of one hundred sleeping rooms and having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public; and

(2) the sale of alcoholic beverages under the dispenser's license is restricted to their consumption on the licensed premises.

History: Laws 1981, ch. 39, § 74; 1991, ch. 5, § 1.

The 1991 amendment, effective June 14, 1991, designated the former section as Subsection A, adding the exception at the beginning thereof, and added Subsection B.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 123.

48 C.J.S. Intoxicating Liquors § 197.

60-7A-11. Offenses by retailers.

It is a violation of the Liquor Control Act for any retailer to:

A. allow or permit any alcoholic beverages to be consumed on his licensed premises;

B. maintain or keep in close proximity to the licensed premises any place for the consumption of alcoholic beverages purchased from him;

C. sell any alcoholic beverages at any place other than his licensed premises;

D. sell, possess for the purpose of sale or to have, possess or keep on his licensed premises alcoholic beverages not contained in the unopened, original package;

E. buy or receive any alcoholic beverages from any person other than a duly licensed New Mexico wholesaler, or wine wholesaler for the purpose of or with the intent of reselling the alcoholic beverages; or

F. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided, that this subsection shall not prevent a retailer from owning stock in any corporation which wholesales, manufactures or bottles alcoholic beverages when he owns the stock for investment purposes only.

History: Laws 1981, ch. 39, § 77; 1988, ch. 60, § 6.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Meaning of "package". - In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Delivery of purchase permitted. - When a sale takes place on the licensed premises of a retailer or dispenser, the beverage so purchased may be delivered by the retailer or independent carrier to any location designated by the purchaser. 1957-58 Op. Att'y Gen. No. 58-15.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 237.

60-7A-12. Offenses by dispensers, canopy licensees, restaurant licensees, governmental licensees or their lessees and clubs.

It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose of or with the intent of reselling the same from any person other than one duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell, possess for the purpose of sale or to bottle any bulk wine for sale other than by the drink for immediate consumption on his licensed premises;

C. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent a dispenser from owning an interest in any legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating under the provisions of Subsection B of Section 60-7A-10 NMSA 1978; or

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except his licensed premises or the location permitted under Section 60-6A-12 NMSA 1978.

History: Laws 1981, ch. 39, § 78; 1991, ch. 5, § 2.

The 1991 amendment, effective June 14, 1991, rewrote Subsection C, which read "do any of the things which a retailer is prohibited from doing pursuant to Subsection F of Section 77 of the Liquor Control Act", and made a stylistic change in Subsection D.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Dram-shop statutes within province of legislature. - Whether legislation in the nature of the so-called dram-shop or civil damage statutes should be included as a part of New Mexico's liquor control acts is within the province of the legislature. Hall v. Budagher, 76 N.M. 591, 417 P.2d 71 (1966).

Intent to sell required for offense. - When there is no intent or attempt to sell alcoholic liquors directly from an off-premises storage location, there is no offense. 1980 Op. Att'y Gen. No. 80-34.

Section does not prohibit storage of alcoholic liquors at unlicensed location. 1980 Op. Att'y Gen. No. 80-34.

"Possess for the purpose of sale" is intended to cover the situation where if there is no actual sale, there could be one. 1980 Op. Att'y Gen. No. 80-34.

60-7A-13. Sales by clubs.

A. Any club licensed under the provisions of the Liquor Control Act shall only have the right to sell alcoholic beverages by the drink and wine by the bottle for consumption on the premises.

B. It is unlawful and grounds for suspension or revocation of its license for a club to:

(1) solicit by advertising or any other means public patronage of its alcoholic beverage facilities. In the event the club solicits public patronage of its other facilities, alcoholic beverages shall not be sold, served or consumed on the premises while the other facilities are being used by or operated for the benefit of the general public, unless the alcoholic beverage facilities are separate from the other facilities and the general public is not permitted to enter any part of the facilities where alcoholic beverages are being sold, served or consumed; or

(2) serve, sell or permit the consumption of alcoholic beverages to persons other than members and their bona fide guests.

C. For the purposes of this section:

(1) "bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility; and

(2) "member" includes the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues or a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club.

History: Laws 1981, ch. 39, § 79; 1987, ch. 34, § 1.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 130.

48 C.J.S. Intoxicating Liquors § 197.

60-7A-14. Filling bottles; misrepresentation of alcoholic beverages.

It is a violation of the Liquor Control Act for any licensee to:

A. pour into any empty or partially empty bottle which contains or has contained any alcoholic beverage, alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter on the bottle;

B. have, allow or permit upon the licensed premises any bottle containing alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter appearing on the bottle;

C. expressly or impliedly misrepresent the kind, class, brand, proof or age of any alcoholic beverages served by the drink; or

D. pour into any empty or partially empty alcoholic beverage bottle, alcoholic beverages of the same kind, class, brand, proof or age as that represented by the label, indicia, legend and descriptive matter appearing on the bottle.

History: Laws 1981, ch. 39, § 80.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.

48 C.J.S. Intoxicating Liquors § 201.

60-7A-15. Public nuisance.

A. Any premises used for the unlawful purpose of sale, manufacture, storage, possession or consumption of alcoholic beverages in violation of the Liquor Control Act is a public nuisance.

B. The district attorney in the county in which the nuisance exists is authorized to maintain an action to abate and temporarily and permanently enjoin the nuisance. The district attorney shall not be required to post bond.

C. Upon final judgment, the court shall enjoin the owner, lessee, tenant or occupant from maintaining or assisting in maintaining the nuisance, and shall order the premises to be closed until bond is furnished with sufficient surety in such sum as the court in its discretion shall be order and judgment provide, conditioned that the premises will not be maintained as a public nuisance.

History: Laws 1981, ch. 39, § 92.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 79, 427, 434.

Constitutionality of statute relating to injunctions against crime or abatement of nuisance arising from violation of liquor law, 49 A.L.R. 635.

Sale and use of intoxicating liquor at public dance as nuisance, 44 A.L.R.2d 1401.

48 C.J.S. Intoxicating Liquors §§ 248, 405, 407, 408.

60-7A-16. Sale to intoxicated persons.

It is a violation of the Liquor Control Act for a person to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person knowing that the person buying or receiving service of alcoholic beverages is intoxicated.

History: Laws 1981, ch. 39, § 93.

Cross-references. - As to tort liability for alcoholic liquor sales or service, see 41-11-1 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

This section must not be read to impose a duty on the tavernkeeper to the intoxicated patron. Trujillo v. Trujillo, 104 N.M. 379, 721 P.2d 1310 (Ct. App.), cert. denied, 104 N.M. 289, 720 P.2d 708 (1986).

Liability for serving intoxicated person. - A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to an intoxicated person, the breach of which is found to be the proximate cause of injuries to a third party. The imposition of this new liability will be applied prospectively. Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 266.

Entrapment to comment offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts, 98 A.L.R.3d 1230.

Tavernkeeper's liability to patron for third person's assault, 43 A.L.R.4th 281.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

48 C.J.S. Intoxicating Liquors § 258.

60-7A-17. Prostitution; loitering; promoting.

A. It is a violation of the Liquor Control Act for a licensee to knowingly:

(1) allow prostitution on the licensed premises;

(2) allow or permit the loitering of or solicitation by known prostitutes on the licensed premises; or

(3) procure a prostitute for a patron, solicit a patron for a prostitute or solicit for a house of prostitution.

B. No municipality shall enact any ordinance or resolution inconsistent with the provisions of Subsection A of this section.

History: Laws 1981, ch. 39, § 94.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 187.

48 C.J.S. Intoxicating Liquors § 257.

60-7A-18. Hours for public dances.

A dispenser who in connection with his licensed establishment maintains dancing facilities for use by his patrons shall be allowed to keep such facilities open and permit dancing on the licensed premises during the same hours as he is allowed by law to sell alcoholic beverages.

History: Laws 1981, ch. 39, § 95.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 54.

60-7A-19. Commercial gambling on licensed premises.

A. It is a violation of the Liquor Control Act for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, any person who violates Subsection A of this section may have his license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. For purposes of this section, "commercial gambling" means:

(1) participating in the earnings of or operating a gambling place;

(2) receiving, recording or forwarding bets or offers to bet;

(3) possessing facilities with the intent to receive, record or forward bets or offers to bet;

(4) for gain, becoming a custodian of anything of value bet or offered to be bet;

(5) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or

(6) setting up for use for the purpose of gambling, or collecting the proceeds of, any gambling device or game.

History: Laws 1981, ch. 39, § 96.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-7A-20. False complaints; misdemeanor.

Any person who lodges or intentionally causes or conspires to cause a complaint to be lodged knowing the complaint to be unfounded in actual fact, he [sic] shall, upon conviction thereof, be guilty of a misdemeanor.

History: Laws 1981, ch. 39, § 106.

60-7A-21. Possession or display of United States license.

Possession or display of a license from the United States to sell alcoholic beverages in New Mexico by a person not licensed under the Liquor Control Act to sell alcoholic beverages or issuance of such a license by the district director of the internal revenue

service shall be prima facie evidence that the person possessing or displaying the license, or to whom it was issued, is engaged in the business of selling alcoholic beverages, at the place for which it was issued or where it is displayed, in violation of the laws of New Mexico, and a certified copy of the records of the district director of the internal revenue service showing the issuance of the license or the payment of the tax therefor shall be admissible as evidence in any prosecution.

History: Laws 1981, ch. 39, § 107.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Defendant bears burden of proof. - Ownership of a license would cast upon the defendant in any case brought under the terms of this statute the burden of going forward with the evidence to prove that the defendant did not fall within the provisions of the statute, namely, with operating a club for profit. 1955-56 Op. Att'y Gen. No. 6203.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 364.

48 C.J.S. Intoxicating Liquors § 110.

60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments.

A. It is a violation of the Liquor Control Act for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act for any person not a licensee to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

C. On or after the effective date of the Liquor Control Act [Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B and 8A of Chapter 60 NMSA 1978], no new drive-up windows used for the sale of alcoholic beverages shall be permitted by the director; provided, however, licensed premises that include drive-up windows may be relocated and include a drive-up window if the lease on the current licensed premises expires.

History: Laws 1981, ch. 39, § 108; 1991, ch. 257, § 4.

The 1991 amendment, effective June 14, 1991, deleted "during the ten-year period of economic adjustment" preceding "licensed premises" and made a minor stylistic change in Subsection C.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Effective date of the Liquor Control Act. - See note under same catchline following 60-7A-1 NMSA 1978.

Space for dancing and tables part of "establishment". - Space reserved for dancing and tables in connection with a liquor dispensing unit is a part of the licensed "establishment." 1939-40 Op. Att'y Gen. 66.

Serving liquor in bowling alleys permitted. - There is no prohibition against issuing an alcoholic beverage license to a bowling alley, thus permitting the serving of liquor on the premises. 1955-56 Op. Att'y Gen. No. 6278.

Knowingly permitting consumption constitutes corpus delicti of offense. - The corpus delicti of the offense charged is knowingly permitting the consumption of intoxicating liquor by appellant in his cafe without a license to do so. State v. Carter, 58 N.M. 713, 275 P.2d 847 (1954).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 4 Am. Jur. 2d Amusements and Exhibitions §§ 15, 23; 45 Am. Jur. 2d Intoxicating Liquors § 283.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquors, 4 A.L.R.2d 1216.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place, 39 A.L.R.4th 668.

48 C.J.S. Intoxicating Liquors § 253.

60-7A-23. Possession of wine as prima facie evidence.

In any proceedings under the provisions of the Liquor Control Act, the possession of more than one thousand two hundred liters of wine by any person who is not a public warehouseman, registered carrier or licensee shall be prima facie evidence that the person has manufactured the wine for the purpose of sale and possesses the wine for the purpose of sale in violation of the Liquor Control Act.

History: Laws 1981, ch. 39, § 109.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 392.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality, construction and effect of statute making possession of intoxicating liquor evidence of violation of law, 31 A.L.R. 1222.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation, 37 A.L.R. 1386.

48 C.J.S. Intoxicating Liquors § 346.

60-7A-24. Interference [Interfere] or attempts [attempt to interfere] corruptly, forcibly or by threats to interfere [sic] with administration of the Liquor Control Act.

A. Whoever forcibly, or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act is guilty of a fourth degree felony.

B. Any licensee who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act is guilty of violating the Liquor Control Act and shall be punished by fine, suspension or revocation under the procedures of the Liquor Control Act.

History: Laws 1981, ch. 39, § 110.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 156.

48 C.J.S. Intoxicating Liquors § 214.

60-7A-25. Penalties.

A. A person who violates any provision of the Liquor Control Act or any rule or regulation promulgated by the department that is not declared by the Liquor Control Act to be a felony is guilty of a petty misdemeanor, and, upon conviction thereof, the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. If a corporation is convicted of a violation of any provision of the Liquor Control Act it shall be a misdemeanor and the corporation shall be sentenced pursuant to the provisions of Section 31-20-1 NMSA 1978.

B. Any person convicted of a violation of the Liquor Control Act which is declared by the Liquor Control Act to be a felony, if an individual, shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment in the state penitentiary for not more than five years or by both such fine and imprisonment in the discretion of the court. If the person convicted of the violation is a corporation, it shall be punished by a fine of not more than ten thousand dollars ($10,000).

History: Laws 1981, ch. 39, § 111; 1991, ch. 119, § 1.

The 1991 amendment, effective June 14, 1991, in the first sentence of Subsection A, substituted "A person who violates" for "A violation of", "is guilty of a petty misdemeanor" for "shall be a misdemeanor" and "sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "punished by a fine of not more than three hundred dollars ($300) or by confinement in jail not more than seven months or by both such fine and imprisonment"; and, in the second sentence of Subsection A, substituted "a violation of any provision of the Liquor Control Act it shall be a misdemeanor and the corporation shall be sentenced pursuant to the provisions of Section 31-20-1 NMSA 1978" for "such a violation, it shall be punished by a fine of not more than one thousand dollars ($1,000)".

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Revocation of license of felon. - The director of the department of alcoholic beverage control has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-2.

Illegal sales in dry area punishable. - Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be sold within these areas without punishment. State v. Bryant, 53 N.M. 229, 205 P.2d 213 (1949).

When licensee not criminally liable for acts of his employees. - A liquor licensee would not be criminally liable for acts of agent or employee committed contrary to express instructions. 1959-60 Op. Att'y Gen. No. 59-24.

Adult's custody no defense if not within statutory exemptions. - When minor was in custody of an adult who does not hold such legal relationship to the minor to come with exemptions of the statute, the fact of the adult's custody is no defense. State v. Sifford, 51 N.M. 430, 187 P.2d 540 (1947).

Law reviews. - For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 416.

Recovery of cumulative statutory penalties for intoxicating liquor offenses, 71 A.L.R.2d 1012.

48 C.J.S. Intoxicating Liquors § 286.

ARTICLE 7B
MINORS ON LICENSED PREMISES

60-7B-1. Selling or giving alcoholic beverages to minors; possession.

A. It is a violation of the Liquor Control Act for any governmental licensee and its lessee, retailer, canopy licensee, dispenser, restaurant licensee, club licensee or any other person, except the minor's parent, guardian, adult spouse or adult person into whose custody any court has committed the minor for the time, outside the presence of the minor's parent, guardian, adult spouse or adult person into whose custody a court has committed the minor for the time, to do any of the following acts:

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

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

(3) to deliver alcoholic beverages to a minor; or

(4) to aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is a violation of the Liquor Control Act for any minor to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverages except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by a court, who is present at the time the alcoholic beverages are bought, received by him or possessed by him or served or delivered to him.

C. Any person not a minor who deceives another person to believe that a minor is legally entitled to be sold, served or delivered alcoholic beverages has violated the Liquor Control Act; the person deceived has not violated that act.

D. Violation of this section by a minor between the ages of eighteen and twenty-one with respect to possession is a petty misdemeanor.

History: Laws 1981, ch. 39, § 81.

Cross-references. - As to age of majority, see 28-6-1 NMSA 1978.

As to tort liability for alcoholic liquor sales or service, see 41-11-1 NMSA 1978.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Section forbids all deliveries to minors. - This section forbids any delivery of alcoholic liquors to a minor not accompanied by parent, guardian or person "in loco parentis," even where person so delivering alcoholic liquors knows that same are intended for use by an adult. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

As well as delivery made in person or through agent. - The accused, to be guilty of delivering liquor to a minor, need not hand it over in person, but would be guilty if the handing over was done by an agent or servant, at the express direction of the principal or master. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Liability for serving minor. - A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to a minor, the breach of which is found to be the proximate cause of injuries to a third party. MRC Properties, Inc. v. Gries, 98 N.M. 710, 652 P.2d 732 (1982).

It shall not be negligence per se to violate this section. Trujillo v. Trujillo, 104 N.M. 379, 721 P.2d 1310 (Ct. App.), cert. denied, 104 N.M. 289, 720 P.2d 708 (1986).

Section applies to unlicensed persons as well as licensed dealers. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Minor cannot legally bring alcoholic beverages into state. - A minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the state of New Mexico. 1961-62 Op. Att'y Gen. No. 62-21.

Sale of liquor to minor wife accompanied by adult spouse authorized. - Liquor may be sold to a minor wife when she is accompanied by her adult spouse. 1943-44 Op. Att'y Gen. No. 4462.

Minor police officer may receive or possess liquor. - This section does not prohibit a police officer who is under the age of 21 years and in the lawful performance of his duties from receiving or possessing liquor. 1975 Op. Att'y Gen. No. 75-59.

Contents of information charging defendant with offense. - Information charging that defendant delivered alcoholic liquor to a minor, contrary to provision of this section, was not fatally defective in failing to set out that such minor was not accompanied by a parent, guardian or other person having custody. State v. Cummings, 64 N.M. 337, 319 P.2d 946 (1957).

Charge of defendant in the information with contributing to delinquency of a minor by selling alcoholic liquors to him was adequate. State v. Sena, 54 N.M. 213, 219 P.2d 287 (1950).

Right to jury trial is privilege which may be waived, and if a right to jury trial existed in this case, where appellant was charged with giving alcoholic beverages to minors, appellant, by proceeding without demand or objection to trial before the court without a jury, waived the privilege granted by the constitution. State v. Marrujo, 79 N.M. 363, 443 P.2d 856 (1968).

Conviction based upon uncorroborated evidence of minor. - See State v. Hunter, 37 N.M. 382, 24 P.2d 251 (1933).

Adult's custody no defense if not within statutory exemptions. - Where minor was in custody of an adult who does not hold such legal relationship to the minor as to come within exemptions of the statute, the fact of adult's custody is no defense. State v. Sifford, 51 N.M. 430, 187 P.2d 540 (1947).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M. L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 267.

Criminal offense of selling liquor to minor (or person under specified age) as affected by ignorance or mistake regarding purchaser's age, 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift, 14 A.L.R.3d 1186.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor, 89 A.L.R.3d 1256.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 A.L.R.4th 81.

48 C.J.S. Intoxicating Liquors § 259.

60-7B-1.1. Selling or giving liquor to minors; possession; minor defined.

A. It is a violation of the Liquor Control Act for any club, retailer, dispenser or any other person, except the parent or guardian or adult spouse of any minor, or adult person into whose custody any court has committed the minor for the time, outside of the actual, visible personal presence of the minor's parent, guardian, adult spouse or the adult person into whose custody any court has committed the minor for the time, to do any of the following acts:

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

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

(3) to deliver alcoholic liquor to a minor; or

(4) to aid or assist a minor to buy, procure or be served with alcoholic liquor.

B. It is a violation of the Liquor Control Act for any minor to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court, who is actually, visibly and personally present at the time the alcoholic liquor is bought or received by him or possessed by him or served or delivered to him.

C. In the event any person except a minor procures any other person to sell, serve or delivery any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by a concealment of any facts the concealment of which is calculated to cause the person selling, serving or delivering the alcoholic liquors to the minor, to believe that such minor is legally entitled to be sold, served or delivered alcoholic liquors and actually deceiving him by such misrepresentation or concealment, then that person, and not the person so deceived by such misrepresentation or concealment, shall have violated the Liquor Control Act.

D. In any proceedings under Subsection A of this section, it is not necessary for the prosecution, or any person, official or party urging to [or] contending that such subsection has been violated, to allege or prove that the parent, guardian, adult spouse or any adult person into whose custody any such minor has been committed by any court, was not actually, visibly and personally present at the time of the alleged violation, but such matters are matters of defense to be established and proved by the person against whom the prosecution or proceedings is brought.

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

F. Violation of this section by a minor with respect to possession is a petty misdemeanor. Any sentence imposed pursuant to this subsection may be suspended in the discretion of the court upon the condition that:

(1) the minor relinquish his driver's license for a period not to exceed three months, whereupon the trial court may dismiss the possession of alcoholic liquor charge and it shall not be considered a conviction. In the event the minor's driver's license is relinquished, the trial court shall inform the motor vehicle division of the action; provided, however, if the minor drives during the period of relinquishment, then the court may impose a fine, jail sentence or both, such fine and sentence not to exceed the maximums imposed for petty misdemeanors or may impose punishment pursuant to Paragraph (2) of this subsection;

(2) the minor assist in a community project, designated by the court, up to fifty hours, whereupon the trial court may dismiss the possession of alcoholic liquor charge, and it shall not be considered a conviction.

History: Laws 1939, ch. 236, § 1202; 1941 Comp., § 61-1012; Laws 1945, ch. 95, § 1; 1953 Comp., § 46-10-12; Laws 1967, ch. 48, § 1; 1969, ch. 227, § 3; 1975, ch. 152, § 1; 1981, ch. 39, § 128; 1981, ch. 252, § 1; 1978 Comp., § 60-10-16 recompiled as 1978 Comp., § 60-7B-1.1.

Cross-references. - As to effect of lowering age of majority on Liquor Control Act, see 28-6-1 NMSA 1978.

As to tort liability for alcoholic liquor sales or service, see 41-11-1 NMSA 1978.

Liquor Control Act. - The references in this section to the Liquor Control Act predate the 1981 amendments, and probably refer to former Articles 3 through 11 of Chapter 60 NMSA 1978, which were repealed in their entirety, with the exception of this section, by Laws 1981, ch. 39, § 128. For the current translation of "Liquor Control Act," see 60-3A-1 NMSA 1978.

Section forbids all deliveries to minors. - This section forbids any delivery of alcoholic liquors to a minor not accompanied by parent, guardian or person "in loco parentis," even where person so delivering alcoholic liquors knows that same are intended for use by an adult. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

As well as delivery made in person or through agent. - The accused, to be guilty of delivering liquor to a minor, need not hand it over in person, but would be guilty if the handing over was done by an agent or servant, at the express direction of the principal or master. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

It shall not be negligence per se to violate this section. Trujillo v. Trujillo, 104 N.M. 379, 721 P.2d 1310 (Ct. App.), cert. denied, 104 N.M. 289, 720 P.2d 708 (1986).

Minor cannot legally bring alcoholic beverages into state. - A minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the state of New Mexico. 1961-62 Op. Att'y Gen. No. 62-21.

Section applies to unlicensed persons as well as licensed dealers. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Minor police officer may receive or possess liquor. - This section does not prohibit a police officer who is under the age of 21 years and in the lawful performance of his duties from receiving or possessing liquor. 1975 Op. Att'y Gen. No. 75-59.

Sale of liquor to minor wife accompanied by adult spouse authorized. - Liquor may be sold to a minor wife when she is accompanied by her adult spouse. 1943-44 Op. Att'y Gen. No. 4462.

Contents of information charging defendant with offense. - Information charging that defendant delivered alcoholic liquor to a minor, contrary to provision of this section, was not fatally defective in failing to set out that such minor was not accompanied by a parent, guardian or other person having custody. State v. Cummings, 63 N.M. 337, 319 P.2d 946 (1957).

Charge of defendant in the information with contributing to delinquency of a minor by selling alcoholic liquors to him was adequate. State v. Sena, 54 N.M. 213, 219 P.2d 287 (1950).

Right to jury trial is privilege which may be waived, and if a right to jury trial existed in this case, where appellant was charged with giving alcoholic beverages to minors, appellant, by proceeding without demand or objection to trial before the court without a jury, waived the privilege granted by the constitution. State v. Marrujo, 79 N.M. 363, 443 P.2d 856 (1968).

Adult's custody no defense if not within statutory exemptions. - Where minor was in custody of an adult who does not hold such legal relationship to the minor as to come within exemptions of the statute, the fact of adult's custody is no defense. State v. Sifford, 51 N.M. 430, 187 P.2d 540 (1947).

Conviction based upon uncorroborated evidence of minor. - See State v. Hunter, 37 N.M. 382, 24 P.2d 251 (1933).

Breach of section as tort liability. - An allegation of a breach of this section which caused injury to plaintiffs states a claim for relief and that claim is not barred by the prospectivity rule stated in Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269 (1982); Walker v. Key, 101 N.M. 631, 686 P.2d 973 (Ct. App. 1984).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M. L. Rev. 331 (1976).

For annual survey of New Mexico law relating to criminal law, see 12 N.M.L. Rev. 229 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 267.

Criminal offense of selling liquor to minor (or person under specified age) as affected by ignorance or mistake regarding purchaser's age, 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift, 14 A.L.R.3d 1186.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor, 89 A.L.R.3d 1256.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 A.L.R.4th 81.

48 C.J.S. Intoxicating Liquors § 259.

60-7B-2. Documentary evidence of age and identity.

Evidence of the age and identity of the person may be shown by any document which contains a picture of the person issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle operator's license or an identification card issued to a member of the armed forces.

History: Laws 1981, ch. 39, § 82; 1985, ch. 184, § 1.

60-7B-3, 60-7B-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 184, § 5 repeals 60-7B-3 and 60-7B-4 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 83 and 84, relating to department-issued identity cards. For provisions of former sections, see 1981 replacement pamphlet.

Laws 1985, ch. 184 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1985.

60-7B-5. Refusal to sell or serve alcoholic beverages to person unable to produce identity card.

Any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee and its lessee may refuse to sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that he is twenty-one years of age or over.

History: Laws 1981, ch. 39, § 85; 1985, ch. 184, § 2.

60-7B-6. Demanding and seeing identity card before furnishing alcoholic beverages.

In any criminal prosecution or in any proceedings for the suspension or revocation of a license, or in any proceeding for violation of a municipal or county ordinance prohibiting the gift, sale or service of alcoholic beverages to minors, proof that the accused licensee in good faith demanded and was shown an identity card before furnishing any alcoholic beverages to a minor shall be a defense to the prosecution or proceedings.

History: Laws 1981, ch. 39, § 86; 1985, ch. 184, § 3.

60-7B-7. Presenting false evidence of age or identity.

A minor who presents to any licensee any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 87; 1985, ch. 184, § 4; 1991, ch. 119, § 2.

The 1991 amendment, effective June 14, 1991, substituted "that" for "which" and "petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-8. Delivery of identity card to minor for use in obtaining alcoholic beverages.

Any person who gives, loans, sells or delivers an identity card to a minor with the knowledge that the minor intends to use the identity card for the purpose of procuring or attempting to procure any alcoholic beverages is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 88; 1991, ch. 119, § 3.

The 1991 amendment, effective June 14, 1991, substituted "petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-9. Penalty.

Unless otherwise provided for in Article 7B of Chapter 60, any violation of Sections 60-7B-1 through 60-7B-8 NMSA 1978 by a minor is a petty misdemeanor, and the minor shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 89; 1991, ch. 119, § 4.

The 1991 amendment, effective June 14, 1991, substituted the present provisions for the former provisions, which read "Any violations of Sections 81 through 88 of the Liquor Control Act by a minor is punishable upon conviction by a fine of not less than one hundred dollars ($100), no part of which shall be suspended or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment".

60-7B-10. Minors in licensed premises.

A. Any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee who permits a minor to enter and remain in the licensed premises without lawful business is guilty of a violation of the Liquor Control Act.

B. Any minor who enters and remains in the licensed premises without lawful business is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 90; 1991, ch. 119, § 5.

The 1991 amendment, effective June 14, 1991, in Subsection B, substituted "petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100), no part of which shall be suspended".

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Minor police officer permitted in licensed premises. - This section does not prohibit liquor licensees or their agents from permitting a police officer who is under 21 years of age and in the lawful performance of his duties to be in attendance in the licensed premises of a liquor establishment. 1975 Op. Att'y Gen. No. 75-59.

60-7B-11. Employment of minors.

It shall be a violation of the Liquor Control Act for any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages.

History: Laws 1981, ch. 39, § 91.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Minor over 16 years of age, may be employed as entertainer in a night club provided he is accompanied by an adult who is his parent, guardian, spouse or an adult person in whose custody he has been committed at the time by some court. 1955-56 Op. Att'y Gen. No. 6105.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 287.

48 C.J.S. Intoxicating Liquors § 231.

60-7B-12. Beer kegs; labeling; notice.

A. Every keg which is sold by a retailer shall be labeled by the retailer in a manner prescribed by the superintendent of regulation and licensing with the name and address of the retailer and a control number assigned to that keg by the retailer. Retailers shall record the name and address and date of birth of the purchaser, the control number and the date of purchase for every keg sold on the notice form required by Subsection B of this section.

B. The superintendent of regulation and licensing shall prescribe a suitable notice form which shall include the pertinent provisions of Chapter 60, Article 7B NMSA 1978 and the penalty for violating the provisions of Chapter 60, Article 7B NMSA 1978. The notice form shall also contain a place for the name, address and driver's license number or other suitable identification for the person purchasing the keg. Every person who buys a keg at retail shall sign the form acknowledging that they have read the form. The signed forms shall be kept by the retailer until the keg is returned to that retailer, or six months, whichever is less, and shall be made available to law enforcement officials upon request.

C. As used in this section "keg" means a package of beer containing more than six gallons of beer at the time it is sold.

History: Laws 1989, ch. 140, § 1.

Effective dates. - Laws 1989, ch. 140 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

ARTICLE 8
REVOCATION AND SUSPENSION OF LICENSES

60-8-1 to 60-8-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-8-1 to 60-8-11 NMSA 1978, relating to the revocation and suspension of licenses, effective July 1, 1981. For present provisions, see 60-6B-7, 60-6C-1 to 60-6C-9, 60-7A-20 NMSA 1978.

ARTICLE 8A
TRADE PRACTICES

60-8A-1. Unfair competition; exclusive outlet; tied house; consignment sales.

It is unlawful for any importer, manufacturer, nonresident licensee or any kind or class of wholesaler, directly or indirectly, or through an affiliate:

A. to require by agreement or otherwise that any wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of alcoholic beverages in the state purchase alcoholic beverages from such person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons;

B. to induce through any of the following means, any wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of any kind or class of alcoholic beverages to purchase alcoholic beverages from such person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons:

(1) by acquiring or holding, after the expiration of any existing license, any interest in any license with respect to the premises of the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee;

(2) by acquiring any interest in any real or personal property owned, occupied or used by any wholesaler, retailer, dispenser, restaurant, licensee or club licensee in the conduct of the buying wholesaler's, retailer's, dispenser's, canopy licensee's, restaurant licensee's, club licensee's or governmental licensee's or its lessee's business, subject to such exceptions as the director shall prescribe, having due regard to the free flow of commerce, the purposes of this subsection and established trade customs not contrary to the public interest;

(3) by furnishing, giving, renting, lending or selling to any wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to such exceptions as the director shall by regulation prescribe, having due regard for public health and welfare, the quantity and value of the articles involved and established trade customs not contrary to the public interest and the purposes of this subsection;

(4) by paying or crediting the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for any advertising, display or distribution services;

(5) by requiring any wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee to take and dispose of a certain quota or combination of alcoholic beverages; or

(6) by commercial bribery by offering or giving any bonus, premium or compensation to any officer, employee, agent or representative of any wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee; or

C. to sell, offer for sale or contract to sell to any retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee any alcoholic beverages of any kind or class on consignment or under a conditional sale or on any basis other than a bona fide sale; provided, that this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

History: Laws 1981, ch. 39, § 60.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 187.

48 C.J.S. Intoxicating Liquors § 35.

60-8A-2. Territorial designation for distribution of beer; agreement.

Every brewer, whether located within or without New Mexico, may designate territorial limits in the state within which the brand or brands of beer manufactured by the manufacturer may be sold by wholesalers of beer to licensees. A wholesaler of beer may enter into written agreement with the manufacturer of the brand of beer to be sold by the wholesaler which sets forth the territorial limits within which the wholesaler may distribute the beer. A copy of the agreement and any amendments shall be filed with the department by the wholesaler.

History: Laws 1981, ch. 39, § 61.

60-8A-3. Invoices.

Whenever a New Mexico wholesaler delivers any item of alcoholic beverages to a New Mexico retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee, the delivery shall be accompanied by an invoice which accurately and clearly shows the date of the sale and the quantity of each item of merchandise delivered. The retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee receiving the alcoholic beverages shall retain the invoice for a period of two years. The invoices shall be open for inspection and examination by any employee of the department or the taxation and revenue department during all usual business hours.

History: Laws 1981, ch. 39, § 70.

"Invoice" construed. - Document, which was labeled as an invoice, listing various types of beer along with the quantity, unit price, total price, and a discount, was an "invoice" within the meaning of this section. Pucci Distrib. Co. v. Nellos, 110 N.M. 374, 796 P.2d 595 (1990).

Licensee must observe obligations of each license owned. - A person owning more than one license must still exercise the rights and observe the obligations granted by each license independently of the other licenses. 1980 Op. Att'y Gen. No. 80-34.

A licensee holding more than one dispenser or retailer license may not purchase all the alcoholic liquors needed by his multiple operations under the privilege of only one license, store them unsegregated in a common facility, and then distribute them from the common facility, as needed, to the different licensed operations. 1980 Op. Att'y Gen. No. 80-34.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 205.

60-8A-4. Returns.

A. The return or repossession of any stock of alcoholic beverages to or by any licensed New Mexico wholesaler shall not be construed as a sale within the meaning of any provision of the Liquor Control Act.

B. The provisions of Subsection A of this section shall apply in case of the return or repossession of any alcoholic beverages to or by a nonresident licensee by or from any New Mexico wholesaler.

History: Laws 1981, ch. 39, § 73.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

60-8A-5. Debts for merchandise sold in violation of law unenforceable; no garnishment on sales by retailers and dispensers.

No action shall be maintained or a garnishment or attachment be issued to collect any debt for merchandise sold, served or delivered in violation of the Liquor Control Act. No writ of garnishment shall issue where the debt or obligation or the cause of action in the original suit or the garnishment action is founded upon the sale or purchase of alcoholic beverages by or from a retailer or dispenser as defined in Section 3 [60-3A-3 NMSA 1978] of that act.

History: Laws 1981, ch. 39, § 76.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Writ of garnishment. - Laws 1909, ch. 62, § 1, relating to writs of garnishment and grounds for garnishment, was repealed by Laws 1969, ch. 139, § 2.

Application of section. - This section applies not only to illegal credit sales by retailers to consumers, but sanction of disallowing actions to recover debt also applies to violations of the tied-house laws. New Mexico Beverage Co. v. Blything, 102 N.M. 533, 697 P.2d 952 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 213.

60-8A-6. Primary American source of supply.

For the purpose of tax revenue control, no holder of a nonresident license or resident broker license may solicit, accept or fill an order for distilled spirits or wine from a holder of any type of wholesaler's license unless the nonresident licensee or resident broker is the primary American source of supply for the brand of distilled spirits or wine that is ordered. As used in this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler or the exclusive agent of any of those. To be the "primary American source of supply," the nonresident licensee or resident broker must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

History: Laws 1981, ch. 39, § 122.

60-8A-7. Franchises; definitions.

As used in Sections 60-8A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either expressed or implied, whether written or oral, between a supplier and wholesaler, wherein:

(1) a commercial relationship of definite duration or continuing indefinite duration is involved; and

(2) the wholesaler is granted the right to buy and to offer, sell and distribute within this state or any designated area thereof such of the supplier's brand of packaged alcoholic beverages as may be agreed upon;

B. "good cause":

(1) includes failure by the wholesaler to substantially comply with the essential and reasonable provisions of a contract, agreement or understanding with a supplier;

(2) includes use of bad faith on the part of the wholesaler in carrying out the terms of the franchise; and

(3) does not include failure or refusal on the part of the wholesaler to engage in any trade practice, conduct or activity which may result in a violation of any federal law or regulation or any law or regulation of this state;

C. "supplier" means any person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, importer, broker or agent which distributes any or all of its brands of alcoholic beverages through licensed wholesalers in this state;

D. "termination" includes any substantial alteration or modification of the provisions of the franchise; and

E. "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing in the trade as evidenced by all surrounding circumstances.

History: Laws 1981, ch. 39, § 54; 1987, ch. 263, § 1.

60-8A-8. Franchises; violations.

A. It is a violation of Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act for the supplier, directly or through any officer, agent or employee, to fail to act in good faith in performing or complying with any terms, provisions or conditions of the franchise, or in terminating, canceling or not renewing a franchise with a wholesaler, unless such termination, cancellation or failure to renew is done in good faith and for good cause.

B. If more than one franchise for the same brand or brands of alcoholic beverages is granted to different wholesalers in this state, it is a violation of Sections 54 through 58 of the Liquor Control Act for any supplier to discriminate in any of the terms, provisions and conditions of the franchise between the wholesalers.

History: Laws 1981, ch. 39, § 55.

"Good faith" defined. - In absence of statutory construction of "good faith," the court defined "good faith" such that, in order for a supplier's conduct to lack good faith, such conduct must be coercive and intimidating as well as being unfair and inequitable. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of 60-8A-7, defining "good faith").

Evidence warranting appointment of second distributor. - The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of 60-8A-7, defining "good faith").

Section not given retroactive effect. - This section was not to be applied retroactively to reach an agreement made before the act became effective, even where the termination of such agreement occurred afterwards. Southwest Distrib. Co. v. Olympia Brewing Co., 90 N.M. 502, 565 P.2d 1019 (1977).

Choice of law. - Kentucky law and not the New Mexico Alcoholic Beverage Franchise Act applied to distributorship contracts, where the contracts bore a reasonable relation to the state of Kentucky and the choice of law provision therein did not violate some fundamental principle of justice. United Whsle. Liquor Co. v. Brown-Forman Distillers Corp., 108 N.M. 467, 775 P.2d 233 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction and effect of state franchising statute, 67 A.L.R.3d 1299.

60-8A-9. Franchises; recovery of damages; injunction; remedies independent.

A. Any wholesaler may bring an action against a supplier for violation of Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act in any court of competent jurisdiction, and may recover damages, together with the costs of the action, including reasonable attorneys' fees.

B. Any wholesaler may bring an action against a supplier in any court of competent jurisdiction for injunctive relief against termination, cancellation or failure to renew a franchise in violation of the provisions of Sections 54 through 58 of the Liquor Control Act.

C. The remedies provided in this section are independent of and supplemental to any other remedy available to the wholesaler in law or equity.

History: Laws 1981, ch. 39, § 56.

60-8A-10. Franchises; actions; defense.

In any action brought by a wholesaler against a supplier for termination, cancellation or failure to renew a franchise in violation of Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act, it is a complete defense for the supplier to prove that the termination, cancellation or failure to renew was done in good faith and for good cause.

History: Laws 1981, ch. 39, § 57.

"Good faith" defined. - In absence of statutory construction of "good faith," the court defined "good faith" such that, in order for a supplier's conduct to lack good faith, such conduct must be coercive and intimidating as well as being unfair and inequitable. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of 60-8A-7, defining "good faith").

Evidence warranting appointment of second distributor. - The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. State Distribs., Inc. v. Glenmore Distilleries Co., 738 F.2d 405 (10th Cir. 1984)(decided prior to 1987 amendment of 60-8A-7, defining "good faith").

60-8A-11. Franchises; time limit for bringing of action.

Any action brought pursuant to Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act shall be forever barred unless commenced within one year after the cause of action has accrued.

History: Laws 1981, ch. 39, § 58.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 449.

60-8A-12. Filing of schedules required.

A. No brand of spirituous liquors shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a price and discount schedule is filed with the director and is then in effect.

B. Such schedule shall be filed by the owner of the brand who is the holder of a nonresident license issued by the department.

History: Laws 1981, ch. 39, § 62; 1985, ch. 5, § 1.

Former Discrimination in Selling Act constitutional. - The 1967 New Mexico Discrimination in Selling Act, former 60-12-1 through 60-12-10 NMSA 1978, similar to present 60-8A-12 through 60-8A-19 NMSA 1978, was constitutional. United States Brewers Ass'n v. Rodriguez, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 237.

Price regulation, 14 A.L.R.2d 699.

48 C.J.S. Intoxicating Liquors § 191.

60-8A-13. Selling to wholesalers at prices different than shown in schedule.

A brand of spirituous liquors shall not be sold to wholesalers except at the price and discounts shown on the schedule unless prior written permission of the director is granted for reasons not inconsistent with the purposes of Sections 60-8A-12 through 60-8A-19 NMSA 1978.

History: Laws 1981, ch. 39, § 63; 1985, ch. 5, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 187.

48 C.J.S. Intoxicating Liquors § 212.

60-8A-14. Form of schedule.

The schedule of prices and discounts shall be in writing, duly verified and filed in the number of copies, form and at such time as required by the director. It shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents and age and proof where stated on the label; the number of bottles contained in each case; the bottle and case price to wholesalers, which shall be individual for each item; the discounts for quantity, if any; and the discounts for time of payment, if any.

History: Laws 1981, ch. 39, § 64.

60-8A-15. Filing of affirmation.

The owner of a brand of spirituous liquors shall file as part of the schedule a verified affirmation that the price to New Mexico wholesalers is no greater than the lowest price at which the item of spirituous liquors is sold by the brand owner or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section, "related person" means any person:

A. in any business in which the brand owner has an interest, direct or indirect, by stock or other security ownership, as lender or lienor or by interlocking director or officer;

B. in the exclusive, principal or substantial business of selling a brand of spirituous liquors purchased from the brand owner; or

C. who has an exclusive franchise or contract to sell the brand of spirituous liquors.

History: Laws 1981, ch. 39, § 65; 1985, ch. 5, § 3.

Constitutionality. - This section is neither arbitrary nor discriminatory and does not violate due process or equal protection and is, therefore, constitutional. United States Brewers Ass'n v. Director of N.M. Dep't of ABC, 100 N.M. 216, 668 P.2d 1093 (1983), appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

This section violates the Commerce Clause of the United States Constitution even though it regulates all brand owners of intoxicating liquors even handedly, arguably promotes the state's legitimate interest in assuring the lowest possible price, for its residents, and allows brand owners to change out-of-state prices for a product once the price and discount schedule mandated by § 60-8A-12 is filed, because its practical effect is to control prices in other states. Brown-Forman Corp. v. New Mexico Dep't of ABC, 672 F. Supp. 1383 (D.N.M. 1987).

60-8A-16. Failure to file; schedule deemed invalid.

If an affirmation with respect to any item of spirituous liquors is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquors, and the item shall not be sold to or purchased by any wholesaler during the period covered by the schedule.

History: Laws 1981, ch. 39, § 66; 1985, ch. 5, § 4.

60-8A-17. Determination of lowest price.

In determining the lowest price for which any item of spirituous liquors was sold in any other state or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under the schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing the item in the other state or in the District of Columbia. Nothing contained in Sections 60-8A-12 through 60-8A-19 NMSA 1978 shall prevent differentials in price which make only due allowance for differences in state taxes and fees and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, the liter of spirituous liquors.

History: Laws 1981, ch. 39, § 67; 1985, ch. 5, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 237.

Validity of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail, 96 A.L.R.3d 639.

60-8A-18. Violation; penalty.

Any person who knowingly makes a false statement in any affirmation made and filed pursuant to Sections 62 through 69 [60-8A-12 to 60-8A-19 NMSA 1978] of the Liquor Control Act shall be liable for suspension of any license issued by the department for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

History: Laws 1981, ch. 39, § 68.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 416.

48 C.J.S. Intoxicating Liquors § 286.

60-8A-19. Authority to refuse affirmations.

Upon finding that a person has violated the Liquor Control Act and after appeal or, in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the director may refuse to accept any affirmation required to be filed by such person for a period not to exceed three months.

History: Laws 1981, ch. 39, § 69.

Liquor Control Act. - See 60-3A-1 NMSA 1978.

Veto of severability clause unconstitutional. - The governor's veto of Laws 1981, ch. 39, § 129, the severability clause of the Liquor Control Act, was unconstitutional under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

ARTICLE 9
TRADE PRACTICES

60-9-1 to 60-9-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-9-1 to 60-9-12 NMSA 1978, relating to trade practices, effective July 1, 1981. For present provisions, see 60-8A-1 to 60-8A-11.

ARTICLE 10
OFFENSES AND PENALTIES

60-10-1 to 60-10-15. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-10-1 to 60-10-15 NMSA 1978, relating to offenses, effective July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

60-10-16. Recompiled.

ANNOTATIONS

Recompilations. - Former 60-10-16 NMSA 1978, relating to selling or giving liquor to minors and possession by minors has been recompiled as 60-7B-1.1 NMSA 1978.

60-10-17 to 60-10-40. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-10-17 to 60-10-40 NMSA 1978, relating to offenses and penalties, effective July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

ARTICLE 11
MISCELLANEOUS PROVISIONS

60-11-1 to 60-11-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-11-1 to 60-11-4 NMSA 1978, relating to miscellaneous provisions of the Liquor Control Act, effective July 1, 1981. For present provisions, see 60-3A-5, 60-8A-5 NMSA 1978.

ARTICLE 12
DISCRIMINATION IN SELLING ACT

60-12-1 to 60-12-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 39, § 128, repeals 60-12-1 to 60-12-10 NMSA 1978, the "Discrimination in Selling Act," effective July 1, 1981. For present provisions, see 60-8A-12 to 60-8A-19 NMSA 1978.

ARTICLE 13
CONSTRUCTION INDUSTRIES LICENSING

60-13-1. Short title. (Effective until July 1, 1998.)

Chapter 60, Article 13 NMSA 1978 may be cited as the "Construction Industries Licensing Act".

History: 1953 Comp., § 67-35-1, enacted by Laws 1967, ch. 199, § 1; 1989, ch. 6, § 1.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to exemption of construction industries committee from authority of superintendent of regulation and licensing, see 9-16-12 NMSA 1978.

As to excavation damage to pipelines and underground utility lines, see 62-14-1 NMSA 1978 et seq.

As to prohibition against removal or alteration of identification marks from construction equipment, see 70-2-36 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "Chapter 60, Article 13 NMSA 1978" for "this act".

Licensing boards not contravention of state constitution. - Former act to create boards for the licensing of contractors, and vest them with administrative powers, did not contravene N.M. Const., art. VI, § 13, vesting original jurisdiction of all matters and causes in the district courts. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

The purpose of the act is to provide a comprehensive method for the licensing and control of contractors in order to protect the public from either irresponsible or incompetent contractors. In re Romero, 535 F.2d 618 (10th Cir. 1976).

The phrase "not otherwise exempt by law" in 3-38-1 NMSA 1978, allowing licensing and regulation of certain businesses, refers to the exemptions from licensing and regulation created by the Construction Industries Licensing Act, those created by the Private Investigators' Act (61-27-1 NMSA 1978 et seq.) and possibly to other statutory exemptions. 1969 Op. Att'y Gen. No. 69-72.

This act does not apply to state agencies insofar as licensing is concerned. 1971 Op. Att'y Gen. No. 71-55.

Employment of former legislative member. - A member of the legislature who resigns his position as a member of such legislature may not be legally employed by the construction industries commission (now replaced by the construction industries division). 1968 Op. Att'y Gen. No. 68-121.

Law reviews. - For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For survey of construction law in New Mexico, see 18 N.M.L. Rev. 331 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits § 1 et seq.; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done-modern cases, 44 A.L.R.4th 271.

53 C.J.S. Licenses § 34.

60-13-1.1. Purpose of the act. (Effective until July 1, 1998.)

The purpose of the Construction Industries Licensing Act [this article] is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work. To effect this purpose, it is the intent of the legislature that:

A. examination, licensing and certification of the occupations and trades within the jurisdiction of the Construction Industries Licensing Act be such as to ensure or encourage the highest quality of performance and to require compliance with approved codes and standards and be, to the maximum extent possible, uniform in application, procedure and enforcement;

B. there be eliminated the wasteful and inefficient administrative practices of dual licensing, duplication of inspection, nonuniform classification and examination of closely related trades or occupational activities and jurisdictional conflicts; and

C. contractors be required to furnish and maintain evidence of responsibility.

History: 1953 Comp., § 67-35-4, enacted by Laws 1967, ch. 199, § 4; 1978 Comp., § 60-13-4, recompiled as § 60-13-1.1 by Laws 1989, ch. 6, § 2.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Purpose of this act is to protect the public from incompetent and irresponsible builders, and in view of the severity of the sanctions and the forfeitures which could be involved, courts are reluctant to construe the act more broadly than necessary for achievement of its purpose; its provisions should not be transformed into an "unwarranted shield for the avoidance of a just obligation." Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

60-13-2. General definitions. (Effective until July 1, 1998.)

As used in the Construction Industries Licensing Act [this article]:

A. "division" means the construction industries division of the regulation and licensing department;

B. "trade bureau" means the electrical bureau, the mechanical bureau, the general construction bureau or the liquefied petroleum gas bureau of the division;

C. "jurisdictional conflict" means any conflict between or among trade bureaus as to the exercise of jurisdiction over an occupation or trade for which a license is required under the provisions of the Construction Industries Licensing Act;

D. "person" includes an individual, firm, partnership, corporation, association or other organization, or any combination thereof;

E. "qualifying party" means any individual who submits to the examination for a license to be issued under the Construction Industries Licensing Act and who is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with that act;

F. "certificate of qualification" means a certificate issued by the division to a qualifying party;

G. "journeyman" means any individual who is properly certified by the electrical bureau or the mechanical bureau, as required by law, to engage in or work at his trade;

H. "apprentice" means an individual who is engaged, as his principal occupation, in learning and assisting in a trade;

I. "wages" means compensation paid to an individual by an employer from which taxes are required to be withheld by federal and state law;

J. "public use" means the use or occupancy of any structure, facility or manufactured commercial unit to which the general public, as distinguished from residents or employees, has access;

K. "bid" means a written or oral offer to contract;

L. "building" means any structure built for use or occupancy by persons or property, including but not limited to manufactured commercial units and modular homes or premanufactured homes designed to be placed on permanent foundations whether mounted on skids or permanent foundations or whether constructed on or off the site of location;

M. "inspection agency" means a firm, partnership, corporation, association or any combination thereof approved in accordance with regulations as having the personnel and equipment available to adequately inspect for the proper construction of manufactured commercial units, modular homes or premanufactured homes;

N. "director" means the administrative head of the division;

O. "chief" means the administrative head of a trade bureau;

P. "commission" means the construction industries commission;

Q. "manufactured commercial unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width which is constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for use as an office or other commercial purpose and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined

into one integral unit, as well as a single unit; but which does not include any movable or portable housing structure over twelve feet in width and forty feet in length which is used for nonresidential purposes. "Manufactured commercial unit" does not include modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property; and

R. "code" means a body or compilation of provisions or standards which govern contracting or some aspect of contracting; which provide for safety and protection of life and health; which are approved by a nationally recognized standards association; and which standards are in general use in the United States or in a clearly defined region of the United States. The term "code" includes the Uniform Building Code, the National Electrical Code, the Uniform Plumbing and Mechanical Code, the LP Gas Code and any other codes adopted by the commission.

History: 1953 Comp., § 67-35-2, enacted by Laws 1967, ch. 199, § 2; 1969, ch. 224, § 1; 1972, ch. 11, § 1; 1973, ch. 259, § 6; 1975, ch. 331, § 15; 1977, ch. 245, § 166; 1983, ch. 105, § 1; 1988, ch. 102, § 2; 1989, ch. 6, § 3.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-3. Definition; contractor. (Effective until July 1, 1998.)

As used in the Construction Industries Licensing Act [this article], "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes but is not limited to constructing, altering, repairing, installing or demolishing any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, bridle path, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative which constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company which installs, alters or repairs its facilities, including but not limited to plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property, provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act, and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring which are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time which, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the work being casual, minor or inconsequential such as, but not limited to, handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act, that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars ($7,200) compensation a year;

(15) any person, firm or corporation which installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel; or

(16) a cable television or community antenna television company which constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals.

History: 1953 Comp., § 67-35-3, enacted by Laws 1978, ch. 66, § 1; 1979, ch. 46, § 1; 1979, ch. 49, § 1; 1986, ch. 107, § 1; 1987, ch. 283, § 1; 1989, ch. 6, § 4.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Repeals and reenactments. - Laws 1978, ch. 66, § 1, repealed former 67-35-3, 1953 Comp. (former 60-13-3 NMSA 1978), as amended by Laws 1977, ch. 377, § 1, relating to definition of "contractor," and enacted a new 67-35-3, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

Former Contractors' License Law of 1939 was not unconstitutional as a denial of due process since the legislature could enact laws in the exercise of its police powers, provided only that the exercise was not so unreasonable as to amount to confiscation of property or a denial of the right to engage in a particular trade, occupation or profession. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Filing requirement does not bar eligibility for exemption. - The filing requirement in subsection (b)(14) is directory, not mandatory, and as such does not to constitute a bar to the plaintiff's eligibility for the intended exemption. Stokes v. Tatman, 111 N.M. 188, 803 P.2d 673 (1990).

Highway contractors are included within definition of term "contractor" as used in the former Contractors' License Law. 1961-62 Op. Att'y Gen. No. 61-69.

"Contractor" status requires control of installation. - The ordering and delivering of materials or the mere arranging for their installation does not bring suppliers of materials into the realm of the definition of "contractor" under subsection A where they are not, and their contracts do not place them, in control of the installation. Verchinski v. Klein, 105 N.M. 336, 732 P.2d 863 (1987).

Contractor, where promise to mine and move copper ore. - A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-2, 1953 Comp. (now repealed). Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Contractor, where no hourly wage, time slips, or employee tax forms. - Defendant was not an employee of the person for whom he had contracted to construct a trailer park, and was therefore required to obtain a contractor's license, where he never received an hourly wage, did not submit time slips or employee tax forms, and the evidence was uncontroverted that the work performed fell within the requirements of Subsection A. Mascarenas v. Jaramillo, 111 N.M. 410, 806 P.2d 59 (1991).

Hourly worker not necessarily exempt. - The fact that a person undertakes to do work for another at an hourly rate does not necessarily by that fact alone exempt him from the definition of "contractor" under former law. 1955-56 Op. Att'y Gen. No. 6332.

Contracts for "incidental" work exempted under former law. - Failure to reemploy the word "incidental" in the 1945 amendment did not leave the former Contractors' License Act applicable to contracts for work which was only "incidental" to the

occupations or pursuits named as being exempted from the act. B. & R. Drilling Co. v. Gardner, 55 N.M. 118, 227 P.2d 627 (1951).

Construction for own use on own land not included. - Under former version of this section (67-16-2, 1953 Comp.), a person constructing billboards for his own use on his own land did not need to be licensed as a contractor, as such person did not "undertake" to construct, alter, repair, add to or improve anything within the meaning of that section. "Undertakes" as used in the statutory definition of "contractor," necessarily meant "undertakes with another," and did not include work done by a person alone for his own uses. 1966 Op. Att'y Gen. No. 66-24.

Test as to independent contractor or employee. - The principal test to determine whether one is an independent contractor or an employee is whether the employer has any control over the manner in which the details of the work are to be accomplished. Mere suggestions by the employer or the "directing control essential to coordinate the several parts of a larger undertaking" does not affect the relationship. It is the right to control, not the exercise of it, that furnishes the test. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mechanical & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Independent contractor for assessment work. - Where plaintiff, an expert miner, who was working his adjoining claims was hired to watch defendant's claim and to do defendant's assessment work to consist of 70 feet of tunnel for an agreed price per foot, the details of the work to be left entirely to plaintiff, plaintiff was acting as an independent contractor in the assessment work. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mechanical & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Bowling alley, related fixtures subject to regulation. - Bowling alleys and fixtures related thereto, as in the installation of a bar, are fabricated into a building under a performance contract and for a lump sum and are not considered to be personalty; therefore, the operation in question is subject to regulation under the former act. 1957-58 Op. Att'y Gen. No. 58-155.

Mere moving of completed structure is not included under laws applied to contractors' licensing. 1953-54 Op. Att'y Gen. No. 5653.

When completion and moving of house included. - In the event a house had been wholly constructed elsewhere and moved to the site, the person so moving and setting the house upon the site was not within the provisions of the Contractors' Licensing Law (now repealed). In the event the prefabrication took place in sections and the house or structure was completed on the site, then the persons completing it, if all the other provisions of the law were applicable were under the former law pertaining to the contractors' licensing board (now abolished). 1953-54 Op. Att'y Gen. No. 5653.

Sale of prefabricated structure not included. - In view of the rule requiring strict interpretation of licensing statutes, a person who sells prefabricated structures is in no way included in the terms and provisions of the former Contractors' Licensing Law, whether he sells the structure delivered on the building site or whether the structure is sold F.O.B. manufacturer's plant. 1953-54 Op. Att'y Gen. No. 5653.

Removal of structures included. - Although the removal of structures is not specifically included within the items named, the section provides that contracting includes the altering of buildings, and altering has some meaning other than constructing, repairing, installing or demolishing; otherwise, all of the words would not have been used in the section. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Neither the asserted contract for removal of a structure from plaintiff's land nor the removal process itself involves building or improving the structures (Subsection D(11)), or building, installations, repairs or alterations on a farm or ranch owned, occupied or operated by plaintiff (Subsection D(12)). Therefore, these exclusions do not exclude the asserted contract of removal from the meaning of "constructing." Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

No license required for contract to drill well. - A contract for drilling a well to supply water for agricultural purposes fell within the exceptions to which the former Contractors' License Act of 1939 did not apply. B. & R. Drilling Co. v. Gardner, 55 N.M. 118, 227 P.2d 627 (1951).

Installation of turbine water well pump. - A person who installs a turbine water well pump need not obtain a contractor's license. 1988 Op. Att'y Gen. No. 88-28.

No license requirement for cleaning activity. - Where construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of this section. Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Prospect and contract miners not subject to act. - Generally speaking, the term "project" is not specifically applicable to prospect or development mining operations, but more recognizable as used in commercial or domestic realty terminology; accordingly, under former law, prospect and contract miners were not subject to this act. 1957-58 Op. Att'y Gen. No. 57-105.

Agency or political subdivision of state not covered under former law. - Under former 67-16-3, 1953 Comp. of the Contractors' License Law, an agency or political subdivision of the state was not required to have a contractor's license for any classification as set forth in the rules and regulations of that law. That section confined the necessity for securing licenses to "any person, firm, co-partnership, corporation, association or other organization, or any combination thereof." Neither the state, its

agencies or political subdivisions were mentioned in this list of business entities. Furthermore, the state could not be included in any of such business entities because the state was a body politic and not an association, society or corporation. Thus, the contractors' license board (now abolished) had no authority to license a water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.

License required in partnership's name. - Contractors' License Law, 67-16-2, 1953 Comp. (now repealed), and the rules and regulations issued pursuant thereto, compelled partnerships to be licensed to hold a license in the partnership name. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

Necessary to establish that license required. - Defendant, seeking to invoke 67-16-14, 1953 Comp. (now repealed), prohibiting an unlicensed contractor from maintaining an action, must establish that plaintiff was in fact required to be licensed. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

Effect of knowledge of other party's lack of license. - Formerly the fact that defendants in an action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with former licensing statute. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Standing to attack constitutionality under former law. - Duly licensed contractors operating unmolested under the former act creating the license board (now abolished) were not in position to question constitutionality of the act where no proceeding was pending, contemplated or threatened by the board to revoke their licenses and no other action was contemplated by the board which would affect them adversely. Brockman v. Contractors Licensing Bd., 48 N.M. 304, 150 P.2d 125 (1944).

Law reviews. - For survey of construction law in New Mexico, see 18 N.M.L. Rev. 331 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Who is a "contractor" within statutes requiring the licensing of, or imposing a license tax upon, a "contractor" without specifying the kinds of contractors involved, 19 A.L.R.3d 1407.

53 C.J.S. Licenses § 34.

60-13-4. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1989, ch. 6, § 2 recompiles 60-13-4 NMSA 1978, relating to purpose of the Construction Industries Licensing Act, as 60-13-1.1 NMSA 1978, effective July 1, 1989.

60-13-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-5 NMSA 1978, as enacted by Laws 1974, ch. 78, § 33, relating to criminal offender's character evaluation, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-6. Construction industries commission created; membership; duties. (Effective until July 1, 1998.)

A. There is created within the division the "construction industries commission". The commission shall be composed of nine voting members who shall serve at the pleasure of the governor. Members shall be appointed by the governor, with the advice and consent of the senate as follows:

(1) one member who is a representative of the residential construction industry of this state;

(2) one member who is a licensed electrical contractor;

(3) one member who is a licensed mechanical contractor;

(4) one member who is a licensed and practicing architect;

(5) one member who is a practicing general contractor;

(6) one member who is a representative of the liquefied petroleum gas industry;

(7) one resident of the state who is not a licensed contractor or certified journeyman who shall represent the people of New Mexico;

(8) one member who is a representative of the subcontracting industry of the state; and

(9) one member who is a representative of organized labor.

Members shall be appointed to provide adequate representation of all geographic areas of the state.

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

C. The commission shall annually elect a chairman and vice chairman from its membership. The director shall serve as the executive secretary of the commission.

D. The commission shall meet bimonthly or at the call of the chairman.

E. The commission shall establish policy for the division. It shall advise on, review, coordinate and approve or disapprove all rules, regulations, standards, codes and licensing requirements which are subject to the approval of the commission under the provisions of the Construction Industries Licensing Act [this article] or the LPG Act [70-5-1 to 70-5-22 NMSA 1978] so as to insure that uniform codes and standards are promulgated and conflicting provisions are avoided. The commission shall:

(1) revoke or suspend, for cause, any license or certificate of qualification issued under the provisions of the Construction Industries Licensing Act or the LPG Act; and

(2) define and establish all license classifications. The licensee shall be limited in his bidding and contracting as provided in Subsection B of Section 60-13-12 NMSA 1978. Any licensee, subsequent to the issuance of a license, may make application for additional classification and be licensed in more than one classification if he meets the prescribed qualification for the additional classification.

History: 1953 Comp., § 67-35-4.2, enacted by Laws 1977, ch. 245, § 168; 1983, ch. 105, § 2; 1989, ch. 6, § 5.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to termination of commission, see 60-13-58 NMSA 1978.

Temporary provisions. - Laws 1989, ch. 6, § 66, effective July 1, 1989, provides that the construction industries commission, in accordance with the recertification plan established by the commission, shall work with the personnel board to adjust salary ranges of inspectors upward in a proportional manner in accordance with the personnel board's system for determining classes and class compensation ranges.

60-13-7. Construction industries division; director; appointment and qualifications. (Effective until July 1, 1998.)

The superintendent of regulation and licensing shall appoint the director of the division, who shall be a person who meets at least one of the following qualifications:

A. is or has been an active practicing construction contractor for at least five years;

B. is or has been an employee in an administrative position of a construction company for at least five of the past ten years;

C. has been employed by the construction industries division for at least five years and is knowledgeable in the administration of the law governing the construction industries division; or

D. is or has been actively engaged for at least five of the past ten years in an administrative position of an organization which requires that person to have a broad knowledge of the construction industry.

History: 1953 Comp., § 67-35-4.3, enacted by Laws 1977, ch. 245, § 169; 1989, ch. 6, § 6.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to appointment of director, see 9-16-7 NMSA 1978.

As to termination of division, see 60-13-58 NMSA 1978.

60-13-8. Division; employees; equipment and supplies. (Effective until July 1, 1998.)

A. The division shall employ personnel, procure equipment and supplies and assemble records as necessary to carry out the provisions of the Construction Industries Licensing Act [this article].

B. Any person employed or placed under contract by the division or by any county or municipality for the purpose of carrying out the provisions of the Construction Industries Licensing Act who holds any contractor's license or certificate of competence issued by the division, shall, as a condition of employment surrender the contractor's license or certificate of competence to the division to be held in inactive status. The division shall place the license or certificate on hold effective from the date the employment or contract begins until the date the employment or contract terminates. The license or certificate shall remain in effect after the hold period for the same number of days as it would have remained in effect but for the hold.

History: 1953 Comp., § 67-35-12, enacted by Laws 1967, ch. 199, § 12; 1977, ch. 245, § 170; 1987, ch. 283, § 2.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-9. Division; duties. (Effective until July 1, 1998.)

The division shall:

A. approve and adopt examinations on codes and standards, business knowledge, division rules and regulations and on the Construction Industries Licensing Act [this article] recommended by the commission for all classifications of contractor's licenses;

B. issue, under the director's signature, contractor's licenses and certificates of qualification in accordance with the provisions of the Construction Industries Licensing Act;

C. submit a list of all contractor's licenses and certificates of qualification issued by the division to the commission for review and approval;

D. resolve jurisdictional conflicts by assigning specific responsibility to the appropriate bureau for preparing examinations and for certifying and inspecting each occupation, trade or activity covered by the Construction Industries Licensing Act;

E. establish and collect fees authorized to be collected by the division pursuant to the Construction Industries Licensing Act;

F. adopt all building codes and minimum standards as recommended by the trade bureaus and approved by the commission so that the public welfare is protected, uniformity is promoted and conflicting provisions are avoided;

G. with approval of the superintendent of regulation and licensing employ such personnel as the division deems necessary for the exclusive purpose of investigating violations of the Construction Industries Licensing Act, enforcing Sections 60-13-12 and 60-13-38 NMSA 1978 and instituting legal action in the name of the division to accomplish the provisions of Section 60-13-52 NMSA 1978;

H. approve, disapprove or revise the recommended budget of each trade bureau and submit the budgets of those bureaus, along with its own budget, to the regulation and licensing department;

I. approve, disapprove or revise and submit to the regulation and licensing department all requests of the trade bureaus for emergency budget transfers;

J. make an annual report to the superintendent of regulation and licensing and develop a policy manual concerning the operations of the division and the trade bureaus. The report shall also contain the division's recommendations for legislation it deems necessary to improve the licensing and technical practices of the construction and LP gas industries and to protect persons, property and agencies of the state and its political subdivisions;

K. adopt, subject to commission approval, rules and regulations necessary to carry out the provisions of the Construction Industries Licensing Act and the LPG Act [70-5-1 to 70-5-22 NMSA 1978];

L. maintain a complete record of all applications; all licenses issued, renewed, canceled, revoked and suspended; and all fines and penalties imposed by the division or commission and may make that information available to certified code jurisdictions;

M. furnish, upon payment of a reasonable fee established by the division, a certified copy of any license issued or of the record of the official revocation or suspension thereof. Such certified copy shall be prima facie evidence of the facts stated therein; and

N. publish a list of contractors, with their addresses and classifications, licensed by the division. The list shall be furnished without charge to such public officials, public bodies or public works and building departments as the division deems advisable. The list shall be published annually, and supplements shall be provided as the division deems necessary. Copies of the list and supplements shall be furnished to any person upon request and payment of a reasonable fee established by the division.

History: 1953 Comp., § 67-35-13, enacted by Laws 1978, ch. 73, § 1; 1983, ch. 105, § 3; 1985, ch. 70, § 1; 1989, ch. 6, § 7.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to the superintendent of regulation and licensing, see 9-16-5 NMSA 1978.

Repeals and reenactments. - Laws 1978, ch. 73, § 1, repealed former 67-35-13, 1953 Comp. (former 60-13-9 NMSA 1978), as amended by Laws 1977, ch. 377, § 2, relating to duties, and enacted a new 67-35-13, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

Conversion of individual units in apartment building to condominium would not require new building codes be applied to the same buildings, if the apartment building met all applicable building codes when constructed. In that case, the sale of the building as residential condominium units would not require the construction industries commission (now construction industries division) to enforce the most current building code which may incorporate more stringent requirements. 1978 Op. Att'y Gen. No. 78-18.

60-13-10. Additional division duties; flood or mudslide areas; standards. (Effective until July 1, 1998.)

In addition to the division's other duties, on or before January 1, 1976 the division shall, with the approval of the commission, issue regulations prescribing standards for the installation or use of electrical wiring, the installation of fixtures, plumbing, consumers' gas pipe and appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings, improvements, modular homes, premanufactured homes and manufactured commercial units intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. Such regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to Regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

History: 1953 Comp., § 67-35-13.1, enacted by Laws 1975, ch. 14, § 3; 1975, ch. 331, § 17; 1977, ch. 245, § 172; 1983, ch. 105, § 4; 1989, ch. 6, § 8.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Compiler's note. - Federal Regulation 1910, referred to in the second sentence, appears as 44 C.F.R. § 60.1 et seq.

60-13-10.1. Division; additional duties; alcohol fuel plant construction code; rules and regulations. (Effective until July 1, 1998.)

A. In addition to the division's other duties, on or before January 1, 1982 it shall, with the approval of the commission and after public hearing, adopt an alcohol fuel plant construction code. The code shall set forth reasonable standards and requirements for the construction, alteration or repair of buildings and other structures to be used for the manufacture or distillation of alcohol fuel. In adopting the code, the division shall give due regard to the purpose for which the plant is to be used and to the physical, climatic and other conditions peculiar to New Mexico.

B. Upon the adoption of the code, the commission shall make rules and regulations pertaining to the issuance of a permit prior to any construction, installation, alteration, repair or addition to or within any building or structure proposed for the use of manufacturing or distillation of alcohol fuel. The commission shall also set a reasonable fee for the issuance of a permit.

C. No permit shall be required of any person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installation, repairs or alterations on a farm or ranch owned, occupied or operated by him to any building or structure for the use of manufacturing or distillation of alcohol fuel.

History: 1978 Comp., § 60-13-10.1, enacted by Laws 1981, ch. 245, § 1; 1989, ch. 6, § 9.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-11. Division or commission; powers. (Effective until July 1, 1998.)

The division or the commission may:

A. sue and be sued, issue subpoenas and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing;

B. administer oaths;

C. adopt and use a seal for authentication of its records, processes and proceedings;

D. compel minimum code compliance in all certified code jurisdictions and political subdivisions; and

E. investigate code violations in any code jurisdictions in New Mexico.

History: 1953 Comp., § 67-35-14, enacted by Laws 1967, ch. 199, § 14; 1977, ch. 245, § 173; 1989, ch. 6, § 10.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Use of appropriated funds under former law. - The contractors' license board (now abolished) may not spend money from the appropriated funds for the construction of a block wall contingent upon the board's failure to exercise the right of option to purchase said property. 1957-58 Op. Att'y Gen. No. 58-117.

The contractors' license board (now abolished) may not contract to spend appropriated funds budgeted for maintenance of buildings and structures, for improvement or permanent changes to be made upon its leased premises. 1957-58 Op. Att'y Gen. No. 58-117.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 263, 421.

60-13-12. Contractor's license required. (Effective until July 1, 1998.)

A. No person shall act as a contractor without a license issued by the division classified to cover the type of work to be undertaken.

B. No bid on a contract shall be submitted unless the contractor has a valid license issued by the division to bid and perform the type of work to be undertaken; provided this subsection shall not prohibit a licensed contractor from bidding or contracting work involving the use of two or more trades, crafts or classifications if the performance of the work in the trades, crafts or classifications other than the one in which he is licensed is incidental or supplemental to the performance of the work in the trades, crafts or classifications for which he is licensed; and further provided that work coming under the jurisdiction of the mechanical bureau or the electrical bureau of the division must be performed by a contractor licensed to perform that work.

C. Any contractor may bid on a New Mexico highway project involving the expenditure of federal funds prior to making application to the division for a license. The contractor, if he has not previously been issued a license, shall upon becoming the apparent successful bidder apply to the division for a license. The director shall issue a license to the contractor in accordance with the provisions of the Construction Industries Licensing Act [this article].

History: 1953 Comp., § 67-35-15, enacted by Laws 1967, ch. 199, § 15; 1969, ch. 224, § 5; 1977, ch. 245, § 174; 1983, ch. 105, § 5; 1989, ch. 6, § 11.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Purpose. - The purpose of the former Contractors' License Law was to require licensing of those engaged in the contracting business to protect the public from unqualified contractors. Cancienne, Inc. v. Southwest Community Inns, Inc., 80 N.M. 512, 458 P.2d 587 (1969).

Transfer of license between contractor and subcontractor prohibited. - This article requires both a contractor and subcontractor to be licensed and prohibits transferring a license or certificate of qualification to another. State v. Jenkins, 108 N.M. 669, 777 P.2d 908 (Ct. App. 1989).

Municipality's licensing and regulating rights taken away. - Right of a municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Prior contractors', etc., licenses supplanted. - The Construction Industries Licensing Act provides for issuance of a contractor's license which supplants all prior contractors', plumbers' and electricians' licenses. 1969 Op. Att'y Gen. No. 69-72.

Requirements of electrical contractor's license under former law. - When a business, regardless of the nature of its organization (partnership, corporation, etc.) is formed with the intention of entering into the electrical contracting business, it should obtain an electrical contractor's license by written application stating the name of the business designated as holder and the qualified person named as supervisor. The supervisor must be the master electrician. 1961-62 Op. Att'y Gen. No. 62-77.

Having an electrical contractor's license did not exempt party from requirements of the former Contractors' License Law. An action is barred under 67-16-14, 1953 Comp., because of the lack of a contractor's license. Chavas v. Esper, 76 N.M. 666, 417 P.2d 802 (1966).

License required in partnership name. - Former Contractors' License Law (67-16-1, 1953 Comp. et seq.), and the rules and regulations issued pursuant thereto, compel partnerships required to be licensed to hold a license in the partnership name. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

The admission of a person as a partner with a licensed contractor required the issuance of a new contractor's license to the partnership under former law. Nickels v. Walker, 74 N.M. 545, 395 P.2d 679 (1964).

Type of work to be covered by license. - No person shall engage in business of a contractor unless the construction industries commission (division) has issued him a license which covers the type of work to be undertaken. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

Work done within ambit of party's license. - Defendant's contention that plaintiff's action was barred by 67-16-6 and 67-16-17 1953 Comp. (now repealed), for failure of plaintiff to have contractor's license to perform the work he did was without merit, as plaintiff had a contractor's license which authorized him to do excavating, trenching, welding, water supply, sewage, including disposal and gas lines and the work done involved the cutting and threading of steel braces and welding said braces to steel plates, which fell within that part of plaintiff's contractor's license which authorized plaintiff to contract welding work. Dunson Contractors v. Koury, 76 N.M. 723, 418 P.2d 66 (1966).

Contractor, where promise to mine and move copper ore. - A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-3, 1953 Comp. (now repealed). Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Persons, etc., contracting on percentage basis covered by former law. - The contractors' license board (now abolished) could license persons, firms, partnerships and corporations that were contractors on a percentage basis and otherwise were within the coverage of 67-16-2, 1953 Comp. (now repealed). Agents and employees of contractors needed no license, even though they were employed on a percentage basis. 1961-62 Op. Att'y Gen. No. 62-4.

Salesmen taking orders for remodeling on behalf of licensed building concerns were not required to be licensed by the contractors' license board (now abolished). 1961-62 Op. Att'y Gen. No. 62-4.

Employee, not independent contractor, when performance controlled. - Where plaintiff was hired by defendant for drilling purposes, and where defendant retained at all times right of control of performance of the work as well as right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor and was not barred from recovery under 67-16-3 and 67-16-14, 1953 Comp. (now repealed), for failure to obtain a contractor's license. Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960).

Special license not required for general contractor. - A general contractor for construction of homes and other buildings, but who was not specially licensed as a painter or decorator contractor, was not required by 67-16-17, 1953 Comp. (now repealed), to subcontract the painting and decorating, as his license as a general contractor enabled him to do the painting or hire help to do it for him. 1959-60 Op. Att'y Gen. No. 59-67.

License required maintenance of contract breach action. - Where the work performed was fabricating materials or supplies or using the same in the performance of contracting work and electrical installation, a contractor's license was required under former Contractors' License Law and therefore plaintiff could not maintain an action for breach of contract. Cancienne, Inc. v. Southwest Community Inns, Inc., 80 N.M. 512, 458 P.2d 587 (1969).

Establishment of necessity for license required before action barred. - Defendant, seeking to prohibit an unlicensed contractor from maintaining an action, was required to establish that plaintiff was required by 67-16-2, 1953 Comp. (now repealed), to be licensed. Crumpacker v. Adams, 77 N.M. 633, 426 P.2d 781 (1967).

No quantum meruit recovery where license required. - One who has shown himself to be required to have contractor's license cannot recover under quantum meruit in absence of such license. Campbell v. Smith, 68 N.M. 373, 362 P.2d 523 (1961), overruled on other grounds, Sundance Mechanical & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Allegation of contractor's license treated as tried with parties' consent. - Where appellants made no objection to evidence of contractor's license and raised neither the jurisdiction nor the limitation question at trial, and requested no findings on either question, requirement of allegation of contractor's license was matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot object to appellate court treating issue tried with consent of the parties as though it had been raised by pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

Evidence as to license. - Evidence of certain receipts and decals issued by licensing authority to plaintiff, along with plaintiff's own testimony that he was licensed, constitutes acceptable evidence, especially when it is joined with testimony from an official of the New Mexico construction industries commission (division), the agency which now licenses contractors, that plaintiff had been licensed at all pertinent times. Kennedy v. Lynch, 85 N.M. 479, 513 P.2d 1261 (1973).

"Best evidence rule" not applicable to proof of license. - It is plaintiff's licensed status which must be proved and not contents of particular document; therefore, "best evidence rule" or Rule 1002, N.M.R. Evid. (now see Rule 11-1002), does not apply. Kennedy v. Lynch, 85 N.M. 479, 513 P.2d 1261 (1973).

Same person shall not be designated as supervisor in more than one electrical contractor's license. 1961-62 Op. Att'y Gen. No. 62-77.

Use of unlicensed persons for plumbing and irrigating systems. - Under former law, the New Mexico school for the deaf could employ unlicensed persons for making installation of plumbing in the buildings of a dairy farm located in an unpopulated area; also, an irrigating system could be installed without regard to the licensing requirements

of 67-22-2, 1953 Comp., and connections could be made to water tanks, troughs, etc., by licensed plumbers. 1959-60 Op. Att'y Gen. No. 59-61.

Law reviews. - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits §§ 4, 16; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 63 to 75, 90 to 98, 129, 132, 133.

Requiring procurement of license by heating contractors, 33 A.L.R. 146.

Plumbers, provisions as to licensing, 36 A.L.R. 1342, 22 A.L.R.2d 816.

Municipal regulation of electricians and the installation of electrical work, 96 A.L.R. 1506.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Validity, construction and application of license regulations as to masons, plasterers, painters and paperhangers, 123 A.L.R. 471.

What constitutes plumbing or plumbing work within statute or ordinance requiring license for such work, 125 A.L.R. 718.

Validity, under police power, of regulations as to plumbers and plumbing, 22 A.L.R.2d 818.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done-modern cases, 44 A.L.R.4th 271.

53 C.J.S. Licenses § 34.

60-13-13. Application for contractor's license. (Effective until July 1, 1998.)

A. Applications for a contractor's license or a certificate of qualification shall be submitted to the division on forms prescribed and furnished by the division and shall contain the information and be accompanied by the attachments required by regulation of the commission.

B. The application shall be accompanied by the prescribed fee.

History: 1953 Comp., § 67-35-16, enacted by Laws 1967, ch. 199, § 16; 1977, ch. 245, § 175; 1989, ch. 6, § 12.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-13.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-13.1 NMSA 1978, as enacted by Laws 1979, ch. 107, § 1, relating to supplemental licenses and fees for general building contractors, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-13.2. Licensees; identical or similar names. (Effective until July 1, 1998.)

The division shall not accept an application, shall not issue a license and shall require a change in the name of a proposed license if the proposed name is identical to or in the opinion of the director so similar that it may cause confusion with a name on a pending application or an existing license. Any person aggrieved by the decision of the director may appeal the decision to the commission.

History: 1978 Comp., § 60-13-13.2, enacted by Laws 1983, ch. 105, § 6; 1989, ch. 6, § 13.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-14. Division; license issuance; reports. (Effective until July 1, 1998.)

A. No license shall be issued by the division to any applicant unless the director is satisfied that the applicant is or has in his employ a qualifying party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of Subsection B of this section.

B. An applicant for a license shall:

(1) demonstrate proof of responsibility as provided in the Construction Industries Licensing Act [this article];

(2) comply with the provisions of Subsection D of this section if he has engaged illegally in the contracting business in New Mexico within one year prior to making application;

(3) demonstrate familiarity with the rules and regulations promulgated by the commission and division concerning the classification for which application is made;

(4) if a corporation, have complied with the laws of this state requiring qualification to do business in New Mexico or have been incorporated in this state and, if a foreign corporation, shall have maintained a registered agent and a registered office in New Mexico for at least ninety days preceding the issuance of a contractor's license;

(5) if an individual or partnership, have maintained a residence or street address in New Mexico for at least ninety days preceding the making of an application for a license;

(6) submit proof of registration with the taxation and revenue department and submit a current tax identification number;

(7) comply with any additional procedures, rules and regulations which are established by the commission relating to issuance of licenses; and

(8) have had four years, within the ten years immediately prior to application, of practical or related trade experience dealing specifically with the type of construction or its equivalent for which the applicant is applying for a license. The commission may by regulation provide for reducing this requirement for a particular industry or craft where it is deemed excessive, but at no time shall the requirement be less than two years. The commission may by regulation provide for a waiver of the work experience requirement of this paragraph when the qualifying party has been certified in New Mexico with the same license classification within the ten years immediately prior to application.

C. The division, with the consent of the commission, may enter into a reciprocal licensing agreement with any state having equivalent licensing requirements.

D. The director may issue a license to an applicant who at any time within one year prior to making application has acted as a contractor in New Mexico without a license as required by the Construction Industries Licensing Act if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee in an amount equal to five percent of the value of such nonlicensed contracting work; and

(2) the director is satisfied that no incident of such contracting without a license:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant with the division.

E. The director shall report every incident of nonlicensed contracting work to the taxation and revenue department to assure that the contractor complies with tax requirements and pays all taxes due.

History: 1953 Comp., § 67-35-17, enacted by Laws 1967, ch. 199, § 17; 1969, ch. 224, § 6; 1977, ch. 245, § 176; 1977, ch. 377, § 3; 1978, ch. 73, § 2; 1983, ch. 105, § 7; 1985, ch. 18, § 1; 1989, ch. 6, § 14.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

When foreign corporation considered to be "maintaining an office". - The hiring of an agent by a foreign corporation for the sole purpose of receiving and forwarding a summons and complaint to the home office of the corporation located in another state does not fall within any of the generally accepted definitions pertaining to maintaining of an office. An occasional or isolated act of this type by an agent of a foreign corporation is obviously not a part of the continuous, usual and ordinary business of the corporation which, in this case, would be building or construction. A foreign corporation must do something in addition to merely designating a statutory agent for service in order to meet the requirement of "maintaining an office." 1961-62 Op. Att'y Gen. No. 62-90.

Otherwise qualified alien may be issued license. 1959-60 Op. Att'y Gen. No. 60-162.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.

53 C.J.S. Licenses §§ 39, 40.

60-13-15. License issuance; commission review. (Effective until July 1, 1998.)

A. The commission shall review at its regular meetings all licenses issued by the division. The commission shall report to the superintendent of regulation and licensing and the attorney general any license issued to an applicant who fails to meet the requirements established by law and commission regulations for license issuance.

B. The signing of a license by the director for issuance by the division to an applicant who fails to meet the requirements established by law or committee regulations for issuance of licenses is a misdemeanor, and the director, if convicted by a court of law, shall be relieved of his duties and shall be subject to civil damages as provided in Section 30-23-7 NMSA 1978. Failure by the committee or any member of the committee to report the illegal issuance of a license is a petty misdemeanor and upon conviction shall result in termination of the appointment of the committee member so convicted.

History: 1953 Comp., § 67-35-17.1, enacted by Laws 1977, ch. 245, § 177; 1983, ch. 105, § 8; 1989, ch. 6, § 15.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-16. Division; qualifying party; examination; certificate. (Effective until July 1, 1998.)

A. Except as otherwise provided in this section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he has passed with a satisfactory score an examination approved and adopted by the division.

B. The examination shall consist of a test based on general business knowledge, rules and regulations of the division and the provisions of the Construction Industries Licensing Act [this article]. In addition, applicants for a GB, MM or EE classification or for any other classification which the commission determines to be appropriate shall take a test based on technical knowledge and familiarity with the prescribed codes and minimum standards of the particular classification for which certification is requested. The division shall provide examinations in both English and Spanish.

C. In lieu of the examination to determine knowledge of business and construction industries law provided in Subsection B of this section, an applicant may satisfy the business and law knowledge requirement by receiving a certificate of completion of a business and law course of study which has been approved and certified under rules and regulations adopted by the division and approved by the commission. The course and any preparation and instruction materials shall be available in both English and Spanish.

D. If a contractor's license is subject to suspension by the commission and if it is based on the requirement that the licensee employ a qualifying party, and the employment of the qualifying party is terminated without fault of the licensee, a member of that trade who is experienced in the classification for which the certificate of qualification was issued and has been employed for five or more years by the licensed contractor shall be issued without examination a temporary certificate of qualification in the classification for which the contractor is licensed, and the temporary qualifying party shall be subject to passing the regular examination as set forth in Subsection B of this section within ninety days of issuance of a temporary certificate of qualification.

E. The certificate of qualification is not transferable.

F. A qualifying party whose certificate is revoked by the commission shall not reapply for a certificate for one year.

History: 1953 Comp., § 67-35-18, enacted by Laws 1967, ch. 199, § 18; 1969, ch. 224, § 7; 1971, ch. 214, § 1; 1977, ch. 245, § 178; 1983, ch. 105, § 9; 1985, ch. 70, § 2; 1989, ch. 6, § 16.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits § 47; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.

53 C.J.S. Licenses § 40.

60-13-17. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-17 NMSA 1978, as amended by Laws 1977, ch. 245, § 179, relating to review before refusal to license, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-18. Licenses; renewal. (Effective until July 1, 1998.)

A. Licenses issued by the division are not transferable.

B. Contractor's licenses shall expire two years after the issuance date or as determined by the division, but in no instance less than one year, and shall be renewable upon application to the division and payment of the prescribed renewal fee; provided that nothing in this subsection shall prohibit the division from establishing a staggered system of license expiration and a procedure for proration of fees for licenses issued for less than the two-year period or other period provided by the division pursuant to this subsection.

C. Licenses shall expire upon the date established by regulation of the commission, such regulation to provide for a staggered system of license expiration and for proration of fees for licenses issued for less than a full year. Thereafter, such licenses shall be issued for a period of two years or as otherwise provided by the division pursuant to Subsection B of this section. Licenses shall be subject to renewal upon application to the division and payment of the prescribed renewal fee.

D. The director shall, at least thirty days prior to the expiration date of a license, notify the licensee of the approaching expiration. Notice shall be given by mail addressed to the licensee's last address on file with the division. The notice shall include a renewal application form, instructions and any other information prescribed by the division.

E. Failure of a licensee to make application for the renewal of his license, to furnish such other information required by the commission and to pay the prescribed renewal fee by the last working day prior to the expiration of the license shall cause the license to be suspended by operation of law.

F. Unless the license is renewed within a three-month period, it shall be canceled. The suspended license may be renewed only after payment of a fee equal to one dollar ($1.00) for each day, up to thirty days, that has elapsed since the expiration date of the license and thereafter for a fee equal to twice the amount of the renewal fee.

History: 1953 Comp., § 67-35-20, enacted by Laws 1967, ch. 199, § 20; 1969, ch. 224, § 8; 1977, ch. 245, § 180; 1983, ch. 105, § 10; 1987, ch. 283, § 3; 1989, ch. 6, § 17.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-19. Division; evidence of possession; penalty. (Effective until July 1, 1998.)

A. The licensee shall exhibit satisfactory evidence of the possession of a license on demand and shall clearly indicate his contractor's license number on all written bids and when applying for a building permit. Before work is commenced, a contract is signed or funds are paid for any residential contracting, the contractor shall disclose in writing to the owner that the license issued under the Construction Industries Licensing Act [this article] does not protect the consumer if the contractor defaults.

B. Any contractor who fails to indicate his contractor's license number clearly on all written bids and when applying for a building permit or who fails to make the disclosure statement required under this section shall be assessed by the division a penalty fee of one hundred fifty dollars ($150). The fee shall be payable to the code jurisdiction or political subdivision which issued the permit or in which the work for which the bid is submitted is or would be permitted.

History: 1953 Comp., § 67-35-21, enacted by Laws 1978, ch. 78, § 1; 1983, ch. 105, § 11; 1989, ch. 6, § 18.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Repeals and reenactments. - Laws 1978, ch. 78, § 1, repealed former 67-35-21, 1953 Comp. (former 60-13-19 NMSA 1978), as amended by Laws 1977, ch. 245, § 181, relating to evidence of possession, and posting of license, and enacted a new 67-35-21, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

60-13-20. Fees established by the division; payment of examination fees. (Effective until July 1, 1998.)

A. The division shall by regulation establish reasonable fees for each license classification for initial applications, initial and additional examinations, license issuance and renewals and certificate of qualification issuance.

B. The division by regulation may provide that examination fees, other than examination fees collected by the division for examination of journeymen pursuant to Section 60-13-38 NMSA 1978, shall be paid to the agency administering the examination.

History: 1953 Comp., § 67-35-22, enacted by Laws 1967, ch. 199, § 22; 1977, ch. 245, § 182; 1983, ch. 105, § 12; 1987, ch. 283, § 4; 1989, ch. 6, § 19.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - For definition of "division," see 60-13-2 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 10, 11.

Amount of license fee imposed on electricians, 96 A.L.R. 1506.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.

Reasonableness of amount of license fee imposed upon plumbers, 114 A.L.R. 573.

53 C.J.S. Licenses §§ 64 to 73.

60-13-21. Division; disposition of fees. (Effective until July 1, 1998.)

Fees received by the division except journeymen examination fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-35-24, enacted by Laws 1967, ch. 199, § 24; 1969, ch. 189, § 1; 1973, ch. 259, § 10; 1977, ch. 245, § 183; 1986, ch. 107, § 2; 1987, ch. 283, § 5; 1987, ch. 298, § 7; 1989, ch. 6, § 20.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-21.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 283, § 7 repeals 60-13-21.1 NMSA 1978, as enacted by Laws 1986, ch. 107, § 3, relating to collection and distribution of moneys in the "examination fund," effective June 19, 1987. For provisions of former section, see 1986 Cumulative Supplement.

60-13-22. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 105, § 24, repeals 60-13-22 NMSA 1978, as amended by Laws 1977, ch. 245, § 184, relating to expenses of the division and the trade bureaus, effective July 1, 1983. For provisions of former section, see 1982 Replacement Pamphlet.

60-13-23. Revocation or suspension of license by the commission; causes. (Effective until July 1, 1998.)

Any license issued by the division shall be revoked or suspended by the commission for any of the following causes:

A. if the licensee or qualifying party of the licensee willfully or by reason of incompetence violates any provision of the Construction Industries Licensing Act [this article] or any rule or regulation adopted pursuant to that act by the division;

B. knowingly contracting or performing a service beyond the scope of the license;

C. misrepresentation of a material fact by the applicant in obtaining a license;

D. failure to maintain proof of responsibility as required by the Construction Industries Licensing Act;

E. unjustified abandonment of any contract as determined by a court of competent jurisdiction;

F. conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction;

G. departure from or disregard of plans or specifications that result in code violations;

H. willfull [willful] or fraudulent commission of any act by the licensee as a contractor in consequence of which another is substantially injured, as determined by a court of competent jurisdiction;

I. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act by allowing a contractor's license to be used by an unlicensed person, or acting as agent, partner, associate or otherwise in connection with an unlicensed person, with the intent to evade the provisions of the Construction Industries Licensing Act; or

J. acting in the capacity of a licensee under any other name than is set forth upon the license.

History: 1953 Comp., § 67-35-26, enacted by Laws 1967, ch. 199, § 26; 1977, ch. 245, § 185; 1989, ch. 6, § 21.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Contractor's fiduciary capacity imposed by law binding on him. - Fiduciary capacity of contractor who was advanced money pursuant to construction contracts was

imposed by law, rather than implied by law, and existed independent of any express understanding he had with the owner governing the same obligation. Since obtaining state license by contractor is prerequisite to entering construction industry in New Mexico, obligation and duties imposed under this section were binding upon contractor prior to any dealings he had with the owner, and a bankruptcy court's finding that the contractor was acting in a fiduciary capacity within the meaning of federal bankruptcy law, is not clearly erroneous. In re Romero, 535 F.2d 618 (10th Cir. 1976).

This section imposes fiduciary duty upon contractors who have been advanced money pursuant to construction contracts. In re Romero, 535 F.2d 618 (10th Cir. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 59 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

Stay, pending review, of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 50 to 53.

60-13-23.1. Administrative penalty. (Effective until July 1, 1998.)

A. Notwithstanding any provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] or the Construction Industries Licensing Act [this article] to the contrary, the commission may, in addition to or instead of revocation or suspension of a license issued by the division for any cause specified in the Construction Industries Licensing Act, assess the licensee an administrative penalty in the following amounts:

(1) where the dollar value of the contract or work performed is five thousand dollars ($5,000) or less, the penalty shall be not less than three hundred dollars ($300) or more than five hundred dollars ($500); or

(2) where the dollar value of the contract or work performed is more than five thousand dollars ($5,000), the penalty shall be in an amount equal to not more than ten percent of the dollar amount of the contract or work performed but not less than five hundred dollars ($500).

B. If a person subject to the penalties under Subsection A of this section previously has had his contractor's license suspended or revoked or has been assessed an administrative penalty pursuant to Subsection A of this section, that person shall be assessed twice the amount specified in Paragraph (1) or (2) of Subsection A of this section, as applicable.

C. Failure to pay an administrative penalty upon the date set by the commission shall subject the offender to an additional penalty of one hundred dollars ($100) for each day

the offender fails to comply with the order. The attorney general shall institute an action in the district court to recover the appropriate penalties.

History: 1978 Comp., § 60-13-23.1, enacted by Laws 1987, ch. 283, § 6; 1989, ch. 6, § 22.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-24. Certificates of qualification; causes for revocation or suspension. (Effective until July 1, 1998.)

Any certificate of qualification shall be revoked or suspended by the commission for the following causes:

A. misrepresentation of a material fact by the individual in obtaining the certificate;

B. violation, willfully or by reason of incompetence, of any provision of the Construction Industries Licensing Act [this article] or any code, minimum standard, rule or regulation adopted pursuant to that act; or

C. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act.

History: 1953 Comp., § 67-35-27, enacted by Laws 1967, ch. 199, § 27; 1977, ch. 245, § 186; 1989, ch. 6, § 23.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-25. Qualifying party; termination of relationship. (Effective until July 1, 1998.)

In the event the employment or business relationship between the qualifying party and the licensee is terminated, the licensee and the qualifying party shall notify the division within thirty days of that termination in relationship, and the license shall be suspended for one hundred twenty days from the date of the termination of employment or business relationship and then canceled unless another individual who is a properly certified qualifying party is approved as the qualifying party for the licensee.

History: 1953 Comp., § 67-35-28, enacted by Laws 1967, ch. 199, § 28; 1977, ch. 245, § 187; 1983, ch. 105, § 13; 1989, ch. 6, § 24.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-26. Division; trade bureaus; liability of commission members. (Effective until July 1, 1998.)

Neither the division, the bureaus, their duly authorized employees nor members of the commission shall be held personally responsible or liable for any act pertaining to their official duties.

History: 1953 Comp., § 67-35-29, enacted by Laws 1967, ch. 199, § 29; 1977, ch. 245, § 188; 1989, ch. 6, § 25.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-27. Complaints against licensees and certificate holders; investigations by division; informal resolution; notice of revocation action. (Effective until July 1, 1998.)

A. The division on its own motion or upon the verified complaint in writing of any person shall investigate the actions of any licensee or certificate holder. The director may assign one or more inspectors certified pursuant to Section 60-13-41 NMSA 1978, investigators or other personnel to investigate that licensee or certificate holder or any activity within the jurisdiction of the Construction Industries Licensing Act [this article]. The director may authorize an inspector or investigator to enter any code jurisdiction to make investigations. The investigation shall be for the purpose of determining if there has been a code violation or other breach of Section 60-13-23, 60-13-24 or 60-13-36 NMSA 1978 on the part of a licensee or certificate holder constituting probable grounds for revocation or suspension of his license or certificate.

B. The person assigned by the director shall make an immediate investigation, securing all pertinent facts and statements, including a statement from the contractor, if he is available, and names and addresses of witnesses. Within one hundred eighty days of receipt of the complaint by the division, he shall make a full and complete written report to the director.

C. Complaints may be resolved informally at the request of the complainant, the contractor or the commission. For informal resolution of a complaint, all parties must agree to the informal hearing and agree that the decision of the informal hearing officer is final. The procedures for informal hearings and resolution of complaints shall be established by the commission.

D. All revocation and suspension proceedings conducted by the commission and judicial review of the commission's decision shall be governed by the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. Prior to any revocation action by the commission, notice of the pending action shall be given to the bonding company which has in effect for the licensee any bond issued pursuant to the proof of responsibility provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-30, enacted by Laws 1967, ch. 199, § 30; 1977, ch. 245, § 189; 1977, ch. 377, § 4; 1978, ch. 73, § 2; 1989, ch. 6, § 26.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-28. Suspension period. (Effective until July 1, 1998.)

A. The commission shall make all suspensions for a definite period not exceeding ninety consecutive days. Suspension of a license for any cause specified in the Construction Industries Licensing Act [this article] shall not preclude revocation of that license for cause by the commission.

B. A contractor whose license has been suspended or revoked shall complete work in progress as directed by the commission.

C. At the end of the suspension period, the commission shall review the license to determine if the license should be reinstated or revoked.

History: 1953 Comp., § 67-35-31, enacted by Laws 1967, ch. 199, § 31; 1977, ch. 245, § 190; 1989, ch. 6, § 27.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-29. Renewal of revoked license or certificates. (Effective until July 1, 1998.)

After revocation of any license or certificate of qualification issued pursuant to the Construction Industries Licensing Act [this article], no license or certificate shall be issued, renewed or reissued to the licensee until a period of one year after the date of the original order of revocation by the commission has expired. After expiration of that period, no license or certificate shall be issued, renewed or reissued except as is provided for the issuance of any initial license or certificate.

History: 1953 Comp., § 67-35-32, enacted by Laws 1967, ch. 199, § 32; 1977, ch. 245, § 191; 1989, ch. 6, § 28.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Law reviews. - For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-30. Suit by contractor for compensation; pleading and proof of license. (Effective until July 1, 1998.)

A. No contractor shall act as agent or bring or maintain any action in any court of the state for the collection of compensation for the performance of any act for which a license is required by the Construction Industries Licensing Act [this article] without alleging and proving that such contractor was a duly licensed contractor at the time the alleged cause of action arose.

B. Any contractor operating without a license as required by the Construction Industries Licensing Act shall have no right to file or claim any mechanic's lien as now provided by law.

History: 1953 Comp., § 67-35-33, enacted by Laws 1967, ch. 199, § 33; 1977, ch. 245, § 192.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - For mechanics' and materialmen's liens, see 48-2-1 NMSA 1978 et seq.

No due process or equal protection contravention. - Section does not contravene due process clause or deny equal protection of law as guaranteed by the New Mexico constitution. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

Act does not violate N.M. Const., art. IV, § 18 as attempt to amend the Mechanic's Lien Law by reference. Fischer v. Rakagis, 59 N.M. 463, 286 P.2d 312 (1955).

Courts reluctant to construe act broadly. - Purpose of the act is to protect public from incompetent and irresponsible builders and in view of the severity of sanctions and forfeitures which could be involved, the court is reluctant to construe the statute more broadly than necessary for achievement of its purpose. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972); Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Section overrides policy disfavoring unjust enrichment. - The legislature chose to harshly penalize unlicensed contractors by denying them access to the courts to collect compensation for work performed, and its policy must override the judicial principle that disfavors unjust enrichment. Triple B Corp. v. Brown Root, Inc., 106 N.M. 99, 739 P.2d 968 (1987).

Legislative intent to bar suit by unlicensed contractor. - Intent of legislature under this section was to prohibit bringing of suit by unlicensed contractors acting illegally, and not to bar remedy of lawful contractors because of a technical error in their pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

The provisions of this section should not be transformed into an "unwarranted shield for the avoidance of a just obligation." Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

No foreclosure of lien or judgment on contract where no license. - Failure of contractor to have license at the time contract was entered into prevented foreclosure of mechanic's lien or any judgment based on the contract for work done, even though a license was secured before work was completed or his cause of action arose. Crawford v. Holcomb, 57 N.M. 691, 262 P.2d 782 (1953).

No recovery based on contract entered into by unlicensed contractor. - To recover damages for breach of contract, where the plaintiff must rely on an alleged contract entered into by him in violation of statutes which prohibit contracting as unlicensed contractor and provide a criminal penalty for the violation, his action may not be maintained. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Where recovery prohibited. - The statute only prohibits an unlicensed contractor from bringing or maintaining an action "for the collection of compensation" for construction work, and therefore, recovery by cross-plaintiff was prohibited only if its action on note and mortgage was one for collection of compensation for a construction contract. Institute for Essential Hous., Inc. v. Keith, 76 N.M. 492, 416 P.2d 157 (1966).

To establish that plaintiff is precluded from recovery by this section requires proof that cabinets were "fabricated" into the structure within the meaning of 60-13-3C(1) NMSA 1978 (now see 60-13-3D(1) NMSA 1978). American Bldrs. Supply Corp. v. Enchanted Bldrs., Inc., 83 N.M. 503, 494 P.2d 165 (1972).

The recipient of work can recover payments made on a contract to an unlicensed contractor. Mascarenas v. Jaramillo, 111 N.M. 410, 806 P.2d 59 (1991).

No license requirement for cleanup activity. - Where construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of 60-13-3 NMSA 1978 and was therefore not governed by this section. Olivas v. Sibco, Inc., 87 N.M. 488, 535 P.2d 1339 (1975).

Substantial compliance with licensing requirement. - The doctrine of substantial compliance developed in California, which has a licensing act similar to that of New Mexico, is applicable in New Mexico. The three elements of substantial compliance are: (1) appellant held a valid license at the time of contracting; (2) appellant readily secured a renewal of his license; and (3) the responsibility and competence of plaintiff's managing officer were officially confirmed throughout period of performance of contract. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

Where appellant has violated provisions of the act as to aggregate dollar amount of contract for which he is financially responsible at any one time, and thus taken himself out of the duly licensed category, he has "substantially complied" with the licensing

requirements to such a degree that he is not barred from bringing suit. Peck v. Ives, 84 N.M. 62, 499 P.2d 684 (1972).

Party mining copper ore considered contractor. - A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is contractor within the terms of this section. Salter v. Kindom Uranium Corp., 67 N.M. 34, 351 P.2d 375 (1960).

Employee not independent contractor where performance controlled. - Where plaintiff was hired by defendant for drilling purposes, and where defendant retained at all times the right of control of performance of work as well as the right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor, and was not barred from recovery under this act for failure to obtain contractor's license. Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960).

Effect of knowledge contractor not licensed. - Under former law, fact that defendants in action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with the statute. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Allegation required that contractor duly licensed. - Former law required allegation that contractor was duly licensed at time cause of action arose. Kaiser v. Thomson, 55 N.M. 270, 232 P.2d 142 (1951).

Raising issue of noncompliance with licensing requirements. - If a complaint on its face shows that compliance with requirement that a contractor be licensed is essential to cause of action, the issue of noncompliance may be raised and dealt with as a matter of law. American Bldrs. Supply Corp. v. Enchanted Bldrs., Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Failure to allege license is affirmative defense. - The defense of failure to allege license under the statute is affirmative in nature, and should be pleaded. American Bldrs. Supply Corp. v. Enchanted Bldrs., Inc., 83 N.M. 503, 494 P.2d 165 (1972).

And is equivalent to failure to state claim. - Since failure to allege license under the act is fatal to complaint, it may be asserted at any time that complaint fails to state claim on which relief can be granted. American Bldrs. Supply Corp. v. Enchanted Bldrs., Inc., 83 N.M. 503, 494 P.2d 165 (1972).

Evidence of license treated as tried by parties' consent. - Where appellants made no objection to evidence of contractor's license and raised neither jurisdiction nor limitation question at trial, and requested no findings on either question, the requirement of allegation of a contractor's license was a matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot object to

appellate court treating issue tried with consent of the parties as though it had been raised by the pleadings. Daughtrey v. Carpenter, 82 N.M. 173, 477 P.2d 807 (1970).

Default judgment on crossclaim. - Subcontractor's failure to state a claim upon which relief could be granted by alleging in his crossclaim that he was duly licensed as a contractor did not deprive the district court of jurisdiction to enter a default judgment on the crossclaim. Sundance Mechanical & Util. Corp. v. Atlas, 109 N.M. 683, 789 P.2d 1250 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834, 42 A.L.R. 1226, 118 A.L.R. 646.

Failure to procure license as affecting validity of plumber's contract, 118 A.L.R. 646.

53 C.J.S. Licenses §§ 74 to 77.

60-13-31. Trade bureaus created. (Effective until July 1, 1998.)

There are created under the division the "electrical bureau," the "mechanical bureau," the "general construction bureau" and the "liquefied petroleum gas bureau."

History: 1953 Comp., § 67-35-34, enacted by Laws 1967, ch. 199, § 34; 1973, ch. 259, § 12; 1977, ch. 245, § 193; 1983, ch. 105, § 14.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to termination of trade bureaus, see 60-13-58 NMSA 1978.

60-13-32. Trade bureaus; definitions. (Effective until July 1, 1998.)

As used in the Construction Industries Licensing Act [this article]:

A. "electrical wiring" means all wiring, conductors, fixtures, devices, conduits, appliances or other equipment, including generating equipment of not over ten kilowatt capacity, used in connection with the general distribution or use of electrical energy;

B. "plumbing" means the installing, altering and repairing of all plumbing fixtures, fixture traps and soil, waste, supply and vent pipes, with their devices, appurtenances and connections, through which water, waste, sewage, oil and air are carried, when done within the property lines of the building or structure to be served by the plumbing or to the point of connection with the utility system. This subsection shall not be construed as prohibiting the installation by a "fixed works" licensee of service lines from the utility system to a point five feet outside the building or structure to be served by the plumbing;

C. "fixtures" includes closet bowls, lavatories, bath tubs, showers, kitchen sinks, laundry trays, hot water tanks, softeners, urinals, bidets, service sinks, shower pans, drink fountains, water compressors, water coolers, septic tanks or similar systems of sewage disposal and such other similar fixtures used in plumbing as designated by the mechanical bureau;

D. "gas fitting" means the installing, altering and repairing of consumers' gas piping and the installation of appliances utilizing natural gas as fuel and their appurtenances in or upon premises of the consumers;

E. "softener" or "water conditioner" means any appliance, apparatus, fixture and equipment which is designed to soften, filter or change the mineral content of water, whether permanent or portable; and

F. "certificate of competence" means evidence of competence issued by the division to a journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter or journeyman welder working on pipelines, collection lines or compressor stations.

History: 1953 Comp., § 67-35-35, enacted by Laws 1967, ch. 199, § 35; 1969, ch. 224, § 9; 1977, ch. 245, § 194; 1984, ch. 55, § 1; 1989, ch. 6, § 29.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Law reviews. - For survey of construction law in New Mexico, see 18 N.M.L. Rev. 331 (1988).

60-13-33. Trade bureaus; general duties and powers. (Effective until July 1, 1998.)

The trade bureaus shall:

A. cooperate in administering examinations for the licensing and certification of the occupations or trades assigned to their jurisdictions pursuant to the Construction Industries Licensing Act [this article], and provide those examinations and any related materials in both English and Spanish;

B. perform inspections of all occupations, trades and activities within their jurisdictions;

C. be responsible for all administrative duties and other duties necessary and incidental thereto required in the Construction Industries Licensing Act, including those activities and duties assigned to them by the director; and

D. recommend rules and regulations and submit them to the division for approval by the commission and promulgation by the division.

History: 1953 Comp., § 67-35-36, enacted by Laws 1967, ch. 199, § 36; 1977, ch. 245, § 195; 1977, ch. 377, § 5; 1978, ch. 73, § 2; 1985, ch. 70, § 3; 1989, ch. 6, § 30.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Cross-references. - As to trade bureaus, see 60-13-31 NMSA 1978.

Jurisdiction over natural gas piping installation under former law. - The installation, alteration and repair of natural gas piping and the installation of natural gas appliances in house trailers came under the jurisdiction of the state plumbing administrative board under former law. 1959-60 Op. Att'y Gen. No. 60-230.

60-13-34, 60-13-35. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-34 and 60-13-35 NMSA 1978, as amended by Laws 1977, ch. 245, §§ 196 and 197, relating to revocations by, and general powers of, trade bureaus, effective July 1, 1989. For provisions of former sections, see 1984 Replacement Pamphlet.

60-13-36. Certificates of competence; suspension and revocation. (Effective until July 1, 1998.)

A. The commission may suspend any certificate of competence issued within the scope of the bureau's trade for a definite period not exceeding ninety consecutive days.

B. Suspension of a certificate of competence shall be for any cause specified in the Construction Industries Licensing Act [this article].

C. The commission may revoke any certificate of competence issued by it only for the following causes:

(1) misrepresentation of a material fact by the individual obtaining the certificate;

(2) violation willfully or by reason of in competence of any provision of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act pertaining to installation, alteration, maintenance, connection or repair; or

(3) aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant thereto.

History: 1953 Comp., § 67-35-39, enacted by Laws 1967, ch. 199, § 39; 1969, ch. 13, § 2; 1977, ch. 245, § 198; 1983, ch. 105, § 15; 1989, ch. 6, § 31.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

53 C.J.S. Licenses §§ 50 to 62.

60-13-37. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-37 NMSA 1978, as amended by Laws 1977, ch. 245, § 199, relating to renewal of revoked certification, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-38. Certificates of competence; examination; journeymen. (Effective until July 1, 1998.)

A. No individual shall engage in the occupation or trade of journeyman unless he holds a certificate of competence issued by the division for the occupation or trade in which he desires to engage.

B. The division shall issue certificates of competence for journeyman electricians, journeyman plumbers, journeyman gas fitters, journeyman pipe fitters, journeyman sheet metal workers, journeyman boiler operators and journeyman welders working on pipelines, collection lines or compressor stations.

C. An applicant for a certificate of competence shall pass an examination approved and adopted by the division as to his knowledge of the orders, rules and regulations governing the occupation or trade for which a certificate is sought, and he shall also be examined as to his technical knowledge and ability pertaining to his particular trade. The examination may be oral, written or demonstrative or any combination thereof, as required by regulations of the commission; provided that the division shall issue a certificate of competence to any journeyman welder working on pipelines, collection lines or compressor stations who shows evidence of having satisfactorily completed an examination administered by an independent testing organization or public utility employing engineers registered with the state, such examination meeting the minimum pipeline safety standards set by the state corporation commission.

D. Applications for certificates of competence shall be in the form and shall contain such information and attachments as the division prescribes.

E. The division shall establish a reasonable fee for any examination or issuance of certificate of competence.

F. No individual is eligible to take an examination for a certificate of competence unless he has had two years' experience in the occupation or trade for which a certificate of competence is sought, or the equivalent thereof as determined by the commission, or has successfully completed a course in the trade approved by the vocational education division of the state department of public education. Employment of an apprentice working under the direct supervision of a certified journeyman is not prohibited by the Construction Industries Licensing Act [this article].

History: 1953 Comp., § 67-35-41, enacted by Laws 1967, ch. 199, § 41; 1971, ch. 212, § 1; 1977, ch. 245, § 200; 1983, ch. 105, § 16; 1984, ch. 55, § 2; 1985, ch. 70, § 4; 1989, ch. 6, § 32.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

State employees must obtain certificate. - The Personnel Act does not exempt state employees in journeyman occupations from obtaining a certificate of competency. 1981 Op. Att'y Gen. No. 81-11.

All persons employed in journeyman trades or occupations, including those employed by a state agency, are required by law to obtain a certificate of competency in accordance with the provisions of the Construction Industries Licensing Act. 1981 Op. Att'y Gen. No. 81-11.

Effect under former law of master electrician's disassociating from business. - When the master electrician disassociated himself from the business, the business had 60 days in which to qualify a new supervisor. The license remained with its owner, the new business, assuming that the master electrician was not a partner. The master electrician then, ipso facto, had no electrical contractor's license. Therefore, he had to apply for and obtain a new one before engaging in the electrical contracting business again. 1961-62 Op. Att'y Gen. No. 62-77.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47, 113, 114.

53 C.J.S. Licenses § 40.

60-13-39. Certificates and examination. (Effective until July 1, 1998.)

A. Certificates of competence issued by the division are not transferable and shall expire on the date established by the division, not more than one year from the month of issuance.

B. Application shall be made before the expiration date for renewal of a current certificate of competence and shall be accompanied by the fee prescribed for the initial issuance of the certificate.

C. Applications for a renewal of a certificate of competence shall be filed with the division prior to the last working day before the certificate expires. An expired certificate shall be renewable within a six-month period without examination and only upon paying a fee in twice the amount of the renewal fee. If the certificate has not been renewed within the six-month period, it shall be canceled.

History: 1953 Comp., § 67-35-42, enacted by Laws 1967, ch. 199, § 42; 1969, ch. 224, § 11; 1977, ch. 245, § 201; 1989, ch. 6, § 33.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-40. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-40 NMSA 1978, as amended by Laws 1983, ch. 105, § 17, relating to disposition of fees, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-40.1. Journeymen testing revolving fund created; earmarked fees; use of fund. (Effective until July 1, 1998.)

There is created in the state treasury the "journeymen testing revolving fund" to be administered by the director. All examination fees collected by the electrical and mechanical bureaus for examination of journeymen pursuant to Section 60-13-38 NMSA 1978 shall be credited to the fund. Money deposited in the fund shall be used solely for the provision of supplies, tools, equipment and facilities for the demonstrative testing of ability of applicants for certificates of competence as journeymen. Disbursements from the fund shall be made by the director with committee approval and after consultation with the chiefs of the electrical and mechanical bureaus. No part of the fund shall revert at the end of any fiscal year.

History: 1978 Comp., § 60-13-40.1, enacted by Laws 1983, ch. 82, § 2; 1989, ch. 6, § 34; 1989, ch. 324, § 31.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-41. Inspectors; designated inspection agencies. (Effective until July 1, 1998.)

A. State inspectors shall be employed by the director.

B. Qualifications and job descriptions for inspectors for the state, municipalities and all other political subdivisions shall be prescribed by the commission. The commission shall also promulgate rules and regulations establishing a recertification incentive plan

which provides for salary increases for state inspectors based on education and training and additional qualifications.

C. The division may appoint inspection agencies to inspect the construction, installation, alteration or repair of manufactured commercial units, modular homes and premanufactured homes, including those manufacturers whose business premises are without the state, to ensure that the New Mexico standards of construction and installation are adhered to and that the quality of construction meets all New Mexico codes and standards. If the inspection agency has no place of business within the state, it shall file a written statement with the secretary of state setting forth its name and business address and designating the secretary of state as its agent for the service of process.

D. The division may enter into reciprocal agreements with other jurisdictions having comparable codes, standards and inspection requirements for the inspection of the construction, alteration or repair of modular homes, premanufactured homes and manufactured commercial units.

E. The division may, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction.

History: 1953 Comp., § 67-35-49, enacted by Laws 1967, ch. 199, § 49; 1972, ch. 11, § 2; 1973, ch. 229, § 4; 1973, ch. 259, § 14; 1975, ch. 331, § 19; 1977, ch. 245, § 203; 1983, ch. 105, § 18; 1989, ch. 6, § 35.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Law reviews. - For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-42. Authority of inspectors; limitation. (Effective until July 1, 1998.)

A. A state certified inspector may, during reasonable hours, enter any building or go upon any premises in the discharge of his official duties for the purpose of making an inspection of work performed or for the purpose of testing any installation authorized within the jurisdiction of his trade certification. He may cut or disconnect, or have cut or disconnected in cases of emergency, any installation or device when necessary for safety to life or property or where the installation may interfere with the work of a fire department.

B. The inspector may disconnect or order the discontinuance of any service to any installation, device, appliance or equipment found to be dangerous to life or property because it is defective or is incorrectly installed, until the installation, device, appliance or equipment is made safe and is approved by the inspector.

C. The inspector may order the correction of any defects or any incorrect installation which prompted the disconnection and discontinuance of service.

D. In all cases where disconnection is made, a notice shall be attached by the inspector to the installation, device, appliance or equipment disconnected, which notice shall state that the same has been disconnected by or on order of the inspector and the reason for the disconnection. It is unlawful for any person to remove the notice or to use the installation, device, appliance or equipment without authorization of an inspector.

E. The powers granted by this section to any municipal inspector may be exercised by him only in the localities where he is authorized to make inspection.

F. The division shall by regulation adopt official inspection stickers or medallions for the purpose of identifying those modular homes and premanufactured homes which have been inspected and found to comply with all requirements of the state codes and standards. State inspection and acceptance for use of modular homes and premanufactured homes shall exclusively apply to the use and occupancy of such dwellings in the state and in any of its political subdivisions, subject to the requirements of local planning and zoning ordinances and ordinances requiring permits and inspections for foundations, electrical and mechanical hookups or other safety or sanitary requirements.

History: 1953 Comp., § 67-35-50, enacted by Laws 1967, ch. 199, § 50; 1972, ch. 11, § 3; 1973, ch. 259, § 15; 1975, ch. 331, § 20; 1977, ch. 245, § 204; 1989, ch. 6, § 36.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Inspection of wiring in trailers, mobile homes. - The former electrical board could inspect the installation and use of electrical wiring in a trailer or mobile home during the construction of such trailer or mobile home within this state. 1969 Op. Att'y Gen. No. 69-51.

Inspection of buildings on Indian lands. - State inspection of buildings constructed by New Mexico contractors on Indian lands leased to private individuals under a 99-year lease does not interfere with reservation self-government. 1970 Op. Att'y Gen. No. 70-76.

60-13-43. Qualification of municipal and county inspectors. (Effective until July 1, 1998.)

A. No person shall be employed by any municipality or county as an inspector unless he has first secured approval from the division of his competence as an inspector.

B. Trade bureaus shall issue to all approved municipal and county inspectors a certificate setting forth the fact of approval.

C. Certification by the division shall remain in effect unless rescinded by action of the commission.

D. Any complaint brought against a certified municipal or county inspector shall cause the director to assign an investigator to investigate the merits of the complaint and report to the commission within thirty days.

History: 1953 Comp., § 67-35-51, enacted by Laws 1967, ch. 199, § 51; 1977, ch. 245, § 205; 1989, ch. 6, § 37.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-44. Trade bureaus; standards; conflicts. (Effective until July 1, 1998.)

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of electrical standards for safety to life and property promulgated by a nationally recognized underwriting laboratory, as approved by a nationally recognized standards association, which standards are in general use in the United States or in a clearly defined region of the United States.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with the Uniform Mechanical Code published by the international conference of building officials and the Uniform Plumbing Code published by the international association of mechanical and plumbing officials.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code which is in general use in the United States or in a clearly defined region of the United States and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to individuals who are physically handicapped, and the specifications shall conform substantially with those contained in

a nationally recognized standard for making public facilities accessible to the physically handicapped. All orders, rules and regulations recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's committee on concerns of the handicapped. The orders, rules and regulations shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act [this article]. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by the physically handicapped or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association, which standards are in general use in the United States or in a clearly defined region of the United States, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the New Mexico Uniform Building Code, the New Mexico Electrical Code, the New Mexico Uniform Plumbing Code or the New Mexico Natural Gas Code shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by regulation adopt standards and codes which substantially comply with the requirements of this section which apply to the recommendations of the trade bureaus.

History: 1953 Comp., § 67-35-52, enacted by Laws 1967, ch. 199, § 52; 1971, ch. 223, § 1; 1972, ch. 11, § 4; 1973, ch. 259, § 16; 1975, ch. 331, § 21; 1977, ch. 245, § 206; 1983, ch. 105, § 19; 1989, ch. 6, § 38.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Effective date of the Construction Industries Licensing Act. - The "effective date of the Construction Industries Licensing Act", referred to in the first sentence in Subsection I, is July 1, 1967. See Laws 1967, ch. 199, § 67.

Construction Industries Licensing Act authorizes adoption of a statewide code. 1968 Op. Att'y Gen. No. 68-119.

Political subdivisions, not state, included under section. - This section only extends provisions of the codes adopted pursuant to the Construction Industries Licensing Act to political subdivisions of the state; it does not include the state itself. 1970 Op. Att'y Gen. No. 70-38.

Powers of general construction board. - This section empowers general construction board to do anything necessary to ensure that public buildings conform to adopted codes. Requiring building permits and performing inspections are powers necessary to ensure this conformity. Insofar as Attorney General's Opinion No. 70-38 is inconsistent with this opinion, it is amended accordingly. 1974 Op. Att'y Gen. No. 74-10.

Electrical contractor formerly under jurisdiction of electrical board. - Trade which is within jurisdiction of the former electrical board is that of electrical contractor, that is, a person engaged in the installation of electrical wiring. 1969 Op. Att'y Gen. No. 69-51.

60-13-45. Trade bureaus; permits. (Effective until July 1, 1998.)

A. The trade bureaus within their respective jurisdictions may require a permit to be secured and conspicuously posted prior to any construction, installation, alteration, repair or addition to or within any building, structure or premises.

B. No permit shall be required for the performance of any of the following classes of work:

(1) minor repairs, replacement of lamps, the connection of portable electrical equipment to suitable receptacles which are permanently installed, minor repairs or replacement of or to faucets, taps or jets or connection of portable equipment to suitable connections or inlets which have been permanently installed;

(2) installation of temporary wiring for testing electrical equipment or apparatus or installation of temporary fixtures or devices for testing fixtures, equipment, apparatus or appliances;

(3) installation, alteration or repair of electrical equipment for the operation of signals or the transmission of intelligence by wire; and

(4) installation or work which is done after regular business hours or during a holiday when immediate action is imperative to safeguard life, health or property, provided the person making the installation or performing the work applies for a permit covering the installation or work not later than the next business day.

C. If a permit has been issued for construction of a new residential building, that residential building shall not be occupied until a certificate of occupancy has been issued certifying compliance with all codes and standards.

D. The commission shall make rules and regulations pertaining to the issuance of permits and the setting of reasonable fees to be paid by the applicant for a permit. The regulations shall provide a procedure for the issuance of permits outside the corporate limits of a municipality where inspection is made by a state inspector or a municipal inspector serving as a part-time state inspector and for inspections within a municipality where the inspection is done exclusively by a full-time state inspector. Each trade bureau by regulation may require a reasonable bond or surety in the penal sum of five hundred dollars ($500) or more, but not to exceed fifteen hundred dollars ($1,500), with such bureau named as obligee and conditioned for the payment of inspection fees provided in the Construction Industries Licensing Act [this article]. Nothing in this section shall preclude municipalities from making inspections in accordance with the Construction Industries Licensing Act or rules and regulations pursuant to that act or from establishing a schedule of fees to be paid by an applicant for a permit.

E. In the event that the division assumes inspections of a municipal or county jurisdiction, the permit fees shall be paid directly to the division.

History: 1953 Comp., § 67-35-53, enacted by Laws 1967, ch. 199, § 53; 1969, ch. 224, § 12; 1977, ch. 245, § 207; 1989, ch. 6, § 39.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

"Permit" as used in this section refers to a "building permit" or "installation permit." 1969 Op. Att'y Gen. No. 69-72.

Municipalities and trade boards not given coextensive authority. - It is unreasonable to interpret this section as giving municipalities and trade boards coextensive authority to require permits and inspections within municipalities. That interpretation would produce the possibility that citizens of a municipality might have to obtain two permits and submit to double inspections for their construction work, which

would be contrary to purposes of the Construction Industries Licensing Act, one of which is to eliminate duplication of inspections. 1974 Op. Att'y Gen. No. 74-13.

Construction Industries Licensing Act covers practically entire field of construction industry and leaves municipalities only the right to make inspections or rules and regulations pursuant thereto, and to establish a schedule of fees to be paid by applicant for a permit. 1969 Op. Att'y Gen. No. 69-72.

Right of municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Municipality's power to tax contractors. - Legislature intended all occupations should be taxed under former 3-38-3 NMSA 1978, and the mere fact they are not included in suggested classifications which a municipality could choose to use does not prevent taxation of resident or nonresident contractors with a minimum tax of $5.00 and a maximum of $25.00 for an occupation license, unless municipality has issued a license to a contractor under any other law. 1969 Op. Att'y Gen. No. 69-72.

And powers to enact rules, make inspections. - All municipalities have power to enact rules and regulations and make inspections pursuant to the Construction Industries Licensing Act, and charge for building or installation permits, but can add no requirements whatsoever thereto, except possibly as to character and quality of installations, and even this admits of some doubt, if the work passes state inspection. 1969 Op. Att'y Gen. No. 69-72.

Recovery by plumber obtaining permit while work in progress. - Plaintiff, a licensed plumber who obtained permit while work was in progress, contrary to former version of statute which required that permit be obtained before job began, could recover for labor performed and materials furnished where defendant was not injured by delay and where 67-22-11, 1953 Comp., was silent on effect of failure to apply for permit. Measday v. Sweazea, 78 N.M. 781, 438 P.2d 525 (Ct. App. 1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131. 13 Am. Jur. 2d Buildings §§ 8 to 11.

60-13-46. Trade bureaus; annual permits. (Effective until July 1, 1998.)

A. In lieu of an individual permit for each installation, alteration or repair, an annual permit shall be issued, upon application, to any person, commercial or industrial plant or enterprise, governmental agency or political subdivision of the state that regularly employs one or more certified journeymen for installation, alteration, maintenance or repair on premises owned or occupied by the applicant for the permit.

B. The application for an annual permit shall be in writing to the appropriate trade bureau in whose jurisdiction the work is to be done.

C. Annual permit holders shall keep a record of all work done under the annual permit, and the appropriate trade bureau or its authorized employees shall have access to the record.

D. A reasonable fee established by the division shall be paid for each annual permit at the time of issuance. Inspection fees shall be collected at the time of each regular inspection of installations, alterations or repairs made under the annual permit. Fees received by a bureau under this subsection shall be remitted to the division.

E. Annual permits expire one year from their date of issuance.

History: 1953 Comp., § 67-35-54, enacted by Laws 1967, ch. 199, § 54; 1973, ch. 259, § 17; 1975, ch. 331, § 22; 1975, ch. 336, § 1; 1977, ch. 245, § 208; 1983, ch. 105, § 20; 1989, ch. 6, § 40.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-47. Trade bureaus; connection to installation. (Effective until July 1, 1998.)

A. Except where work is done under an annual permit, no public utility shall make a connection from a supply of water or gas to an installation for which a permit is required, or which has been disconnected or ordered to be disconnected by the trade bureau having jurisdiction, without the authorization of the trade bureau having jurisdiction.

B. The public utility may make a connection from a supply of water or gas to an installation under the following circumstances:

(1) if within seven days after notification to the appropriate trade bureau of the completion of any work or installation the bureau has failed to approve or disapprove the connection; or

(2) if an installation or work is not located in any territory where there is an authorized inspector; provided, however, before any such connection is made by the public utility, the public utility must have received a written statement from the licensee declaring that the installation or work conforms with the provisions of the Construction Industries Licensing Act [this article] and the orders, rules and regulations, codes and minimum standards made pursuant to that act. The public utility shall immediately report to the proper trade bureau the receipt and contents of the statement. If it is discovered by the trade bureau that the declaration made in the statement is false, the trade bureau shall order the licensee making the statement to rectify the defects within five days after receipt of the written notice thereof from the bureau.

C. No public or municipally owned electric utility shall make a connection from a supply of electricity for which a permit is required without the approval of the electrical bureau or its authorized representative. In the event of an emergency, the electrical contractor shall issue a prefinal permit to the serving utility authorizing the service to be reconnected. The electrical contractor shall report the emergency on the next working day to the electrical bureau or its authorized representative for inspection.

History: 1953 Comp., § 67-35-55, enacted by Laws 1967, ch. 199, § 55; 1977, ch. 245, § 209; 1983, ch. 105, § 21.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Inspection of plumbing in public schools. - Municipal inspectors have authority to inspect plumbing installed in public schools, even though they may not collect a fee for such inspection. If the inspector does not conduct an inspection, or if no inspector has been appointed in the area to be inspected, the connection to the municipal water or sewer system can be made. 1961-62 Op. Att'y Gen. No. 61-15.

60-13-48. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-48 NMSA 1978, as amended by Laws 1977, ch. 245, § 210, relating to contractors' financial responsibility, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-48.1. Financial statements; confidentiality. (Effective until July 1, 1998.)

No information from financial statements obtained from applicants for licenses or licensees for the division's use in determining responsibility or maintaining proof of responsibility for the future shall be released unless in statistical form and classified to prevent identification of particular applicants. Any employee of the division, any former employee of the division or any other person who reveals to another individual any information which he is prohibited from lawfully revealing by provision of this section is guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1978 Comp., § 60-13-48.1, enacted by Laws 1983, ch. 105, § 22; 1989, ch. 6, § 41.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-49. Proof of responsibility. (Effective until July 1, 1998.)

A. No applicant for a contractor's license or for renewal of a contractor's license shall be issued a license until the director determines that he is responsible to perform under the individual permit capacity for which he furnishes proof of responsibility pursuant to Subsection C of this section.

B. Proof of responsibility shall be:

(1) a license bond acceptable to the director and underwritten by a corporate surety authorized to transact business in New Mexico;

(2) an agreement of cash collateral assignment executed with a state or national bank or federally insured savings association authorized to do business in New Mexico as trustee, in a form prescribed by the commission. Interest, if any, accumulating on the cash collateral assignment shall accrue to the licensee; or

(3) a current financial statement, which shall be filed initially with the license application and filed annually thereafter with the division. The financial statement shall be a current audited financial statement or certified by a financial institution.

C. Proof of responsibility shall be furnished in amounts as follows:

(1) for a licensee or applicant who permits or contracts projects singly in New Mexico for a dollar value of twenty-five thousand dollars ($25,000) or less, proof of responsibility in the amount of five hundred dollars ($500). This licensee's maximum permit or contract capacity shall be twenty-five thousand dollars ($25,000);

(2) for a licensee or applicant who permits or contracts projects singly in New Mexico for a dollar value of more than twenty-five thousand dollars ($25,000) but less than two hundred thousand dollars ($200,000), proof of responsibility in the amount of one thousand dollars ($1,000). This licensee's maximum permit or contract capacity shall be two hundred thousand dollars ($200,000);

(3) for a licensee or applicant who permits or contracts projects singly in New Mexico for a dollar value of more than two hundred thousand dollars ($200,000) but less than one million dollars ($1,000,000), proof of responsibility in the amount of two thousand five hundred dollars ($2,500). This licensee's maximum permit or contract capacity shall be one million dollars ($1,000,000); and

(4) for a licensee or applicant who permits or contracts projects singly in New Mexico for a dollar value of more than one million dollars ($1,000,000), proof of responsibility in the amount of five thousand dollars ($5,000). This licensee shall have no maximum permit or contract capacity.

D. Proof of responsibility shall be for the payment of fines and penalties.

E. Proof of responsibility, if a bond, shall be a continuous form bond on a form prescribed by the commission. It shall be a condition of the bond that the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond irrespective of the number of years the bond is in force.

F. Proof of responsibility posted by a licensee or applicant shall be in a form to provide thirty days' written notice of a cancellation to the division.

G. Failure to maintain proof of responsibility for the period required by law is cause for revocation of the license.

H. No legal action may be maintained on the proof of responsibility unless the action is commenced within twelve months after the case accrues or within twelve months after substantial completion of the project, whichever is earlier.

I. If a licensee's license bond or cash collateral assignment is canceled, expires or otherwise becomes ineffective during the period for which it is required, the division shall cancel the license upon receiving notice of such cancellation, expiration or ineffectiveness. The cancellation of the license shall become effective thirty days after the date that notice of such action is mailed to the licensee by the division, unless the licensee provides to the division within that thirty days proof of responsibility as required under this section. A person whose license has been canceled pursuant to this subsection may be renewed or reinstated provided he complies with all licensing requirements.

J. Contracting or bidding during the period when the license bond or cash collateral assignment is canceled, expired or otherwise ineffective is cause for revocation of the license by the commission.

History: 1953 Comp., § 67-35-57, enacted by Laws 1967, ch. 199, § 57; 1969, ch. 224, § 13; 1977, ch. 245, § 211; 1985, ch. 153, § 1; 1989, ch. 6, § 42.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Formerly, judgments against principal could not be collaterally attacked by surety because it was claimed that attorneys' fees were not proper element of damages in suit based upon a statutory contractor's bond. State ex rel. Dar Tile Co. v. Glens Falls Ins. Co., 78 N.M. 435, 432 P.2d 400 (1967).

Judgment against principal was conclusive, absent fraud or collusion under former law. State ex rel. Dar Tile Co. v. Glens Falls Ins. Co., 78 N.M. 435, 432 P.2d 400 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 17 Am. Jur. 2d Contractors' Bonds § 1 et seq.

53 C.J.S. Licenses § 42.

60-13-50. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-50 NMSA 1978, as enacted by Laws 1967, ch. 199, § 58, relating to exemptions, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-51. Contractor's bond; municipal requirement prohibited. (Effective until July 1, 1998.)

No municipality shall require any person or corporation licensed under the provisions of the Construction Industries Licensing Act [this article] to file or obtain as a condition of doing business as a licensed contractor within the municipality any additional license bond as proof of responsibility if the person or corporation has met the responsibility requirements of the commission.

History: 1953 Comp., § 67-35-58.1, enacted by Laws 1971, ch. 233, § 1; 1977, ch. 245, § 212; 1989, ch. 6, § 43.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-52. Penalty; misdemeanor. (Effective until July 1, 1998.)

A. Any person who acts in the capacity as a contractor within the meaning of the Construction Industries Licensing Act [this article] without a license required by that act, and any person who holds himself out as a sales representative of a contractor which contractor is without a license as required by that act, is guilty of a misdemeanor, and upon conviction therefor the court shall:

(1) where the dollar value of the contracting work is five thousand dollars ($5,000) or less, sentence the person to be imprisoned in the county jail for a term of ninety days or to the payment of a fine of not less than three hundred dollars ($300) nor more than five hundred dollars ($500), or to both such imprisonment and fine in the discretion of the court; and

(2) where the dollar value of the contracting work exceeds five thousand dollars ($5,000), sentence the person to be imprisoned in the county jail for a term of six months or to the payment of a fine of ten percent of the dollar value of the contracting work, or to both such imprisonment and fine in the discretion of the court.

B. Any person who acts in the capacity as a journeyman within the meaning of the Construction Industries Licensing Act without holding a valid certificate of competence issued by the division is guilty of a misdemeanor, and upon conviction therefor the court shall sentence the person to be imprisoned in the county jail for a term of ninety days or

to payment of a fine of not less than one hundred dollars ($100) nor more than three hundred dollars ($300), or to both such imprisonment and fine.

C. Any person who, after having been convicted and sentenced in accordance with the provisions of either Subsection A or Subsection B of this section, is again convicted pursuant to the provisions of this section shall be sentenced to twice the applicable penalty imposed by the provisions of this section.

D. In the case of a first conviction under this section, the court may impose a deferred sentence on the condition that the person comply with the provisions for licensure pursuant to Subsection D of Section 60-13-14 NMSA 1978.

History: 1953 Comp., § 67-35-59, enacted by Laws 1977, ch. 377, § 6; 1979, ch. 274, § 1; 1989, ch. 6, § 44.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Repeals and reenactments. - Laws 1977, ch. 377, § 6, repealed former 67-35-59, 1953 Comp., relating to penalties, and enacted a new 67-35-59, 1953 Comp.

Acting in capacity of contractor without required license is a misdemeanor. Fleming v. Phelps-Dodge Corp., 83 N.M. 715, 496 P.2d 1111 (Ct. App. 1972).

Jurisdiction of justices of the peace. - Justices of the peace did not have jurisdiction to try cases arising out of a violation of 67-22-21, 1953 Comp., of the former Plumbing Administrative Act. 1964 Op. Att'y Gen. No. 64-14.

Evidence sufficient for conviction. - Conviction for contracting without a license was supported by sufficient evidence, where, although the contract stated that another firm would perform any work requiring a contractor's license, the contract was written on a form with the defendant's trade name and address at the top and was an undertaking for the entire project, for which the defendant remained responsible. State v. Jenkins, 108 N.M. 669, 777 P.2d 908 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 70 to 80.

53 C.J.S. Licenses §§ 78 to 81.

60-13-53. Commission or division; powers of injunction; mandamus. (Effective until July 1, 1998.)

The commission or division may enforce in the district court of the county in which the offense was committed the provisions of the Construction Industries Licensing Act [this article] by injunction, mandamus or any proper legal proceeding.

History: 1953 Comp., § 67-35-60, enacted by Laws 1967, ch. 199, § 60; 1977, ch. 245, § 213; 1989, ch. 6, § 45.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

60-13-54. Continuation of license. (Effective until July 1, 1998.)

Any person who, at the time of the passage and approval of the Construction Industries Licensing Act, is engaged in any occupation, trade or activity related thereto, pursuant to a valid license authorizing such acts and operations issued under laws repealed by this act and rules and regulations pursuant thereto, is entitled to continue such act and operations, and the license shall continue in effect until the expiration date thereof, subject in all cases to suspension or revocation as provided by the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-61, enacted by Laws 1967, ch. 199, § 61.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Exception of existing buildings or businesses from statute or ordinance enacted in exercise of police or license taxing power, as unconstitutional discrimination, 136 A.L.R. 207.

60-13-55. Continuation of construction codes and standards. (Effective until July 1, 1998.)

Any code and minimum standard related to the construction, alteration, installation or repair of a private or public building, or installation on public or private premises, in effect at the time of passage and approval of the Construction Industries Licensing Act shall continue in effect until the commission and trade bureaus created by the Construction Industries Licensing Act [this article] amend or revise those codes and minimum standards pursuant to provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-62, enacted by Laws 1967, ch. 199, § 62; 1977, ch. 245, § 214; 1989, ch. 6, § 46.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Effective dates. - Laws 1967, ch. 199, § 67, makes the Construction Industries Licensing Act effective on July 1, 1967.

60-13-56. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 6, § 67 repeals 60-13-56 NMSA 1978, as amended by Laws 1977, ch. 245, § 215, relating to transfer of property, supplies and records, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-57. Hearing officer authorized. (Effective until July 1, 1998.)

The commission may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Construction Industries Licensing Act [this article]. Hearing officers may be employees or individuals hired outside the division by contract or on a case by case basis as determined by the commission.

History: 1953 Comp., § 67-35-64, enacted by Laws 1973, ch. 229, § 5; 1973, ch. 259, § 9; 1977, ch. 245, § 216; 1989, ch. 6, § 47.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

Compiler's note. - Laws 1973, ch. 229, § 5 and ch. 259, § 9 enact identical new sections which are compiled as the above section.

60-13-58. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)

The construction industries commission and division and its trade bureaus are terminated on July 1, 1997 pursuant to the Sunset Act. The construction industries commission and division and its trade bureaus shall continue to operate according to the provisions of Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 are repealed.

History: 1953 Comp., § 67-35-64.1, enacted by Laws 1978, ch. 194, § 1; 1981, ch. 241, § 15; 1983, ch. 105, § 23; 1987, ch. 333, § 6; 1989, ch. 6, § 48; 1991, ch. 33, § 1.

Delayed repeals. - Laws 1991, ch. 33, § 1 amends this section to repeal Chapter 60, Article 13 NMSA 1978, effective July 1, 1998.

The 1991 amendment, effective June 14, 1991, substituted "1997" and "1998" for "1991" and "1992".

60-13-59. Building permits; contents; display. (Effective until July 1, 1998.)

Every building permit or notice of permit required under the provisions of a building code shall:

A. clearly indicate the name and address of the owner of the property;

B. contain a legal description of the property being built upon, either by "lot and block" description in a subdivision, by street address in a municipality or by township, range and section numbers if outside a municipality or platted subdivision;

C. contain the name, address and license number of the general contractor, where applicable; and

D. be prominently displayed on the site where the construction or work is to be performed.

History: Laws 1987, ch. 209, § 1.

Delayed repeals. - See 60-13-58 NMSA 1978 and notes thereto.

ARTICLE 14
MANUFACTURED HOUSING

60-14-1. Short title. (Effective until July 1, 1994.)

Chapter 60, Article 14 NMSA 1978 may be cited as the "Manufactured Housing Act."

History: 1953 Comp., § 67-41-1, enacted by Laws 1975, ch. 331, § 1; 1983, ch. 295, § 7.

Delayed repeals. - See 60-14-16 NMSA 1978.

Jurisdiction over installation of gas lines. - The Mobile Housing Act does not supersede or repeal by implication the Liquefied Petroleum Gas Act, 70-5-1 NMSA 1978 et seq., with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit. 1976 Op. Att'y Gen. No. 76-38.

60-14-2. Definitions. (Effective until July 1, 1994.)

As used in the Manufactured Housing Act [this article]:

A. "broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive twelve-month period;

B. "certificate of qualification" means a certificate issued by the division to a qualifying party;

C. "committee" means the manufactured housing committee;

D. "consumer" means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. "dealer" means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive twelve-month period. A dealer may also engage in any brokerage activities included under the definition of broker in this section; provided, "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers; and

(3) finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. "director" means the director of the manufactured housing division;

G. "division" means the manufactured housing division of the regulation and licensing department;

H. "inspection agency" means any firm, partnership, corporation, association or any combination thereof approved in accordance with regulations adopted by the division as having the personnel and equipment available to adequately inspect for the proper construction of manufactured homes or house trailers not used exclusively for recreational purposes;

I. "inspector" means a person appointed by the division as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tie-downs, blocking, skirting, water, gas and sewer connections of any manufactured homes in New Mexico;

J. "installer" means any person who installs manufactured homes for remuneration;

K. "installation" means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

L. "manufacturer" means any resident or nonresident person who manufactures or assembles manufactured homes or any component of manufactured homes;

M. "manufactured home" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. "Manufactured home" does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. "Manufactured home" includes any movable or portable housing structure over twelve feet in width and forty feet in length which is used for nonresidential purposes;

N. "permit" means a certificate issued by the division to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the division;

O. "person" includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;

P. "qualifying party" means any individual who submits to the examination for a license, other than a broker's or salesperson's license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. "repairman" means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. "salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

History: 1953 Comp., § 67-41-2, enacted by Laws 1978, ch. 79, § 1; 1983, ch. 295, § 8; 1988, ch. 102, § 3.

Delayed repeals. - See 60-14-16 NMSA 1978.

Repeals and reenactments. - Laws 1978, ch. 79, § 1, repealed former 67-41-2, 1953 Comp. (former 60-14-2 NMSA 1978), as amended by Laws 1977, ch. 341, § 1, relating to definitions used in the Mobile Housing Act, and enacted a new 67-41-2, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

Offering units for sale constitutes "dealing". - In order to be engaged in the business of mobile home dealing, it is not necessary that a person actually sell mobile housing units so long as he offers mobile housing units for sale or attempts to negotiate such sales in pursuit of a livelihood. 1982 Op. Att'y Gen. No. 82-12.

And not dealing in real estate. - When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Law reviews. - For comment, "A Comparison of State and Federal Exemptions: 11 U.S.C. § 101-1330 (Supp. II 1978)," see 10 N.M.L. Rev. 431 (1980).

60-14-3. Purpose. (Effective until July 1, 1994.)

It is the intent of the legislature that the large and growing manufactured housing industry be supervised and regulated by a division of the commerce and industry department [regulation and licensing department]. The purpose of the Manufactured Housing Act [this article] is to insure the purchasers and users of manufactured homes the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of human shelter.

History: 1953 Comp., § 67-41-3, enacted by Laws 1975, ch. 331, § 3; 1977, ch. 245, § 218; 1983, ch. 295, § 9.

Delayed repeals. - See 60-14-16 NMSA 1978.

Commerce and industry department. - Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the mobile housing division, and Laws 1983, ch. 297, § 31, provides that all references in law to the mobile housing division of the commerce and industry department shall be construed to be references to the same division within the regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like, in residential neighborhoods, 95 A.L.R.3d 378.

60-14-4. Powers and duties of division. (Effective until July 1, 1994.)

The division shall:

A. prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act [this article];

C. establish and collect fees authorized to be collected by the division pursuant to the Manufactured Housing Act;

D. subject to the approval of the committee, adopt rules and regulations relating to the construction, repair, modification, installation, tie-down, hook-up and sale of all manufactured homes, which regulations shall be uniform throughout the state and shall be enforced by inspectors for the division to insure minimum standards of safety within the state and any of its political subdivisions. Ordinances of any political subdivision of New Mexico relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas, electricity, sanitary plumbing and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the division pursuant to the Manufactured Housing Act;

E. adopt a budget and submit it to the regulation and licensing department for approval;

F. make an annual report to the superintendent of regulation and licensing concerning the operations of the division. The report shall contain the division's recommendations for legislation it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business in New Mexico;

I. subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

J. subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the department of housing and urban development pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

K. issue permits and provide for a single inspection of every installation in New Mexico, regardless of the location;

L. subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring, the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petroleum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico;

M. conduct "inspector schools" so that each inspector under the division's jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The division may enter into agreements with municipalities and counties to provide for the inspection of manufactured homes by employees of municipalities and counties, to be performed under the supervision and control of the division. The division may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the division and shall be related to the completeness of the inspection performed;

O. administer oaths through any member of the division, the director or a hearing officer;

P. subject to the approval of the committee, adopt rules and regulations for the conducting of hearings and the presentation of views, consistent with the regulations promulgated by the department of housing and urban development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. subject to the approval of the committee, adopt by regulation a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. coordinate with and qualify inspectors for any multiple inspection program provided by the construction industries division of the regulation and licensing department for inspection of manufactured homes; and

S. subject to the approval of the committee, adopt regulations, codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured home being used for nonresidential purposes on the effective date of this act shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential

purposes after the effective date shall be required to meet Uniform Building Code standards.

T. None of the provisions contained in Subsection S of Section 60-14-4 NMSA 1978 shall apply to retailers licensed by the motor vehicle division of the taxation and revenue department.

History: 1953 Comp., § 67-41-6, enacted by Laws 1978, ch. 80, § 1; 1983, ch. 295, § 10; 1988, ch. 102, § 4; 1988, ch. 102, § 4.

Delayed repeals. - See 60-14-16 NMSA 1978.

Cross-references. - As to the motor vehicle division of the taxation and revenue department, see Chapter 66, Article 2 NMSA 1978.

Repeals and reenactments. - Laws 1978, ch. 80, § 1, repealed former 67-41-6, 1953 Comp. (former 60-14-4 NMSA 1978), relating to powers and duties, and enacted a new 67-41-6, 1953 Comp.

Compiler's note. - Federal Regulation 1910, referred to in the second sentence in Subsection L, presently appears as 44 C.F.R. § 60.1 et seq.

"Effective date of this act". - The phrase "effective date of this act", referred to in Subsection S, means May 18, 1988, the effective date of Laws 1988, Chapter 102.

Shared jurisdiction over liquefied petroleum gas line installations. - Mobile Housing Act in no way confers on the mobile housing commission (now mobile housing division) exclusive jurisdiction over liquefied petroleum gas line installations within mobile housing units. Both the mobile housing commission and the liquefied petroleum gas commission (now liquefied petroleum gas bureau) have jurisdiction to regulate and inspect the installation of liquefied petroleum gas lines in mobile homes. 1976 Op. Att'y Gen. No. 76-38.

60-14-5. Manufactured housing committee created; membership; compensation; duties. (Effective until July 1, 1994.)

A. There is created within the division the "manufactured housing committee." It shall be composed of seven members who are residents of New Mexico and who shall serve at the pleasure of the governor and be appointed by him as follows:

(1) one member who is or is the designated representative of a manufacturer licensed under the Manufactured Housing Act [this article];

(2) one member who is or is the qualifying party of a dealer licensed under the Manufactured Housing Act;

(3) one member who is or is the qualifying party of an installer licensed under the Manufactured Housing Act;

(4) one member who is a broker licensed under the Manufactured Housing Act; and

(5) three members who are manufactured housing unit owners not subject to licensure under the Manufactured Housing Act.

The term of office of each member of the committee is four years; provided that members shall be appointed for staggered terms beginning July 1, 1983 so that two terms end on June 30, 1985, two terms end on June 30, 1986 and three terms end on June 30, 1987. Thereafter, all members shall be appointed to four-year terms. Members shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

C. The committee shall annually elect a chairman and vice chairman from its membership. The director of the division shall serve as the executive secretary of the committee.

D. The committee shall meet at least bimonthly at the call of the chairman.

E. The committee shall provide technical and policy advice to the division, review and approve or disapprove all rules, regulations, standards and codes subject to its approval under the provisions of the Manufactured Housing Act and:

(1) establish by regulation classifications of licenses issued by the division and qualifications and examinations necessary for licensure under the Manufactured Housing Act; and

(2) suspend or revoke for cause any license or certificate of qualification issued by the division.

History: 1953 Comp., § 67-41-6.1, enacted by Laws 1977, ch. 245, § 220; 1983, ch. 295, § 11.

Delayed repeals. - See 60-14-16 NMSA 1978.

Cross-references. - As to termination of committee, see 60-14-16 NMSA 1978.

60-14-6. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers. (Effective until July 1, 1994.)

A. The division, with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the division a consumer protection bond underwritten by a corporate surety authorized to transact business in New Mexico, in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulation, to be conditioned upon the dealer, broker, salesperson, manufacturer, repairman or installer complying with the provisions of the Manufactured Housing Act [this article] and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

(1) as a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the division adopted pursuant to that act;

(2) as a result of a violation of any regulation adopted by the division;

(3) by fraud of a licensee in the execution or performance of a contract; or

(4) by misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the division pursuant to this section. The division, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this section.

History: 1953 Comp., § 67-41-7, enacted by Laws 1978, ch. 81, § 1; 1983, ch. 295, § 12.

Delayed repeals. - See 60-14-16 NMSA 1978.

Repeals and reenactments. - Laws 1978, ch. 81, § 1, repealed former 67-41-7, 1953 Comp. (former 60-14-6 NMSA 1978), as amended by Laws 1977, ch. 341, § 3, relating to bonding requirements for dealers, manufacturers and installers, and enacted a new 67-41-7, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Occupations, Trades and Professions § 7.

60-14-7. License required; classification; examination. (Effective until July 1, 1994.)

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salesperson unless licensed as provided in the Manufactured Housing Act [this article].

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling, leasing or exchanging or offering for sale, lease or exchange, any manufactured home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

History: 1953 Comp., § 67-41-8, enacted by Laws 1975, ch. 331, § 8; 1977, ch. 245, § 222; 1983, ch. 295, § 13.

Delayed repeals. - See 60-14-16 NMSA 1978.

When real estate broker must be licensed. - When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits § 1 et seq.

53 C.J.S. Licenses §§ 26, 27.

60-14-8. Licensure; exemption. (Effective until July 1, 1994.)

The provisions of Section 60-14-7 NMSA 1978 shall not apply to licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee.

History: 1953 Comp., § 67-41-8.1, enacted by Laws 1977, ch. 6, § 1; 1983, ch. 295, § 14.

Delayed repeals. - See 60-14-16 NMSA 1978.

When real estate broker must be licensed. - When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or

purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 53 C.J.S. Licenses §§ 35, 36.

60-14-9. License; application; issuance. (Effective until July 1, 1994.)

A. Application for a license required under Section 60-14-7 NMSA 1978 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the division on forms prescribed and furnished by the division. The application shall contain such information and be accompanied by such attachments as are required by regulations of the division. The forms shall be accompanied by the prescribed fee.

B. No license shall be issued by the division to any person unless the division is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection C of this section.

C. An applicant for licensure shall:

(1) demonstrate financial responsibility as required by regulations of the committee;

(2) be of good reputation;

(3) not have engaged illegally in the licensed classification that he is applying for within one year prior to making the application;

(4) demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;

(5) if a corporation, have complied with the laws of New Mexico regarding qualifications for doing business in this state or have been incorporated in New Mexico and have and maintain a registered agent and a registered office in this state;

(6) if an individual or partnership, have maintained a residence or street address in New Mexico for at least thirty days preceding the date of application;

(7) submit proof of registration with the revenue division of the taxation and revenue department and submit a current tax identification number; and

(8) personally or through the applicant's qualifying party successfully pass an examination administered by the division in the license classification for which application is made.

History: 1953 Comp., § 67-41-9, enacted by Laws 1975, ch. 331, § 9; 1977, ch. 245, § 223; 1983, ch. 295, § 15.

Delayed repeals. - See 60-14-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.

53 C.J.S. Licenses §§ 37 to 42.

60-14-10. Qualifying party; examination; certificate. (Effective until July 1, 1994.)

A. Except as provided in Subsection C of this section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he has passed with a satisfactory score an examination prepared, administered and graded by the division.

B. The examination where applicable shall consist of:

(1) general business knowledge, the rules and regulations of the division and committee and the provisions of the Manufactured Housing Act [this article];

(2) technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the division who is expert in the particular classification for which certification is sought; and

(3) general knowledge of the statutes of this state relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualifying party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this section within one year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

History: 1953 Comp., § 67-41-10, enacted by Laws 1975, ch. 331, § 10; 1977, ch. 245, § 224; 1983, ch. 295, § 16.

Delayed repeals. - See 60-14-16 NMSA 1978.

60-14-11. Division fees. (Effective until July 1, 1994.)

The division shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-41-11, enacted by Laws 1975, ch. 331, § 11; 1977, ch. 245, § 225; 1983, ch. 295, § 17; 1987, ch. 298, § 9.

Delayed repeals. - See 60-14-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.

53 C.J.S. Licenses §§ 64 to 73.

60-14-12. Suspension and revocation. (Effective until July 1, 1994.)

Any license or certificate of qualification issued by the division shall be suspended for a definite period or revoked under the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] by the committee for any of the following causes:

A. if a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act [this article] or any regulations adopted by the division or committee pursuant to that act;

B. false, misleading or deceptive advertising;

C. knowingly contracting or performing a service beyond the scope of the license;

D. misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. misrepresentation or omission of a material fact in any manufactured home transaction;

F. failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. failure by a manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the division.

History: 1953 Comp., § 67-41-12, enacted by Laws 1975, ch. 331, § 12; 1977, ch. 245, § 226; 1983, ch. 295, § 18.

Delayed repeals. - See 60-14-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

53 C.J.S. Licenses §§ 50 to 62.

60-14-13. Transition. (Effective until July 1, 1994.)

The records, automobiles, field equipment, office furniture and office equipment and the records of the mobile housing commission shall be transferred to the mobile housing division on the effective date of the Commerce and Industry Department Act. The regulations and all licenses and permits currently in force under the Construction Industries Licensing Act [Chapter 60, Article 13] regarding mobile homes shall remain in force to be administered by the division under the Mobile Housing Act until replaced by regulations adopted by the division.

History: 1953 Comp., § 67-41-13, enacted by Laws 1975, ch. 331, § 13; 1977, ch. 245, § 227.

Delayed repeals. - See 60-14-16 NMSA 1978.

Effective dates. - Laws 1977, ch. 245, § 239, makes the Commerce and Industry Department Act effective on March 31, 1978.

Commerce and Industry Department Act. - The Commerce and Industry Department Act refers to Laws 1977, ch. 245, §§ 1 to 12, the provisions of which were compiled as 9-2-1 to 9-2-10. Laws 1983, ch. 297, § 33, repeals 9-2-1 to 9-2-13 NMSA 1978.

Mobile Housing Act. - The reference in this section to the Mobile Housing Act refers to Laws 1975, ch. 331, the provisions of which were compiled as 60-13-2, 60-13-10, 60-13-41, 60-13-42, 60-13-44, 60-13-46, 60-14-1, 60-14-3, 60-14-7, 60-14-9 to 60-14-15 NMSA 1978. However, Laws 1983, ch. 295, § 7, amended 60-14-1 NMSA 1978 to change the name of the Mobile Housing Act to the Manufactured Housing Act. For scope of Manufactured Housing Act, see 60-14-1 NMSA 1978.

60-14-14. Hearing officer. (Effective until July 1, 1994.)

The division or committee may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act [this article].

History: 1953 Comp., § 67-41-14, enacted by Laws 1975, ch. 331, § 14; 1977, ch. 245, § 228; 1983, ch. 295, § 19.

Delayed repeals. - See 60-14-16 NMSA 1978.

60-14-15. Committee and division; consumer complaints; orders; suspension; revocation. (Effective until July 1, 1994.)

In addition to the other duties imposed on the committee and division under the Manufactured Housing Act [this article], the committee and division shall receive complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or division cannot secure a proper adjustment, the committee or division shall prepare a formal complaint for the consumer, and, pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

History: 1953 Comp., § 67-41-15, enacted by Laws 1975, ch. 331, § 23; 1983, ch. 295, § 20.

Delayed repeals. - See 60-14-16 NMSA 1978.

60-14-16. Termination of agency life; delayed repeal. (Effective until July 1, 1994.)

The manufactured housing committee and the manufactured housing division are terminated on July 1, 1993 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The manufactured housing committee and the manufactured housing division shall continue to operate according to the provisions of Chapter 60, Article 14 NMSA 1978 until July 1, 1994. Effective July 1, 1994, Chapter 60, Article 14 NMSA 1978 is repealed.

History: 1978 Comp., § 60-14-16, enacted by Laws 1983, ch. 295, § 21; 1987, ch. 333, § 7.

Delayed repeals. - Laws 1987, ch. 333, § 7, amends this section to repeal Chapter 60, Article 14 NMSA 1978, effective July 1, 1994.

Repeals and reenactments. - Laws 1983, ch. 295, § 21, repealed former 60-14-16 NMSA 1978, as enacted by Laws 1979, ch. 400, § 1, relating to renewal of agency life, and enacted a new 60-14-16 NMSA 1978. For provisions of former section, see 1982 Replacement Pamphlet.

60-14-17. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties. (Effective until July 1, 1994.)

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufactured Housing Act [this article] without a license required by that act. Any person who conspires with any person to violate any provision of that act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or ten percent of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer's, broker's, salesperson's, repairman's, manufacturer's or installer's license, whichever is greater.

History: 1953 Comp., § 60-14-17, enacted by Laws 1979, ch. 351, § 1; 1979, ch. 400, § 1; 1983, ch. 295, § 22.

Delayed repeals. - See 60-14-16 NMSA 1978.

60-14-18. Committee or division; powers of injunctions; mandamus. (Effective until July 1, 1994.)

The division or committee may enforce the provisions of the Manufactured Housing Act [this article] by injunction, mandamus or any proper legal proceeding in the district court of the county in which the offense was committed.

History: 1953 Comp., § 60-14-18, enacted by Laws 1979, ch. 351, § 2; 1979, ch. 400, § 2; 1983, ch. 295, § 23.

Delayed repeals. - See 60-14-16 NMSA 1978.

60-14-19. Penalties. (Effective until July 1, 1994.)

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act [this article] or any rule, regulation or administrative order of the committee or division in a manner that threatens the health or safety of any purchaser or consumer commits a misdemeanor and on conviction shall be fined not more than one thousand dollars ($1,000) or shall be confined in the county jail not longer than one year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the attorney general, upon petition to the court, may recover on behalf of the state a civil penalty not to exceed one thousand dollars ($1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with the warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Practices Act and is actionable pursuant to the Unfair Practices Act. As such, the venue provisions and all remedies available in the Unfair Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

History: 1953 Comp., § 60-14-19, enacted by Laws 1983, ch. 295, § 24.

Delayed repeals. - See 60-14-16 NMSA 1978.

Unfair Practices Act. - See 57-12-1 NMSA 1978 and notes thereto.

60-14-20. Criminal offenders character evaluation. (Effective until July 1, 1994.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Manufactured Housing Act [this article].

History: 1978 Comp., § 60-14-20, enacted by Laws 1983, ch. 295, § 25.

Delayed repeals. - See 60-14-16 NMSA 1978.