UNANNOTATED

CHAPTER 44
Miscellaneous Civil Law Matters

ARTICLE 1
Habeas Corpus

44-1-1. [Who may obtain writ.]

Every person imprisoned or otherwise restrained of his liberty, except in the cases in the following section specified, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it proves to be unlawful.

History: Laws 1884, ch. 1, § 1; C.L. 1884, § 2012; C.L. 1897, § 2781; Code 1915, § 2589; C.S. 1929, § 63-101; 1941 Comp., § 25-1101; 1953 Comp., § 22-11-1.

44-1-2. [Detention under judgment or execution; contempt.]

The following persons are not entitled to prosecute such writ: persons committed or detained by virtue of the final judgment, conviction or decree of any competent tribunal or by virtue of an execution issued upon such judgment or decree; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party shall be deemed a judgment, conviction or decree within the meaning of this section; nor shall any attachment or other process issued upon any such order be deemed an execution within the meaning of this section.

History: Laws 1884, ch. 1, § 2; C.L. 1884, § 2013; C.L. 1897, § 2782; Code 1915, § 2590; C.S. 1929, § 63-102; 1941 Comp., § 25-1102; 1953 Comp., § 22-11-2.

44-1-3. [Application for writ; to whom made; petition; signature; verification.]

Application for such writ shall be made by petition to any judge of the supreme court, signed and verified either by the party for whose relief it is intended, or by some person in his behalf, as follows: to the supreme or district court or to any judge thereof, being within the district where the prisoner is detained; or if there is no such officer within such district, or if he be absent or from any cause is incapable of acting, or has refused to grant such writ, then to some officer having such authority residing in any other district.

History: Laws 1884, ch. 1, § 3; C.L. 1884, § 2014; Laws 1889, ch. 17, § 2; C.L. 1897, § 2783; Code 1915, § 2591; C.S. 1929, § 63-103; 1941 Comp., § 25-1103; 1953 Comp., § 22-11-3.

44-1-4. [Application to officer residing outside district of detention; jurisdictional proof required.]

Whenever application for any such writ is made to any officer not residing within the district where the prisoner is detained, he shall require proof by oath of the party applying, or by other sufficient evidence, that there is no officer in such district authorized to grant the writ; or if there is one, that he is absent or has refused to grant such writ; or for some cause, to be specially set forth, is incapable of acting, and if such proof is not produced, the application shall be denied.

History: Laws 1884, ch. 1, § 4; C.L. 1884, § 2015; C.L. 1897, § 2784; Code 1915, § 2592; C.S. 1929, § 63-104; 1941 Comp., § 25-1104; 1953 Comp., § 22-11-4.

44-1-5. [Petition for writ; allegations; exhibits.]

The petition shall state in substance:

A. that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained and the place where, naming both parties, if their names are known, or describing them if they are not;

B. that such person is not committed or detained by virtue of any process, judgment, decree or execution, specified in Section 44-1-2 NMSA 1978;

C. the cause or pretense of such confinement or restraint, according to the knowledge or belief of the party verifying the petition;

D. if the confinement or restraint is by virtue of any warrant, or order, or process, a copy thereof shall be annexed, or it shall be averred that by reason of such prisoner being removed or concealed before application, a demand of such copy could not be made, or that such demand was made, and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused;

E. if the imprisonment is alleged to be illegal, the petition shall state in what the illegality consists.

History: Laws 1884, ch. 1, § 5; C.L. 1884, § 2016; C.L. 1897, § 2785; Code 1915, § 2593; C.S. 1929, § 63-105; 1941 Comp., § 25-1105; 1953 Comp., § 22-11-5.

44-1-6. [Form of writ.]

Every writ of habeas corpus issued under the provisions of this chapter shall be substantially in the following form:

The state of New Mexico to the sheriff of, etc., or to A.B.:

You are hereby commanded to have the body of C.D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name the said C.D. shall be called or charged, before E.F., judge of the district court, as etc. (or immediately after the receipt of this writ), to do, and receive what shall then and there be considered concerning the said C.D., and have you then and there this writ.

Witness, etc.

History: Laws 1884, ch. 1, § 6; C.L. 1884, § 2017; C.L. 1897, § 2786; Code 1915, § 2594; C.S. 1929, § 63-106; 1941 Comp., § 25-1106; 1953 Comp., § 22-11-6.

44-1-7. [Defects of form; names of prisoner and custodian.]

Such writ of habeas corpus shall not be disobeyed for any defect of form. It is sufficient:

A. if the person having the custody of the prisoner is designated either by his name or office, if he has any, or by his own name, or if both such names are unknown or uncertain, he may be described by any assumed appellation, and any one [anyone] who may be served with the writ, shall be deemed to be the person to whom it is directed, although it is directed to him by a wrong name or description, or to another person;

B. if the person who is directed to be produced is designated by name, or if his name is uncertain or unknown, he may be described in any other way so as to designate the person intended.

History: Laws 1884, ch. 1, § 7; C.L. 1884, § 2018; C.L. 1897, § 2787; Code 1915, § 2595; C.S. 1929, § 63-107; 1941 Comp., § 25-1107; 1953 Comp., § 22-11-7.

44-1-8. [Wrongful refusal of writ; forfeiture.]

If any officer herein authorized to grant writs of habeas corpus willfully refuses to grant such writ when legally applied for, he shall forfeit for any such offense, to the party aggrieved, one thousand dollars [($1,000)].

History: Laws 1884, ch. 1, § 8; C.L. 1884, § 2019; C.L. 1897, § 2788; Code 1915, § 2596; C.S. 1929, § 63-108; 1941 Comp., § 25-1108; 1953 Comp., § 22-11-8.

44-1-9. [Return; contents; exhibits; signature; verification.]

The person upon whom such writ is duly served shall state in his return plainly and unequivocally:

A. whether he has or has not the party in his custody, or control, or under his restraint, and, if he has not, whether he has had the party in his custody, or under his control or restraint, at any and what time prior or subsequent to the date of the writ;

B. if he has the party in his custody or control, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

C. if the party is detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the officer before whom the same is returnable;

D. if the person upon whom such writ is served has had the party in his control or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place. The return shall be signed by the person making the same, and except where such person is a sworn public officer and makes his return in his official capacity, it shall be verified by oath.

History: Laws 1884, ch. 1, § 9; C.L. 1884, § 2020; C.L. 1897, § 2789; Code 1915, § 2597; C.S. 1929, § 63-109; 1941 Comp., § 25-1109; 1953 Comp., § 22-11-9.

44-1-10. [Petitioner to be produced; exception.]

The person or officer on whom the writ is served shall bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided in this chapter.

History: Laws 1884, ch. 1, § 10; C.L. 1884, § 2021; C.L. 1897, § 2790; Code 1915, § 2598; C.S. 1929, § 63-110; 1941 Comp., § 25-1110; 1953 Comp., § 22-11-10.

44-1-11. [Attachment for disobedience of writ; issuance; to whom directed; proceedings.]

If the person upon whom such writ is duly served refuses or neglects to obey the same, by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this chapter, and no sufficient excuse is shown for such refusal or neglect, the officer before whom such writ is returnable, upon due proof of the service thereof, shall forthwith issue an attachment against such person, directed to the sheriff of any county in this state, and commanding him forthwith to apprehend such person and to bring him immediately before such officer, and on such person being so brought he shall be committed to close custody in the jail of the county in which such officer is, until he makes return to such writ and

complies with any order that may be made by such officer in relation to the person for whose relief such writ was issued.

History: Laws 1884, ch. 1, § 11; C.L. 1884, § 2022; C.L. 1897, § 2791; Code 1915, § 2599; C.S. 1929, § 63-111; 1941 Comp., § 25-1111; 1953 Comp., § 22-11-11.

44-1-12. [Attachment against sheriff; place of detention.]

If a sheriff neglects to return such writ the attachment may be directed to any person designated therein, who shall have full power to execute the same, and such sheriff upon being brought up may be committed to the jail of any county other than his own.

History: Laws 1884, ch. 1, § 12; C.L. 1884, § 2023; C.L. 1897, § 2792; Code 1915, § 2600; C.S. 1929, § 63-112; 1941 Comp., § 25-1112; 1953 Comp., § 22-11-12.

44-1-13. [Precept for production of petitioner by officer executing attachment.]

The officer by whom any such attachment is issued may also at the same time or afterward issue a precept to the sheriff, or other person to whom such attachment was directed, commanding him to bring forthwith before such officers the party for whose benefit such writ was allowed, who shall thereafter remain in the custody of such sheriff or person until he is discharged, bailed or remanded, as such officer directs.

History: Laws 1884, ch. 1, § 13; C.L. 1884, § 2024; C.L. 1897, § 2793; Code 1915, § 2601; C.S. 1929, § 63-113; 1941 Comp., § 25-1113; 1953 Comp., § 22-11-13.

44-1-14. [Hearing.]

The officer before whom such party is brought on such writ shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same was before commitment for any criminal charge or not.

History: Laws 1884, ch. 1, § 14; C.L. 1884, § 2025; C.L. 1897, § 2794; Code 1915, § 2602; C.S. 1929, § 63-114; 1941 Comp., § 25-1114; 1953 Comp., § 22-11-14.

44-1-15. [When petitioner will be discharged.]

If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

History: Laws 1884, ch. 1, § 15; C.L. 1884, § 2026; C.L. 1897, § 2795; Code 1915, § 2603; C.S. 1929, § 63-115; 1941 Comp., § 25-1115; 1953 Comp., § 22-11-15.

44-1-16. [When petitioner will be remanded to custody.]

The officer shall forthwith remand such party, if it appears that he is detained in custody, either:

A. by virtue of process issued by any court or judge of the United States in a case where such court or judge has exclusive jurisdiction; or

B. by virtue of the final judgment or decree of any competent court, or of any execution issued upon such judgment or decree; or

C. for any contempt, specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and

D. that the time during which such party may be legally detained has not expired.

History: Laws 1884, ch. 1, § 16; C.L. 1884, § 2027; C.L. 1897, § 2796; Code 1915, § 2604; C.S. 1929, § 63-116; 1941 Comp., § 25-1116; 1953 Comp., § 22-11-16.

44-1-17. [Causes for discharge of petitioner in custody under civil process.]

If it appears on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, such prisoner can only be discharged in one of the following cases:

A. when the jurisdiction of such court or officer has been exceeded either as to matter, place, sum or person;

B. where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterward, the party is entitled to be discharged;

C. where the process is defective in some matter of substance required by law rendering such process void;

D. where the process, though in proper form, has been issued in a case not allowed by law;

E. where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; or

F. where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

History: Laws 1884, ch. 1, § 17; C.L. 1884, § 2028; C.L. 1897, § 2797; Code 1915, § 2605; C.S. 1929, § 63-117; 1941 Comp., § 25-1117; 1953 Comp., § 22-11-17.

44-1-18. [Legality or justice of judgment or execution.]

But no officer on the return of any habeas corpus can inquire into the legality or justice of any judgment, decree or execution specified in Section 44-1-16 NMSA 1978.

History: Laws 1884, ch. 1, § 18; C.L. 1884, § 2029; C.L. 1897, § 2798; Code 1915, § 2606; C.S. 1929, § 63-118; 1941 Comp., § 25-1118; 1953 Comp., § 22-11-18.

44-1-19. [Petitioner legally committed or guilty of offense; release on bail.]

If it appears that the party has been legally committed for any criminal offense, or if he appears, by the testimony offered with the return upon the hearing thereof, to be guilty of such an offense, although the commitment is irregular, the officer before whom such party is brought shall proceed to let such party to bail, if the case be bailable and good bail is offered, or if not, shall forthwith remand such party.

History: Laws 1884, ch. 1, § 19; C.L. 1884, § 2030; C.L. 1897, § 2799; Code 1915, § 2607; C.S. 1929, § 63-119; 1941 Comp., § 25-1119; 1953 Comp., § 22-11-19.

44-1-20. [Decision in other cases.]

In other cases the party shall be placed in custody of the person legally entitled thereto, or if no one is so entitled, he shall be discharged.

History: Laws 1884, ch. 1, § 20; C.L. 1884, § 2031; C.L. 1897, § 2800; Code 1915, § 2608; C.S. 1929, § 63-120; 1941 Comp., § 25-1120; 1953 Comp., § 22-11-20.

44-1-21. [Custody of petitioner pending decision.]

Until judgment is given upon the action, the officer before whom such party is brought may either commit such party to the custody of the sheriff of the county in which such officer is, or place him in such care or under such custody as his age and other circumstances require.

History: Laws 1884, ch. 1, § 21; C.L. 1884, § 2032; C.L. 1897, § 2801; Code 1915, § 2609; C.S. 1929, § 63-121; 1941 Comp., § 25-1121; 1953 Comp., § 22-11-21.

44-1-22. [Notice of hearing.]

In criminal cases, notice of the time and place at which the writ is made returnable shall be given to the district attorney, if he is within the county; in other cases like notice

shall be given to any person interested in continuing the custody or restraint of the party seeking the aid of said writ.

History: Laws 1884, ch. 1, § 22; C.L. 1884, § 2033; C.L. 1897, § 2802; Code 1915, § 2610; C.S. 1929, § 63-122; 1941 Comp., § 25-1122; 1953 Comp., § 22-11-22.

44-1-23. [Bail proceedings; authorization of habeas corpus; committing magistrate's proceedings to be reviewed.]

Hereafter all persons to whom bail has been denied or who are confined for failure to give bail, may have the benefit of a writ of habeas corpus for the purpose of being admitted to bail or having the bail reduced, and the court or judge shall, upon habeas corpus, review the proceedings or action of a committing magistrate.

History: Laws 1889, ch. 29, § 1; C.L. 1897, § 2803; Code 1915, § 2611; C.S. 1929, § 63-123; 1941 Comp., § 25-1123; 1953 Comp., § 22-11-23.

44-1-24. [Certiorari to committing magistrate; transcript; examination of case de novo; decision.]

When an application is made before any authority authorized by law to issue such writs of habeas corpus it shall be the duty of such officers to issue a writ of certiorari commanding the committing magistrate forthwith to send to said officers a full and complete transcript of all his proceedings had thereof, and the said officer upon the return of such writ shall proceed to examine the case de novo and either commit to jail, discharge or recognize such person to appear before the district court as the case may require.

History: Laws 1889, ch. 29, § 2; C.L. 1897, § 2804; Code 1915, § 2612; C.S. 1929, § 63-124; 1941 Comp., § 25-1124; 1953 Comp., § 22-11-24.

44-1-25. [Pleading by petitioner after return; summary hearing.]

The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show, either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as are legally produced in support of such imprisonment or detention or against the same, and to dispose of such party as justice requires.

History: Laws 1884, ch. 1, § 24; C.L. 1884, § 2035; C.L. 1897, § 2805; Code 1915, § 2613; C.S. 1929, § 63-125; 1941 Comp., § 25-1125, 1953 Comp., § 22-11-25.

44-1-26. [Procedure when petitioner is sick or infirm.]

Whenever from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus such person cannot, without danger, be brought before the officer before whom the suit is made returnable, the party in whose custody he is may state the fact in his return to the writ, verifying the same by his oath; and if such officer is satisfied of the truth of such allegation and the return is otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appears that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall order those having such person in their custody to discharge him forthwith; and if it appears that such person is legally detained, imprisoned and confined, and is not entitled to be bailed, such officer shall dismiss the proceedings.

History: Laws 1884, ch. 1, § 25; C.L. 1884, § 2036; C.L. 1897, § 2806; Code 1915, § 2614; C.S. 1929, § 63-126; 1941 Comp., § 25-1126; 1953 Comp., § 22-11-26.

44-1-27. [Disobedience of order for discharge; attachment; damages recoverable.]

Obedience to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and the person guilty of such disobedience shall forfeit to the party aggrieved, one thousand dollars [($1,000)] in addition to any special damages such party may have sustained.

History: Laws 1884, ch. 1, § 26; C.L. 1884, § 2037; C.L. 1897, § 2807; Code 1915, § 2615; C.S. 1929, § 63-127; 1941 Comp., § 25-1127; 1953 Comp., § 22-11-27.

44-1-28. [Detention for same offense after discharge on habeas corpus prohibited; when permissible.]

No person who has been discharged upon a habeas corpus shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof or committed for want of bail by some court of record having jurisdiction of the cause; or unless after a discharge for a defect of proof or for some material defect in the commitment in a criminal case, he is again arrested on sufficient proof and committed by legal process.

History: Laws 1884, ch. 1, § 27; C.L. 1884, § 2038; C.L. 1897, § 2808; Code 1915, § 2616; C.S. 1929, § 63-128; 1941 Comp., § 25-1128; 1953 Comp., § 22-11-28.

44-1-29. [Concealment or transfer of prisoner to avoid writ; forfeiture.]

If anyone, who has in his custody, or under his control, a person entitled to a writ of habeas corpus, whether a writ has been issued or not, transfers such prisoner to the

custody, or places him under the power or control of another person, or conceals him, or changes the place of his confinement, with intent to elude the service of such writ, or to avoid the effect thereof, the person so offending shall forfeit to the party aggrieved thereby the sum of four hundred dollars [($400)], to be recovered in a civil action.

History: Laws 1884, ch. 1, § 28; C.L. 1884, § 2039; C.L. 1897, § 2809; Code 1915, § 2617; C.S. 1929, § 63-129; 1941 Comp., § 25-1129; 1953 Comp., § 22-11-29.

44-1-30. [Detention officer refusing to furnish copies; forfeiture.]

Any officer, or other person, refusing to deliver a copy of any order, warrant, process or other authority, by which he detains any person, to anyone who demands such copy and tenders the fees thereof, shall forfeit two hundred dollars [($200)] to the person so detained.

History: Laws 1884, ch. 1, § 29; C.L. 1884, § 2040; C.L. 1897, § 2810; Code 1915, § 2618; C.S. 1929, § 63-130; 1941 Comp., § 25-1130; 1953 Comp., § 22-11-30.

44-1-31. [When writ returnable; seal.]

Every writ of habeas corpus may be made returnable at a day certain, or forthwith, as the case may require, and shall be under the seal of the court.

History: Laws 1884, ch. 1, § 30; C.L. 1884, § 2041; C.L. 1897, § 2811; Code 1915, § 2619; C.S. 1929, § 63-131; 1941 Comp., § 25-1131; 1953 Comp., § 22-11-31.

44-1-32. [Who may serve writ; tender of fees; bond for costs and restoration of prisoner.]

It can only be served by an elector of this state, and the service thereof shall not be deemed complete unless the party serving the same tenders to the person in whose custody the prisoner is, if such person is a sheriff, constable or marshal, the fees allowed by law for bringing up such prisoner. The officer granting the writ may, in his discretion, require a bond in a penalty not exceeding one thousand dollars [($1,000)], with sufficient sureties, conditioned that the obligators will pay all costs and expenses of the proceeding, and the reasonable charges of restoring the prisoner to the person from whose custody he was taken, if he is remanded. Such bond shall run to the sheriff of the county and be filed in the office of the clerk of the court from which the writ issues.

History: Laws 1884, ch. 1, § 31; C.L. 1884, § 2042; C.L. 1897, § 2812; Code 1915, § 2620; C.S. 1929, § 63-132; 1941 Comp., § 25-1132; 1953 Comp., § 22-11-32.

44-1-33. [Service by delivery to custodian or person to whom writ is directed.]

Every writ of habeas corpus issued pursuant to this chapter may be served by delivering the same to the person to whom it is directed. If he cannot be found, it may be served by being left at the jail or other place in which the prisoner is confined, with any under officer or other person of proper age having charge for the time of such prisoner.

History: Laws 1884, ch. 1, § 32; C.L. 1884, § 2043; C.L. 1897, § 2813; Code 1915, § 2621; C.S. 1929, § 63-133; 1941 Comp., § 25-1133; 1953 Comp., § 22-11-33.

44-1-34. [Service by posting.]

If the person on whom the writ ought to be served, conceals himself, or refuses admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

History: Laws 1884, ch. 1, § 33; C.L. 1884, § 2044; C.L. 1897, § 2814; Code 1915, § 2622; C.S. 1929, § 63-134; 1941 Comp., § 25-1134; 1953 Comp., § 22-11-34.

44-1-35. [Time allowed for making return and producing prisoner.]

If the writ is returnable at a certain day, such return shall be made, and such prisoner produced at the time and place specified therein; if he is returnable forthwith, and the place is within twenty miles of the place of service, such return shall be made and such prisoner produced within twenty-four hours, and the like time shall be allowed for every additional twenty miles.

History: Laws 1884, ch. 1, § 34; C.L. 1884, § 2045; C.L. 1897, § 2815; Code 1915, § 2623; C.S. 1929, § 63-135; 1941 Comp., § 25-1135; 1953 Comp., § 22-11-35.

44-1-36. [Compelling attendance of prisoner for trial or as witness.]

Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court, or to bring any prisoner to be examined as a witness in any action or proceeding, civil or criminal, pending in such court, when they think the personal attendance and examination of the witness necessary for the attainment of justice.

History: Laws 1884, ch. 1, § 35; C.L. 1884, § 2046; C.L. 1897, § 2816; Code 1915, § 2624; C.S. 1929, § 63-136; 1941 Comp., § 25-1136; 1953 Comp., § 22-11-36.

44-1-37. [Sheriff's fees for producing prisoner.]

The sheriff or person who shall be required to bring up a person on habeas corpus, if the person be held by virtue of any legal process directed to such person as an officer, shall be entitled to the same fees and allowances as are allowed to sheriffs for removing prisoners in other cases.

History: Laws 1884, ch. 1, § 36; C.L. 1884, § 2047; C.L. 1897, § 2817; Code 1915, § 2625; C.S. 1929, § 63-137; 1941 Comp., § 25-1137; 1953 Comp., § 22-11-37.

44-1-38. [Federal court proceedings; payment of costs, fees and expenses by state penitentiary.]

If the petition for the writ is filed in any federal court, all the reasonably necessary costs, fees and expenses incurred or paid by the respondent shall be paid by the penitentiary of New Mexico. The budget of the penitentiary shall include an item for the anticipated expenses of habeas corpus proceedings. If budgeted funds shall not be sufficient to pay the costs and expenses that will arise, an emergency allowance from the state court fund shall be allowed upon application of the warden of the penitentiary to the state board of finance.

History: 1953 Comp., § 22-11-41, enacted by Laws 1963, ch. 178, § 4.

ARTICLE 2
Mandamus

44-2-1. [Regulation of mandamus.]

The writ of mandamus is regulated as in this chapter prescribed.

History: Laws 1884, ch. 1, § 37; C.L. 1884, § 1992; C.L. 1897, § 2760; Code 1915, § 3411; C.S. 1929, § 86-101; 1941 Comp., § 26-101; 1953 Comp., § 22-12-1.

44-2-2. [District courts open at all times for issuance of writs.]

For the purpose of hearing application for, and issuing writs of mandamus, the district courts shall be regarded as open at all times, wherever the judge of such court may be within the state.

History: Laws 1884, ch. 1, § 50; C.L. 1884, § 2005; C.L. 1897, § 2774; Code 1915, § 3412; C.S. 1929, § 86-102; 1941 Comp., § 26-102; 1953 Comp., § 22-12-2.

44-2-3. [Exclusive original jurisdiction; district and supreme courts.]

The district court has exclusive original jurisdiction in all cases of mandamus, except where such writ is to be directed to a district court or a judge thereof in his official capacity, in which case the supreme court has exclusive original jurisdiction, and in such cases the supreme court or a judge thereof shall first make a rule, returnable in term, that such district court or judge thereof, show cause before the court why a peremptory writ of mandamus should not issue, and upon the return day of such rule such district court or judge may show cause against the rule by affidavit or record, evidence, and upon the hearing thereof, the supreme court shall award a peremptory writ, or dismiss the rule. In case of emergency, a judge of the supreme court, at the time of making the rule to show cause, may also appoint a special term of the court for hearing the motion, and at which the rule shall be made returnable.

History: Laws 1884, ch. 1, § 48; C.L. 1884, § 2003; C.L. 1897, § 2771; Code 1915, § 3423; C.S. 1929, § 86-113; 1941 Comp., § 26-103; 1953 Comp., § 22-12-3.

44-2-4. [Purpose of writ; judicial discretion not controlled.]

It may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

History: Laws 1884, ch. 1, § 38; C.L. 1884, § 1993; C.L. 1897, § 2761; Code 1915, § 3413; C.S. 1929, § 86-103; 1941 Comp., § 26-104; 1953 Comp., § 22-12-4.

44-2-5. [Adequate remedy at law; writ will not issue; who may obtain writ.]

The writ shall not issue in any case where there is a plain, speedy and adequate remedy in the ordinary course of law. It shall issue on the information of the party beneficially interested.

History: Laws 1884, ch. 1, § 39; C.L. 1884, § 1994; C.L. 1897, § 2762; Code 1915, § 3414; C.S. 1929, § 86-104; 1941 Comp., § 26-105; 1953 Comp., § 22-12-5.

44-2-6. [Contents of writ.]

The writ is either alternative or peremptory. The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court out of which the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ shall be in a similar form, except that the words

requiring the defendant to show cause why he has not done as commanded, shall be omitted.

History: Laws 1884, ch. 1, § 40; C.L. 1884, § 1995; C.L. 1897, § 2763; Code 1915, § 3415; C.S. 1929, § 86-105; 1941 Comp., § 26-106; 1953 Comp., § 22-12-6.

44-2-7. [When peremptory or alternative writs issued.]

When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases the alternative writ shall be first issued.

History: Laws 1884, ch. 1, § 41; C.L. 1884, § 1996; C.L. 1897, § 2764; Code 1915, § 3416; C.S. 1929, § 86-106; 1941 Comp., § 26-107; 1953 Comp., § 22-12-7.

44-2-8. [Allowance of writ; return day; service.]

The court or judge, by an indorsement on the writ, shall allow the same, designate the return day thereof and direct the manner of service.

History: Laws 1884, ch. 1, § 42; C.L. 1884, § 1997; C.L. 1897, § 2765; Code 1915, § 3417; C.S. 1929, § 86-107; 1941 Comp., § 26-108; 1953 Comp., § 22-12-8.

44-2-9. [Answer to writ.]

On the return day of the alternative writ, or such further day as the court allows, the party on whom the writ is served may show cause by answer, made in the same manner as an answer to a complaint in civil action.

History: Laws 1884, ch. 1, § 43; C.L. 1884, § 1998; C.L. 1897, § 2766; Code 1915, § 3418; C.S. 1929, § 86-108; 1941 Comp., § 26-109; 1953 Comp., § 22-12-9.

44-2-10. [Peremptory mandamus on failure to answer; procedure after answer.]

If no answer is made a peremptory mandamus shall be allowed against the defendant; if an answer is made containing new matter, the plaintiff may, on the trial or other proceedings, avail himself of any valid objection to its sufficiency, or may countervail it by evidence either in direct denial or by way of avoidance.

History: Laws 1884, ch. 1, § 44; C.L. 1884, § 1999; C.L. 1897, § 2767; Code 1915, § 3419; C.S. 1929, § 86-109; 1941 Comp., § 26-110; 1953 Comp., § 22-12-10.

44-2-11. [Pleadings allowed; proceedings as in civil actions.]

No other pleading or written allegation is allowed than the writ and answer. They shall be construed and amended in the same manner as pleadings in a civil action, and the issues thereby joined shall be tried and further proceedings had in the same manner as in a civil action.

History: Laws 1884, ch. 1, § 45; C.L. 1884, § 2000; C.L. 1897, § 2768; Code 1915, § 3420; C.S. 1929, § 86-110; 1941 Comp., § 26-111; 1953 Comp., § 22-12-11.

44-2-12. [Judgment for plaintiff; damages; costs; peremptory writ.]

If judgment is given for the plaintiff, he shall recover the damages which he has sustained, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

History: Laws 1884, ch. 1, § 46; C.L. 1884, § 2001; C.L. 1897, § 2769; Code 1915, § 3421; C.S. 1929, § 86-111; 1941 Comp., § 26-112; 1953 Comp., § 22-12-12.

Section

44-2-13. [Officer or board refusing to perform duty; fine; other action for penalty barred.]

Whenever a peremptory mandamus is directed to a public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appears to the court that such officer or any member of such body or board, without just excuse, refuses or neglects to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars [($250)] upon every such officer or member of such body or board; such fine, when collected, shall be paid into the state treasury, and the payment of such fine is a bar to an action for any penalty incurred by such officer or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

History: Laws 1884, ch. 1, § 47; C.L. 1884, § 2002; C.L. 1897, § 2770; Code 1915, § 3422; C.S. 1929, § 86-112; 1941 Comp., § 26-113; 1953 Comp., § 22-12-13.

44-2-14. [Review of proceedings.]

That in all cases of proceedings by mandamus in any district court of this state, the final judgment of the court thereon shall be reviewable by appeal or writ of error in the same manner as now provided by law in other civil cases.

History: Laws 1887, ch. 60, § 1; C.L. 1897, § 2773; Laws 1899, ch. 80, § 8; Code 1915, § 3424; C.S. 1929, § 86-114; 1941 Comp., § 26-114; 1953 Comp., § 22-12-14.

ARTICLE 3
Quo Warranto

44-3-1. [Commencement of proceedings; complaint; writ permissive.]

The remedies heretofore obtainable by writ of quo warranto and by proceedings by information in the nature of quo warranto shall be commenced by the filing of a complaint as in other civil actions, and it shall not be necessary to sue out such writs in form, but this section shall not prevent nor be construed to prohibit the use by the supreme court and the district courts of the state of writs and proceedings in the forms hitherto used in such cases by such courts.

History: Laws 1919, ch. 28, § 1; C.S. 1929, § 115-101; 1941 Comp., § 26-201; 1953 Comp., § 22-15-1.

44-3-2. [Trial; time; use of jury permissive.]

Actions of quo warranto shall be set down and summarily tried as soon as the issues are made up and the court shall have power, if he deems proper, to summon a jury for the purpose and prescribe the manner of summoning the same.

History: Laws 1919, ch. 28, § 2; C.S. 1929, § 115-102; 1941 Comp., § 26-202; 1953 Comp., § 22-15-2.

44-3-3. [Name of private relator to be shown.]

When an action shall be brought by the attorney general or district attorney by virtue of this chapter [44-3-1 to 44-3-16 NMSA 1978], on the relation or information of a person or persons, having an interest in the question, the name of such person shall be joined with the state as relator.

History: Laws 1919, ch. 28, § 3; C.S. 1929, § 115-103; 1941 Comp., § 26-203; 1953 Comp., § 22-15-3.

44-3-4. [Who may bring action; private relators; when action lies.]

An action may be brought by the attorney general or district attorney in the name of the state, upon his information or upon the complaint of any private person, against the parties offending in the following cases:

A. when any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office or offices in a corporation created by authority of this state; or,

B. when any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office; or,

C. when any association or number of persons shall act, within this state, as a corporation without being duly incorporated, or in case of a foreign corporation, without being duly authorized, to do business within this state.

The district attorneys in their respective judicial districts shall exercise the same power and right given by this section to the attorney general in cases which may be limited in their operation to the said district.

When the attorney general or district attorney refuses to act, or when the office usurped pertains to a county, incorporated village, town or city, or school district, such action may be brought in the name of the state by a private person on his own complaint.

History: Laws 1919, ch. 28, § 4; C.S. 1929, § 115-104; 1941 Comp., § 26-204; 1953 Comp., § 22-15-4.

44-3-5. [Cost bond to be posted by private relator.]

Before any writ shall issue in an action brought upon the complaint or information of a private relator under the provisions of this act [44-3-1 to 44-3-16 NMSA 1978], such private person shall file with the clerk of the court issuing such writ a cost bond in an amount to be fixed by the court, executed and acknowledged as required by law in the case of supersedeas bonds on appeal, to be approved by the clerk of said court, conditioned as now required by law in the case of cost bonds in the district court.

History: Laws 1919, ch. 28, § 5; C.S. 1929, § 115-105; 1941 Comp., § 26-205; 1953 Comp., § 22-15-5.

44-3-6. [Usurpation of office; allegations in complaint; compensation of defendant; bond; injunction.]

Whenever such action shall be brought against a person for usurping an office, the attorney general, district attorney or person complaining, in addition to the statement of the cause of action, shall also set forth in the complaint the name of the person rightfully entitled to the office with a statement of his right thereto, and in such cases, upon proof

by affidavit that the defendant has received or is about to receive the fees and emoluments of the office by virtue of his usurpation thereof, the judge of the district court wherein such proceeding is pending, or a justice of the supreme court, if the proceeding be therein pending, may by order require the defendant to furnish a good and sufficient bond, within a designated time not exceeding fifteen days, executed and acknowledged as required by law in the case of supersedeas bonds on appeal, to be approved by said judge, conditioned that in case the person alleged to be entitled to the office should prevail, the defendant will repay to him all fees and emoluments of the office received by him and by means of his usurpation thereof, and in addition to said bond, or in case of a failure to give said bond, the said judge or justice shall upon good cause shown, issue a writ of injunction directed to the proper disbursing officer enjoining and restraining him from issuing to the defendant or his assigns any warrant, check, certificate or certificates of indebtedness representing fees or emoluments of said office, until the final adjudication of said cause.

History: Laws 1919, ch. 28, § 6; C.S. 1929, § 115-106; 1941 Comp., § 26-206; 1953 Comp., § 22-15-6.

44-3-7. [Right to elective office; allegations concerning election.]

In all actions brought to determine the right to any office it shall be necessary for the plaintiff or relator whenever the defendant is in possession of the office in controversy under a certificate of election issued by the proper officer or board of canvassers, to state in his complaint in what respect such certificate was improperly or illegally issued; and in case it is claimed that the relator received a majority of legal votes cast for the office at any legal election to fill such office he shall also state in such complaint the number of legal votes cast, as far as he may be able so to do, for the relator and for the defendant for such office respectively, and also the number of votes cast for the relator and for the defendant respectively for such office, as determined by the legal canvass of such election.

History: Laws 1919, ch. 28, § 7; C.S. 1929, § 115-107; 1941 Comp., § 26-207; 1953 Comp., § 22-15-7.

44-3-8. [Time of hearing demurrer, amending complaint, filing answer and trial; application for continuance.]

If a demurrer to the complaint in such actions be filed by the defendant the same shall be heard and determined within six days from the date of service of a copy upon counsel for the plaintiff and relator, and if the demurrer is sustained, plaintiff and relator will be given not to exceed five days to amend the complaint, and if it is overruled then the defendant shall have a like time to file the answer, provided that upon good cause shown the court may extend the time of either party, but in no event shall the time be extended to either party more than four days. The issue as finally made shall stand for trial forthwith; and no continuance of any such cause shall be granted upon the application of either party unless he shall show the absence of a witness or other

testimony and they shall be deemed material by the court. The plaintiff or relator may traverse or offer counter evidence to the facts set forth in such application for continuance.

History: Laws 1919, ch. 28, § 8; C.S. 1929, § 115-108; 1941 Comp., § 26-208; 1953 Comp., § 22-15-8.

44-3-9. [Judgment; nature; expiration of term of office before rendition.]

In every case such judgment shall be rendered upon the right of the defendant and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice may require. When the action shall not be terminated during the term of the office in controversy it may notwithstanding be prosecuted to completion and judgment rendered, which shall determine the right which any party had to the office, and to the fees and emoluments thereof.

History: Laws 1919, ch. 28, § 9; C.S. 1929, § 115-109; 1941 Comp., § 26-209; 1953 Comp., § 22-15-9.

44-3-10. [Judgment for relator claiming office; provisions for changing possession; enforcement; punishment for contempt.]

If the judgment be rendered in favor of the person so alleged to be entitled to the office, it shall provide that upon his qualification as required by law, he shall immediately thereafter demand of the defendant in the action all the books and papers and insignia of the office in his custody and control and that the defendant shall immediately comply therewith by turning over to him all of said books, papers and insignia of the office. If the defendant fails or in any wise [way] refuses to comply with said demand, the plaintiff or relator shall have an order of the court in said proceeding citing the defendant as for contempt and directing him to show cause why he should not be punished therefor and, if upon the hearing it be shown that the defendant was guilty of disobeying such order, the court shall impose a fine of not less than one hundred ($100.00) dollars, and not more than one thousand ($1,000.00) dollars, or not less than thirty (30) days nor more than ninety (90) days in the county jail, or both such fine and imprisonment within the limits stated. In addition the court may direct the further imprisonment of the party in contempt until he complies with the order of the court. In addition to the foregoing such proceedings may be had as are provided for by law to compel the delivery of such papers, books and insignia of office.

History: Laws 1919, ch. 28, § 10; C.S. 1929, § 115-110; 1941 Comp., § 26-210; 1953 Comp., § 22-15-10.

44-3-11. [Costs.]

The prevailing party in such proceedings may recover his costs from his opponent, provided that no costs shall be taxable against the state nor the attorney general when acting as relator, but such costs shall be taxable against and recovered from a private relator whenever the judgment is for the defendant.

History: Laws 1919, ch. 28, § 11; C.S. 1929, § 115-111; 1941 Comp., § 26-211; 1953 Comp., § 22-15-11.

44-3-12. [Judgment for relator claiming office; provisions concerning compensation; separate action for damages.]

When the judgment is for the person so alleged to be entitled to the office, he may have included therein a money judgment against the defendant and the surety or sureties on his bond, if furnished as in Section 6 [44-3-6 NMSA 1978] provided, for all fees and emoluments collected by him during the term involved in such case with interest thereon at six percent per annum; and he may recover by separate action the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which by virtue of said judgment said defendant has been excluded.

History: Laws 1919, ch. 28, § 12; C.S. 1929, § 115-112; 1941 Comp., § 26-212; 1953 Comp., § 22-15-12.

44-3-13. [Joinder of defendants.]

When several persons claim to be entitled to the same office or franchise, or if they collectively claim to be entitled to exercise the franchise of a corporation created by the authority of this state, one action may be brought against all such persons in order to try their, and each of their, respective rights to such office or franchise.

History: Laws 1919, ch. 28, § 13; C.S. 1929, § 115-113; 1941 Comp., § 26-213; 1953 Comp., § 22-15-13.

44-3-14. [Judgment finding defendant guilty of usurpation of office; provisions concerning exclusion and costs.]

When a defendant against whom such action shall have been brought shall be adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and that the plaintiff recover costs against such defendant.

History: Laws 1919, ch. 28, § 14; C.S. 1929, § 115-114; 1941 Comp., § 26-214; 1953 Comp., § 22-15-14.

44-3-15. [Election contest statutes unaffected.]

This act [44-3-1 to 44-3-16 NMSA 1978] shall not be construed to in any way affect the provisions of the statutes now in force in relation to election contests.

History: Laws 1919, ch. 28, § 15; C.S. 1929, § 115-115; 1941 Comp., § 26-215; 1953 Comp., § 22-15-15.

44-3-16. [Speedy hearing on appeal.]

In case of an appeal the supreme court shall advance the case on the docket of said court so as to obtain the most speedy hearing possible.

History: Laws 1919, ch. 28, § 16; C.S. 1929, § 115-116; 1941 Comp., § 26-216; 1953 Comp., § 22-15-16.

ARTICLE 4
Actions Against Receivers (Repealed.)

44-4-1 to 44-4-5. Repealed.

ARTICLE 5
Gambling Debts and Losses

44-5-1. [Money and property losses; loser's right of action for recovery; nature of remedy.]

Any person who shall lose any money or property at any game at cards, or at any gambling device, may recover the same by action of debt, if money; if property, by action of trover, replevin or detinue.

History: Laws 1856-1857, p. 34; C.L. 1865, ch. 36, § 1; C.L. 1884, § 2290; C.L. 1897, § 3199; Code 1915, § 2507; C.S. 1929, § 58-101; 1941 Comp., § 25-1001; 1953 Comp., § 22-10-1.

44-5-2. [Contents of complaint.]

In such action it shall be sufficient for the plaintiff to declare generally as in actions for debt for money had and received for the plaintiff's use, or as in actions of trover or detinue for a supposed finding and the detaining or converting the property of the plaintiff to the use of the defendant whereby an action hath accrued to the plaintiff.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 2; C.L. 1884, § 2291; C.L. 1897, § 3200; Code 1915, § 2508; C.S. 1929, § 58-102; 1941 Comp., § 25-1002; 1953 Comp., § 22-10-2.

44-5-3. Action maintainable by spouse, children, heirs, executors, administrators and creditors or [of] loser.

The spouse, children, heirs, executors, administrators and creditors of the person losing may have the same remedy against the winner as provided in Sections 44-5-1 and 44-5-2 NMSA 1978.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 3; C.L. 1884, § 2292; C.L. 1897, § 3201; Code 1915, § 2509; C.S. 1929, § 58-103; 1941 Comp., § 25-1003; 1953 Comp., § 22-10-3; Laws 1973, ch. 59, § 1.

44-5-4. Judgments, conveyances and contracts founded on gambling loss void; suit to declare void; parties.

All judgments, securities, bonds, bills, notes or conveyances, when the consideration is money or property won at gambling, or at any game or gambling device, shall be void, and may be set aside or vacated by any court of equity upon a bill filed for that purpose, by the person so granting, giving, entering into or executing the same or by any creditor or by his executors, administrators, or by any heir, purchaser or other persons interested therein; provided however, that the holder in due course of any such security, bond, bill or note which is otherwise negotiable holds such instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of such instrument for the full amount thereof against all parties liable thereon.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 4; C.L. 1884, § 2293; C.L. 1897, § 3202; Code 1915, § 2510; C.S. 1929, § 58-104; 1941 Comp., § 25-1004; 1953 Comp., § 22-10-4; Laws 1955, ch. 77, § 1.

44-5-5. [Defense in action by assignee.]

The assignment of any bond, bill, note, judgment, conveyance or other security, shall not affect the defense of the person executing the same.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 5; C.L. 1884, § 2294; C.L. 1897, § 3203; Code 1915, § 2511; C.S. 1929, § 58-105; 1941 Comp., § 25-1005; 1953 Comp., § 22-10-5.

44-5-6. [Loss by minor, servant or apprentice in grocery, store or dramshop; proprietor liable; who may sue.]

If any minor, servant or apprentice shall lose any money or property in any grocery, store or dramshop by betting at cards, or any other gambling device, or by any other bet, wager or hazard whatever, the father, mother, relations or guardian of such minor, or the master of such apprentice or servant may sue for and recover from the keeper of

such grocery, store or dramshop, such money or property or the value thereof, so lost by such minor, apprentice or servant.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 6; C.L. 1884, § 2295; C.L. 1897, § 3204; Code 1915, § 2512; C.S. 1929, § 58-106; 1941 Comp., § 25-1006; 1953 Comp., § 22-10-6.

44-5-7. [How defenses under this article may be asserted.]

Any matter of defense, under this chapter [44-5-1 to 44-5-14 NMSA 1978], may be specially pleaded, or given in evidence, under the general issue.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 7; C.L. 1884, § 2296; C.L. 1897, § 3205; Code 1915, § 2513; C.S. 1929, § 58-107; 1941 Comp., § 25-1007; 1953 Comp., § 22-10-7.

44-5-8. [Suit before magistrate; interrogatories to defendant.]

In all suits, under this chapter [44-5-1 to 44-5-14 NMSA 1978], before a justice of the peace [magistrate], the plaintiff may call in the defendant to answer, on oath, any interrogatory touching the case, and if the defendant refuse to answer, the same shall be taken as confessed.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 8; C.L. 1884, § 2297; C.L. 1897, § 3206; Code 1915, § 2514; C.S. 1929, § 58-108; 1941 Comp., § 25-1008; 1953 Comp., § 22-10-8.

44-5-9. [Answer to interrogatories not evidence in criminal prosecution.]

Such answer shall not be admitted against such person as evidence in any criminal proceeding.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 9; C.L. 1884, § 2298; C.L. 1897, § 3207; Code 1915, § 2515; C.S. 1929, § 58-109; 1941 Comp., § 25-1009; 1953 Comp., § 22-10-9.

44-5-10. [Election bets included.]

Bets and wagers on an election authorized by the constitution and laws of the United States, or by the laws of this state, are gaming within the meaning of this chapter [44-5-1 to 44-5-14 NMSA 1978].

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 10; C.L. 1884, § 2299; C.L. 1897, § 3208; Code 1915, § 2516; C.S. 1929, § 58-110; 1941 Comp., § 25-1010; 1953 Comp., § 22-10-10.

44-5-11. [Stakeholder's liability; demand required.]

Every stakeholder who shall knowingly receive any money or property, staked upon any betting, declared gaming by the provisions of this chapter [44-5-1 to 44-5-14 NMSA 1978], shall be liable to the party who placed such money or property in his hands, both before and after the determination of such bet, and the delivery of the money or property to the winner shall be no defense to an action brought by the loser for the recovery thereof: provided, that no stakeholder shall be liable afterwards, unless a demand has been made upon such stakeholder for the money or property in his possession previous to the expiration of the time agreed upon by the parties for the determination of such bet or wager.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 11; C.L. 1884, § 2300; C.L. 1897, § 3209; Code 1915, § 2517; C.S. 1929, § 58-111; 1941 Comp., § 25-1011; 1953 Comp., § 22-10-11.

44-5-12. [Garnishment against winner in action by creditor against loser.]

Any creditor to any person losing by any game at cards or any other gambling device, in addition to the remedy provided by the above sections of this chapter [44-5-1 to 44-5-14 NMSA 1978], shall have the right to garnishee the winner in any proceeding by attachment or execution, and the same proceeding shall be had thereon as if such winner were a debtor of the party losing to the amount of money, property, rights or credits, that may appear to have been so won by said winner from the party losing.

History: Laws 1856-1857, p. 36; C.L. 1865, ch. 36, § 12; C.L. 1884, § 2301; C.L. 1897, § 3210; Code 1915, § 2518; C.S. 1929, § 58-112; 1941 Comp., § 25-1012; 1953 Comp., § 22-10-12.

44-5-13. [Time for commencing action.]

Any action for money or property brought under this chapter [44-5-1 to 44-5-14 NMSA 1978], shall be commenced within one year from the time such action accrued, and not afterwards.

History: Laws 1856-1857, p. 38; C.L. 1865, ch. 36, § 13; C.L. 1884, § 2302; C.L. 1897, § 3211; Code 1915, § 2519; C.S. 1929, § 58-113; 1941 Comp., § 25-1013; 1953 Comp., § 22-10-13.

44-5-14. Action for recovery; immunity.

All persons who shall claim money or property lost at gaming, or when said money or property may be claimed by his spouse, child, relation or friend, said person, although he may have gambled, is hereby exempted from the punishment imposed by the laws prohibiting and restraining gaming.

History: Laws 1856-1857, p. 38; C.L. 1865, ch. 36, § 14; C.L. 1884, § 2303; C.L. 1897, § 3212; Code 1915, § 2520; C.S. 1929, § 58-114; 1941 Comp., § 25-1014; 1953 Comp., § 22-10-14; Laws 1973, ch. 59, § 2.

ARTICLE 6
Declaratory Judgments

44-6-1. Short title.

This act [44-6-1 to 44-6-15 NMSA 1978] may be cited as the "Declaratory Judgment Act."

History: 1953 Comp., § 22-6-4, enacted by Laws 1975, ch. 340, § 1.

44-6-2. Scope.

In cases of actual controversy, district courts within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

History: 1953 Comp., § 22-6-5, enacted by Laws 1975, ch. 340, § 2.

44-6-3. Definition.

As used in the Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978], "person" means any person, partnership, joint stock company, unincorporated association or society or municipal or other corporation of any character whatsoever.

History: 1953 Comp., § 22-6-6, enacted by Laws 1975, ch. 340, § 3.

44-6-4. Power to construe.

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question

of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

History: 1953 Comp., § 22-6-7, enacted by Laws 1975, ch. 340, § 4.

44-6-5. Contract construction.

A contract may be construed either before or after there has been a breach thereof.

History: 1953 Comp., § 22-6-8, enacted by Laws 1975, ch. 340, § 5.

44-6-6. Enumeration not exclusive.

The enumeration in Sections 4 [44-6-4 NMSA 1978] and 5 [44-6-5 NMSA 1978] of the Declaratory Judgment Act does not limit or restrict the exercise of the general powers conferred in Section 2 [44-6-2 NMSA 1978], in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

History: 1953 Comp., § 22-6-9, enacted by Laws 1975, ch. 340, § 6.

44-6-7. Discretionary.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

History: 1953 Comp., § 22-6-10, enacted by Laws 1975, ch. 340, § 7.

44-6-8. Review.

All orders, judgments and decrees under the Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978] may be reviewed as other order [orders], judgments and decrees.

History: 1953 Comp., § 22-6-11, enacted by Laws 1975, ch. 340, § 8.

44-6-9. Supplemental relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

History: 1953 Comp., § 22-6-12, enacted by Laws 1975, ch. 340, § 9.

44-6-10. Jury trial.

When a proceeding under the Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978] involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

History: 1953 Comp., § 22-6-13, enacted by Laws 1975, ch. 340, § 10.

44-6-11. Costs.

In any proceeding under the Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978], the court may make an award of costs as may seem equitable and just.

History: 1953 Comp., § 22-6-14, enacted by Laws 1975, ch. 340, § 11.

44-6-12. Parties.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard.

History: 1953 Comp., § 22-6-15, enacted by Laws 1975, ch. 340, § 12.

44-6-13. State or official may be sued; construction of constitution or statute.

For the purpose of the Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978], the state of New Mexico, or any official thereof, may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof.

History: 1953 Comp., § 22-6-16, enacted by Laws 1975, ch. 340, § 13.

44-6-14. Construction.

The Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978] is declared to be remedial. The act's purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.

History: 1953 Comp., § 22-6-17, enacted by Laws 1975, ch. 340, § 14.

44-6-15. Uniformity of interpretation.

The Declaratory Judgment Act [44-6-1 to 44-6-15 NMSA 1978] shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

History: 1953 Comp., § 22-6-18, enacted by Laws 1975, ch. 340, § 15.

ARTICLE 7
Arbitration (Repealed.)

44-7-1 to 44-7-22. Repealed.

ARTICLE 7A
Uniform Arbitration

44-7A-1. Short title; definitions.

(a) The provisions of this act may be cited as the "Uniform Arbitration Act" [44-7A-1 NMSA 1978].

(b) As used in the Uniform Arbitration Act:

(1) "arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

(2) "arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(3) "court" means a court of competent jurisdiction in this state;

(4) "disabling civil dispute clause" means a provision modifying or limiting procedural rights necessary or useful to a consumer, borrower, tenant or employee in the enforcement of substantive rights against a party drafting a standard form contract

or lease, such as, by way of example, a clause requiring the consumer, tenant or employee to:

(a) assert a claim against the party who prepared the form in a forum that is less convenient, more costly or more dilatory than a judicial forum established in this state for resolution of the dispute;

(b) assume a risk of liability for the legal fees of the party preparing the contract, but a seller, lessor or lender may exact for a buyer, tenant or borrower an obligation to reimburse the seller, lessor or lender for a reasonable fee paid to secure enforcement of a promise to pay money;

(c) forego access to the discovery of evidence as provided in the rules of procedure of a convenient judicial forum available to hear and decide a dispute between the parties;

(d) present evidence to a purported neutral person who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral person;

(e) forego recourse to appeal from a decision not based on substantial evidence or disregarding the legal rights of the consumer, tenant or employee;

(f) decline to participate in a class action; or

(g) forego an award of attorney fees, civil penalties or multiple damages otherwise available in a judicial proceeding;

(5) "knowledge" means actual knowledge;

(6) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

(7) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(8) "standard form contract or lease" means a written instrument prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees.

History: Laws 2001, ch. 227, § 1.

44-7A-2. Notice.

(a) Except as otherwise provided in the Uniform Arbitration Act [44-7A-1 NMSA 1978], a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

History: Laws 2001, ch. 227, § 2.

44-7A-3. When the uniform arbitration applies.

(a) The Uniform Arbitration Act [44-7A-1 NMSA 1978] governs an agreement to arbitrate made on or after the effective date of that act.

(b) The Uniform Arbitration Act governs an agreement to arbitrate made before the effective date of that act if all the parties to the agreement or to the arbitration proceeding so agree in a record.

History: Laws 2001, ch. 227, § 3.

44-7A-4. Effect of agreement to arbitrate; nonwaivable provisions.

(a) Except as otherwise provided in Subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of the requirements of the Uniform Arbitration Act [44-7A-1 NMSA 1978] to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of Section 6(a), 7(a), 9, 18(a), 18(b), 27 or 29 [44-7A-6, 44-7A-7, 44-7A-9, 44-7A-18, 44-7A-27 or 44-7A-29 NMSA 1978];

(2) agree to unreasonably restrict the right under Section 10 [44-7A-10 NMSA 1978] to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under Section 12 [44-7A-12 NMSA 1978] to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under Section 17 [44-7A-17 NMSA 1978] of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under the Uniform Arbitration Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive or the parties may not vary the effect of the requirements of this section or Section 3(a), 8, 15, 19, 21(d) or (e), 23, 24, 25, 26(a) or (b), 30, 31, 32 or 33 [44-7A-3, 44-7A-15, 44-7A-19, 44-7A-21, 44-7A-23, 44-7A-24, 44-7A-25, 44-7A-26, 44-7A-30, 44-7A-31, 44-7A-32, or 44-7A-33 NMSA 1978].

History: Laws 2001, ch. 227, § 4.

44-7A-5. Disabling civil dispute clause voidable.

In the arbitration of a dispute between a consumer, borrower, tenant or employee and another party, a disabling civil dispute clause contained in a document relevant to the dispute is unenforceable against and voidable by the consumer, borrower, tenant or employee. If the enforcement of such a clause is at issue as a preliminary matter in connection with arbitration, the consumer, borrower, tenant or employee may seek judicial relief to have the clause declared unenforceable in a court having personal jurisdiction of the parties and subject matter jurisdiction of the issue.

History: Laws 2001, ch. 227, § 5.

44-7A-6. Application for judicial relief.

(a) Except as otherwise provided in Section 28 [44-7A-28 NMSA 1978], an application for judicial relief under the Uniform Arbitration Act [44-7A-1 NMSA 1978] must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under the Uniform Arbitration Act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

History: Laws 2001, ch. 227, § 6.

44-7A-7. Validity of agreement to arbitrate.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

History: Laws 2001, ch. 227, § 7.

44-7A-8. Motion to compel or stay arbitration.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not pursuant to Subsection (a) or (b) order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in Section 28 [44-7A-28 NMSA 1978].

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

History: Laws 2001, ch. 227, § 8.

44-7A-9. Provisional remedies.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under Subsection (a) or (b).

History: Laws 2001, ch. 227, § 9.

44-7A-10. Initiation of arbitration.

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under Section 16(c) [44-7A-16 NMSA 1978] not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

History: Laws 2001, ch. 227, § 10.

44-7A-11. Consolidation of separate arbitration proceedings.

(a) Except as otherwise provided in Subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

History: Laws 2001, ch. 227, § 11.

44-7A-12. Appointment of arbitrator; service as a neutral arbitrator.

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

History: Laws 2001, ch. 227, § 12.

44-7A-13. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) a financial or personal interest in the outcome of the arbitration proceeding; and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator. If an arbitrator discloses a fact required by Subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under Section 24(a)(2) [44-7A-24 NMSA 1978] for vacating an award made by the arbitrator.

(c) If the arbitrator did not disclose a fact as required by Subsection (a) or (b), upon timely objection by a party, the court under Section 24(a)(2) may vacate an award.

(d) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under Section 24(a)(2).

(e) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under Section 24(a)(2).

History: Laws 2001, ch. 227, § 13.

44-7A-14. Action by majority.

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Section 16(c) [44-7A-16 NMSA 1978].

History: Laws 2001, ch. 227, § 14.

44-7A-15. Immunity of arbitrator; competency to testify; attorney's fees and costs.

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by Section 13 [44-7A-13 NMSA 1978] does not cause any loss of immunity under this section.

(d) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing on a motion to vacate an award under Section 24(a)(1) or (2) [44-7A-24 NMSA 1978] if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of Subsection (d), and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

History: Laws 2001, ch. 227, § 15.

44-7A-16. Arbitration process.

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under Subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 12 [44-7A-12 NMSA 1978] to continue the proceeding and to resolve the controversy.

History: Laws 2001, ch. 227, § 16.

44-7A-17. Representation by lawyer.

A party to an arbitration proceeding may be represented by a lawyer.

History: Laws 2001, ch. 227, § 17.

44-7A-18. Witnesses; subpoenas; depositions; discovery.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

(d) If an arbitrator permits discovery under Subsection (c), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

History: Laws 2001, ch. 227, § 18.

44-7A-19. Judicial enforcement of pre-award ruling by arbitrator.

If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 20 [44-7A-20 NMSA 1978]. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section 23 [44-7A-23 NMSA 1978], in which case the court shall summarily decide the motion. The court shall issue

an order to confirm the award unless the court vacates, modifies or corrects the award under Section 24 or 25 [44-7A-24 or 44-7A-25 NMSA 1978].

History: Laws 2001, ch. 227, § 19.

44-7A-20. Award.

(a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

History: Laws 2001, ch. 227, § 20.

44-7A-21. Change of award by arbitrator.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in Section 25(a)(1) or (3) [44-7A-25 NMSA 1978];

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(b) A motion under Subsection (a) must be made and notice given to all parties within twenty days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(d) If a motion to the court is pending under Section 23, 24 or 25 [44-7A-23, 44-7A-24 or 44-7A-25 NMSA 1978], the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in Section 25(a)(1) or (3) [44-7A-25 NMSA 1978];

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to Sections 20(a), 23, 24 and 25 [44-7A-20, 44-7A-23, 44-7A-24 and 44-7A-25 NMSA 1978].

History: Laws 2001, ch. 227, § 21.

44-7A-22. Remedies; fees and expenses of arbitration proceeding.

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by Subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 23 [44-7A-23 NMSA 1978] or for vacating an award under Section 24 [44-7A-24 NMSA 1978].

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under Subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

History: Laws 2001, ch. 227, § 22.

44-7A-23. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 21 or 25 [44-7A-21 or 44-7A-25 NMSA 1978] or is vacated pursuant to Section 24 [44-7A-24 NMSA 1978].

History: Laws 2001, ch. 227, § 23.

44-7A-24. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was:

(A) evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) corruption by an arbitrator; or

(C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to Section 16 [44-7A-16 NMSA 1978], so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under Section 16(c) not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 10 [44-7A-10 NMSA 1978] so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to Section 20 [44-7A-20 NMSA 1978] or within ninety days after the movant receives notice of a modified or corrected award pursuant to Section 21 [44-7A-21 NMSA 1978], unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in Subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in Subsection (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (a)(3), (4) or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must

render the decision in the rehearing within the same time as that provided in Section 20(b) [44-7A-20 NMSA 1978] for an award. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

History: Laws 2001, ch. 227, § 24.

44-7A-25. Modification or correction of award.

(a) Upon motion made within ninety days after the movant receives notice of the award pursuant to Section 20 [44-7A-20 NMSA 1978] or within ninety days after the movant receives notice of a modified or corrected award pursuant to Section 21 [44-7A-21 NMSA 1978], the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under Subsection (a) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

History: Laws 2001, ch. 227, § 25.

44-7A-26. Judgment on award; attorney's fees and litigation expenses.

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under Section 23, 24 or 25 [44-7A-23, 44-7A-24, or 44-7A-25 NMSA 1978], the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a

judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying or correcting an award.

History: Laws 2001, ch. 227, § 26.

44-7A-27. Jurisdiction.

(a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978].

History: Laws 2001, ch. 227, § 27.

44-7A-28. Venue.

A motion pursuant to Section 6 [44-7A-6 NMSA 1978] must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

History: Laws 2001, ch. 227, § 28.

44-7A-29. Appeals.

(a) An appeal may be taken from:

(1) an order denying a motion to compel arbitration;

(2) an order granting a motion to stay arbitration;

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a final judgment entered pursuant to the Uniform Arbitration Act [44-7A-1 NMSA 1978].

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

History: Laws 2001, ch. 227, § 29.

44-7A-30. Uniformity of application and construction.

In applying and construing the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2001, ch. 227, § 30.

44-7A-31. Relationship to electronic signatures in global and national commerce act.

The provisions of the Uniform Arbitration Act [44-7A-1 NMSA 1978] governing the legal effect, validity and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.

History: Laws 2001, ch. 227, § 31.

44-7A-32. Saving clause.

The Uniform Arbitration Act [44-7A-1 NMSA 1978] does not affect an action or proceeding commenced or right accrued before that act takes effect, subject to Section 3 [44-7A-3 NMSA 1978] of that act.

History: Laws 2001, ch. 227, § 32.

ARTICLE 7B
Mediation Procedures Act

44-7B-1. Short title.

This act [Chapter 44, Article 7B NMSA 1978] may be cited as the "Mediation Procedures Act".

History: Laws 2007, ch. 11, § 1.

44-7B-2. Definitions.

As used in the Mediation Procedures Act [44-7B-1 NMSA 1978]:

A. "mediation" means a process in which a mediator:

(1) facilitates communication and negotiation between mediation parties to assist them in reaching an agreement regarding their dispute; or

(2) promotes reconciliation, settlement or understanding between and among parties;

B. "mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining a mediator;

C. "mediation party" means a person who participates in a mediation and whose agreement is necessary to resolve the dispute;

D. "mediation program" means a program that provides mediation services and is created or administered by a court or court agency, a government or governmental subdivision, agency or instrumentality of this state or a tribal court, government or agency;

E. "mediator" means an individual who:

(1) holds the individual's self out as a mediator and who conducts a mediation;

(2) the mediation parties agree to use as a mediator and who conducts a mediation;

(3) is designated by a mediation program as a mediator and who conducts a mediation; or

(4) is an observer who is permitted by the mediation parties to watch and listen to the mediation for educational or other administrative purposes;

F. "nonparty participant" means a person, other than a mediation party or mediator, who participates in, is present during the mediation or is a mediation program administrator, including a person consulted by a mediation party to assist the mediation party with evaluating, considering or generating offers of settlement;

G. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

H. "proceeding" means:

(1) arbitration or a judicial, administrative or other adjudicative process, including related pre-hearing and post-hearing motions, conferences and discovery; or

(2) a legislative hearing or similar process;

I. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

J. "sign" means:

(1) to execute or adopt a tangible symbol with the present intent to authenticate a record or to ratify the agreement set forth in the record; or

(2) to attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record or to ratify the agreement set forth in the record.

History: Laws 2007, ch. 11, § 2.

44-7B-3. Scope.

A. Except as otherwise provided in Subsection B of this section, the Mediation Procedures Act [44-7B-1 NMSA 1978] applies to all mediators, nonparty participants, mediation parties and a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or are referred to mediation by a court, administrative agency or arbitrator; or

(2) the mediation parties and the mediator agree to mediate and the agreement to mediate is evidenced by a record that is signed by the mediation parties.

B. The Mediation Procedures Act does not apply to a mediation:

(1) relating to the establishment, negotiation, administration or termination of a collective bargaining relationship;

(2) relating to a dispute that is pending pursuant to or is part of the processes established by a collective bargaining agreement, except that the Mediation Procedures Act applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(3) conducted by a judge who might make a ruling on the case; or

(4) agreed to in writing by the mediation parties and the mediator prior to the mediation not to be covered by the Mediation Procedures Act, declared in writing by a mediation program prior to the mediation or declared in writing by a court or court agency, a government or governmental subdivision, agency or instrumentality of this state or a tribal court, government or agency prior to the mediation not to be covered by the Mediation Procedures Act.

History: Laws 2007, ch. 11, § 3.

44-7B-4. Confidentiality.

Except as otherwise provided in the Mediation Procedures Act [44-7B-1 NMSA 1978] or by applicable judicial court rules, all mediation communications are confidential, and not subject to disclosure and shall not be used as evidence in any proceeding.

History: Laws 2007, ch. 11, § 4.

44-7B-5. Exceptions; admissibility; discovery.

A. Mediation communications are not confidential pursuant to the Mediation Procedures Act [44-7B-1 NMSA 1978] if they:

(1) are contained in an agreement reached by the mediation parties during a mediation, including an agreement to mediate, and the agreement is evidenced by a record signed by the mediation parties, except when parts of the agreement are designated by the mediation parties to be confidential or are confidential as otherwise provided by law;

(2) are communications that all mediation parties agree may be disclosed, as evidenced by a record signed by all mediation parties prior to or at the mediation;

(3) threaten or lead to actual violence in the mediation;

(4) reveal the intent of a mediation party to commit a felony or inflict bodily harm to the mediation party's self or another person;

(5) disprove a felony charge;

(6) are required by law to be made public or otherwise disclosed;

(7) relate to abuse, neglect or criminal activity that is not the subject of the mediation;

(8) are sought or offered to disprove a claim or complaint of professional misconduct or malpractice based on conduct during a mediation and filed against a mediation party or nonparty participant;

(9) relate to the administrative facts of the mediation, including:

(a) whether the mediation parties were referred to mediation;

(b) whether a mediation occurred or has terminated;

(c) the date, time and place of a mediation;

(d) the persons in attendance at a mediation; and

(e) whether a mediator received payment for the mediation; or

(10) relate to whether the parties reached a binding and enforceable settlement in the mediation.

B. Mediation communications may be disclosed if a court, after hearing in camera and for good cause shown, orders disclosure of evidence that is sought to be offered and is not otherwise available in an action on an agreement arising out of a mediation evidenced by a record. Nothing in this subsection shall require disclosure by a mediator of any matter related to mediation communications.

C. Mediators shall not be required to make disclosure, either through discovery or testimony at trial or otherwise, of any matter related to mediation communications, except:

(1) pursuant to Paragraphs (3) through (10) of Subsection A and Paragraph (3) of Subsection D of this section; and

(2) to prove or disprove a claim of mediator misconduct or malpractice filed against a mediator.

D. Nothing in the Mediation Procedures Act shall prevent:

(1) the discovery or admissibility of any evidence that is otherwise discoverable or admissible, merely because the evidence was presented during a mediation;

(2) the gathering of information for research or educational purposes or for the purpose of evaluating or monitoring the performance of a mediator; provided that the mediation parties or the specific circumstances of the dispute of the mediation parties are not identified or identifiable;

(3) a court or court agency, a government or governmental subdivision, agency or instrumentality of this state or a tribal court, government or agency, when conducting a mediation program under its auspices, from ordering prior to the mediation that different or additional rules of confidentiality shall apply to the mediation; or

(4) mediation parties from agreeing in writing to additional or different confidentiality protections prior to the mediation, subject to Paragraphs (3) through (10) of Subsection A and Subsection C of this section.

History: Laws 2007, ch. 11, § 5.

44-7B-6. Effect of agreement.

A. If the mediation parties reach a settlement agreement evidenced by a record signed by the mediation parties, the agreement is enforceable in the same manner as any other written contract. The agreement shall not affect any outstanding court order unless the terms of the agreement are incorporated into a subsequent order.

B. A court, administrative agency or arbitrator, in its discretion, may incorporate the terms of the agreement in the order or other document disposing of the matter.

History: Laws 2007, ch. 11, § 6.

ARTICLE 8
Receivership Act

44-8-1. Short title.

This act [44-8-1 to 44-8-10 NMSA 1978] may be cited as the "Receivership Act".

History: Laws 1995, ch. 81, § 1.

44-8-2. Purpose.

The purpose of the Receivership Act [44-8-1 NMSA 1978] is to provide a framework for the creation and administration of receiverships.

History: Laws 1995, ch. 81, § 2.

44-8-3. Definitions.

As used in the Receivership Act [44-8-1 NMSA 1978]:

A. "applicant" means an interested person who seeks the appointment of a receiver;

B. "business entity" means a sole proprietorship, a profit or nonprofit corporation, a general or limited partnership, business trust, joint venture or other enterprise composed of one or more persons or entities;

C. "interested person" means any secured or unsecured creditor, a shareholder of a corporation, a general or limited partner of a partnership or a person jointly owning or interested in a receivership estate; and

D. "receivership estate" means tangible and intangible property, its proceeds, profits, substitutions, additions, fixtures and accretions for which a receiver is sought.

History: Laws 1995, ch. 81, § 3.

44-8-4. Grounds for appointing a receiver.

A. Upon application to a district court, the district court shall appoint a receiver in an action by a mortgagee or secured party or in any other action based upon a contract or other written agreement, where such mortgage, security agreement, contract or other written agreement provides for the appointment of a receiver.

B. Upon application to a district court, the district court may appoint a receiver:

(1) when specific statutory provisions authorize the appointment of a receiver;

(2) in an action between or among persons owning or claiming an interest in the receivership estate;

(3) in actions where receivers have customarily been appointed by courts of law or equity;

(4) when a receiver has been appointed for a business entity or other person by a court of competent jurisdiction in another state, and that receiver seeks to collect, take possession or manage assets of the receivership estate located in New Mexico; or

(5) in any other case where, in the discretion of the district court, just cause exists and irreparable harm may result from failure to appoint a receiver.

History: Laws 1995, ch. 81, § 4.

44-8-5. Application for appointment of a receiver.

A. An applicant may apply to the district court for the appointment of a receiver by motion in an action already pending or by a separate petition or complaint.

B. An application for the appointment of a receiver shall be verified and shall contain:

(1) a description of the receivership estate, including the estimated gross monthly income if known, for which the applicant seeks a receiver;

(2) the location of the receivership estate;

(3) a description of the applicant's interest in the receivership estate;

(4) a statement showing that venue in the district court is proper;

(5) a statement of the grounds for the appointment of a receiver; and

(6) a nomination of the proposed receiver.

C. An ex parte hearing to appoint a receiver may be held without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified application that immediate and irreparable injury, loss or damage will result to the applicant or others before the adverse party's attorney can be heard in opposition; and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the attorney's claim that notice should not be required.

D. Every application, proceeding and order for appointment of a receiver granted without notice shall comply with the Rules of Civil Procedure for the District Courts of New Mexico pertaining to temporary restraining orders and appointment of receivers ex parte.

History: Laws 1995, ch. 81, § 5; 1996, ch. 35, § 10.

44-8-6. Qualifications for receivers.

A receiver shall meet the following qualifications:

A. the person must be at least eighteen years of age or a corporation or other business entity in good standing authorized to do business in New Mexico;

B. the person must not be otherwise disqualified under applicable state or federal law to administer the receivership estate;

C. before entering on his duties as receiver, the receiver shall sign and file a consent to act as receiver; and

D. upon request and a showing of good cause by an interested party, the district court may require the receiver to post a bond unless the mortgage, security agreement,

contract or other written agreement dispenses with the posting of bond. The amount of the bond shall be as ordered by the court.

History: Laws 1995, ch. 81, § 6.

44-8-7. Powers and duties of receivers.

Unless otherwise ordered by the district court, a person who acts as a receiver shall:

A. prepare an inventory of the receivership estate within thirty days of appointment and file that inventory with the district court;

B. collect and manage the receivership estate in a reasonable and prudent manner;

C. file monthly operating reports with the district court and provide copies to all parties who have entered an appearance and allow such parties reasonable access to the books and records of the receivership;

D. enter into contracts reasonably necessary to operate, maintain and preserve the receivership estate;

E. take possession of all available books, records and other documents related to the receivership estate;

F. lease assets of the receivership estate in accordance with the powers and limitations contained in the original order of appointment;

G. bring and defend actions in his capacity as receiver to maintain and preserve the receivership estate;

H. subject to prior order of the district court, engage and retain attorneys, accountants, brokers or any other persons and pay their compensation or fees, sell or mortgage property of the receivership estate, borrow money for the receivership estate, make distributions of receivership proceeds to any party or pay compensation to the receiver; and

I. exercise any other powers expressly granted by statute or an order of the district court.

History: Laws 1995, ch. 81, § 7.

44-8-8. Compensation.

A receiver and an attorney, accountant, broker and other person duly engaged and retained by the receiver shall be entitled to receive reasonable compensation, to be paid

from the receivership estate, in a sum to be fixed or approved by the district court, for services rendered to the receivership estate.

History: Laws 1995, ch. 81, § 8.

44-8-9. Removal, death, resignation, substitution and discharge of receiver; termination of receivership.

A. Upon notice and hearing, a receiver may be removed either upon application by an interested person or upon the district court's own motion.

B. The death, resignation or substitution of a receiver, the expiration of a receiver's term of appointment or the dismissal of the action in which a receiver was appointed shall not have the effect of terminating the receivership.

C. A receiver may not resign except by leave of the district court. Leave shall be sought by motion and hearing unless the agreement of all parties obviates the need for a hearing. Leave may provide for the discharge of a receiver, and leave and discharge may be conditioned upon:

(1) the substitution of another receiver;

(2) the preparation and filing of a receiver's report;

(3) the preparation and filing of an accounting;

(4) the delivery of receivership property, accounts and books to a successor or to a person appointed by the district court;

(5) the consent of all interested persons;

(6) the termination of the receivership;

(7) the conclusion of litigation to which a receiver is party; or

(8) such other terms as the district court may order.

D. In the event of the death, resignation or removal of a receiver, the district court shall appoint a successor receiver to oversee a receivership estate. A receiver so appointed succeeds to the powers of his predecessor.

E. Upon disposition of the action concerning the receivership estate, the district court shall enter an order that discharges the receiver from his duties and releases him from any claim or demand of any interested person. Upon the termination of the receiver's duties, the receiver shall prepare and file a final report and account of the receivership and serve it upon all parties who have entered an appearance. Any

objections to the receiver's final account and report and claims to surcharge must be filed within ten days of service. Upon settlement of the receiver's final account and report, the district court shall enter an order discharging the receiver from all further duties, releasing him from any claim or demand of any interested person and exonerating any bond that the receiver has been required to post in connection with the receivership.

History: Laws 1995, ch. 81, § 9.

44-8-10. Appeal and stay of appointment of a receiver.

If an appeal is taken from a district court from a judgment or an order appointing a receiver, perfecting of an appeal from such judgment or order shall not stay enforcement of the judgment or order unless a bond, in a sum fixed by the district court, is given and posted on condition that if the judgment or order is affirmed on the appeal, or if the appeal is withdrawn or dismissed, the appellant will pay all costs and damages that the respondent may sustain by reason of the stay in the enforcement of the judgment or order.

History: Laws 1995, ch. 81, § 10.

ARTICLE 9
Fraud Against Taxpayers Act

44-9-1. Short title.

This act [44-9-1 to 44-9-14 NMSA 1978] may be cited as the "Fraud Against Taxpayers Act".

History: Laws 2007, ch. 40, § 1.

44-9-2. Definitions.

As used in the Fraud Against Taxpayers Act:

A. "claim" means a request or demand for money, property or services when all or a portion of the money, property or services requested or demanded issues from or is provided or reimbursed by the state or a political subdivision;

B. "employer" includes an individual, corporation, firm, association, business, partnership, organization, trust, charter school and the state and any of its agencies, institutions or political subdivisions;

C. "knowingly" means that a person, with respect to information, acts:

(1) with actual knowledge of the truth or falsity of the information;

(2) in deliberate ignorance of the truth or falsity of the information; or

(3) in reckless disregard of the truth or falsity of the information;

D. "person" means an individual, corporation, firm, association, organization, trust, business, partnership, limited liability company, joint venture or any legal or commercial entity;

E. "political subdivision" means a political subdivision of the state or a charter school; and

F. "state" means the state of New Mexico or any of its branches, agencies, departments, boards, commissions, officers, institutions or instrumentalities, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority.

History: Laws 2007, ch. 40, § 2; 2015, ch. 128, § 1.

44-9-3. False claims; liability; penalties; exception.

A. A person shall not:

(1) knowingly present, or cause to be presented, to an employee, officer or agent of the state or a political subdivision or to a contractor, grantee or other recipient of state or political subdivision funds a false or fraudulent claim for payment or approval;

(2) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to obtain or support the approval of or the payment on a false or fraudulent claim;

(3) conspire to defraud the state or a political subdivision by obtaining approval or payment on a false or fraudulent claim;

(4) conspire to make, use or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or a political subdivision;

(5) when in possession, custody or control of property or money used or to be used by the state or a political subdivision, knowingly deliver or cause to be delivered less property or money than the amount indicated on a certificate or receipt;

(6) when authorized to make or deliver a document certifying receipt of property used or to be used by the state or a political subdivision, knowingly make or deliver a receipt that falsely represents a material characteristic of the property;

(7) knowingly buy, or receive as a pledge of an obligation or debt, public property from any person that may not lawfully sell or pledge the property;

(8) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or a political subdivision; or

(9) as a beneficiary of an inadvertent submission of a false claim and having subsequently discovered the falsity of the claim, fail to disclose the false claim to the state or political subdivision within a reasonable time after discovery.

B. Proof of specific intent to defraud is not required for a violation of Subsection A of this section.

C. A person who violates Subsection A of this section shall be liable for:

(1) three times the amount of damages sustained by the state or political subdivision because of the violation;

(2) a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each violation;

(3) the costs of a civil action brought to recover damages or penalties; and

(4) reasonable attorney fees, including the fees of the attorney general, state agency or political subdivision counsel.

D. A court may assess not less than two times the amount of damages sustained by the state or a political subdivision if the court finds all of the following:

(1) the person committing the violation furnished the attorney general or political subdivision with all information known to that person about the violation within thirty days after the date on which the person first obtained the information;

(2) at the time that the person furnished the attorney general or political subdivision with information about the violation, a criminal prosecution, civil action or administrative action had not been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; and

(3) the person fully cooperated with any investigation by the attorney general or political subdivision.

E. This section does not apply to claims, records or statements made pursuant to the provisions of Chapter 7 NMSA 1978.

History: Laws 2007, ch. 40, § 3; 2015, ch. 128, § 2.

44-9-4. Investigation by the attorney general; delegation; civil action.

A. The attorney general shall diligently investigate suspected violations of Section 44-9-3 NMSA 1978, and if the attorney general finds that a person has violated or is violating that section, the attorney general may bring a civil action against that person pursuant to the Fraud Against Taxpayers Act.

B. The attorney general may in appropriate cases delegate the authority to investigate or to bring a civil action to the state agency or political subdivision to which a false claim was made, and when this occurs, the state agency or political subdivision shall have every power conferred upon the attorney general pursuant to the Fraud Against Taxpayers Act. If the attorney general has delegated authority to a state agency or political subdivision, all references to the attorney general in the Fraud Against Taxpayers Act shall apply to the delegee.

History: Laws 2007, ch. 40, § 4; 2015, ch. 128, § 3.

44-9-5. Civil action by qui tam plaintiff; state or political subdivision may intervene.

A. A person may bring a civil action for a violation of Section 44-9-3 NMSA 1978 on behalf of the person and the state or political subdivision. The action shall be brought in the name of the state or political subdivision. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind the Fraud Against Taxpayers Act.

B. A complaint filed by a qui tam plaintiff shall be filed in camera in district court and shall remain under seal for at least sixty days. No service shall be made on a defendant and no response is required from a defendant until the seal has been lifted and the complaint served pursuant to the rules of civil procedure.

C. On the same day as the complaint is filed, the qui tam plaintiff shall serve the attorney general, and the political subdivision, if applicable, with a copy of the complaint and written disclosure of substantially all material evidence and information the qui tam plaintiff possesses. The attorney general on behalf of the state or the political subdivision, or the political subdivision on its own behalf, may intervene and proceed with the action within sixty days after receiving the complaint and the material evidence and information. Upon a showing of good cause and reasonable diligence in the state's or political subdivision's investigation, the state or political subdivision may move the court for an extension of time during which the complaint shall remain under seal.

D. Before the expiration of the sixty-day period or any extensions of time granted by the court, the attorney general or political subdivision shall notify the court that the state or the political subdivision:

(1) intends to intervene and proceed with the action; in which case, the seal shall be lifted and the action shall be conducted by the attorney general on behalf of the state or the political subdivision, or the political subdivision shall conduct the action on its own behalf; or

(2) declines to take over the action; in which case the seal shall be lifted and the qui tam plaintiff may proceed with the action.

E. When a person brings an action pursuant to this section, no person other than the attorney general on behalf of the state or a political subdivision, or a political subdivision on its own behalf, may intervene or bring a related action based on the facts underlying the pending action.

History: Laws 2007, ch. 40, § 5; 2015, ch. 128, § 4.

44-9-6. Rights of the qui tam plaintiff and the state or political subdivision.

A. If the state or political subdivision proceeds with the action, it shall have the primary responsibility of prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and to present evidence at a hearing.

C. The state or political subdivision may settle the action with the defendant notwithstanding any objection by the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate and reasonable under all of the circumstances.

D. Upon a showing by the state or political subdivision that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the prosecution of the case, or would be repetitious, irrelevant or for the purpose of harassment, the court may, in its discretion, impose limitations on the qui tam plaintiff's participation, such as:

(1) limiting the number of witnesses the qui tam plaintiff may call;

(2) limiting the length of testimony of such witnesses;

(3) limiting the qui tam plaintiff's cross examination of witnesses; or

(4) otherwise limiting the qui tam plaintiff's participation in the litigation.

E. Upon a showing by a defendant that unrestricted participation during the course of litigation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

F. If the state or political subdivision elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the attorney general or political subdivision so requests, the qui tam plaintiff shall serve the attorney general or political subdivision with copies of all pleadings filed in the action and all deposition transcripts in the case, at the state's or political subdivision's expense. When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the attorney general or political subdivision to intervene at a later date upon a showing of good cause.

G. Whether or not the state or political subdivision proceeds with the action, upon a showing by the attorney general on behalf of the state or political subdivision, or a political subdivision on its own behalf, that certain actions of discovery by the qui tam plaintiff would interfere with an investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. The showing by the state or political subdivision shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state or political subdivision has pursued the criminal or civil investigation or proceeding with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

H. Notwithstanding the provisions of Section 44-9-5 NMSA 1978, the attorney general or political subdivision may elect to pursue the state's or political subdivision's claim through any alternate remedy available, including an administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued, the qui tam plaintiff shall have the same rights in such a proceeding as the qui tam plaintiff would have had if the action had continued pursuant to this section. A finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under the Fraud Against Taxpayers Act. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired or if the finding or conclusion is not subject to judicial review.

History: Laws 2007, ch. 40, § 6; 2015, ch. 128, § 5.

44-9-7. Awards to qui tam plaintiff and the state or political subdivision.

A. Except as otherwise provided in this section, if the state or a political subdivision proceeds with an action brought by a qui tam plaintiff and the state or political subdivision prevails in the action, the qui tam plaintiff shall receive:

(1) at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action; or

(2) no more than ten percent of the proceeds of the action or settlement if the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, administrative or legislative hearing, proceeding, report, audit or investigation or from the news media, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation. However, if the attorney general or political subdivision determines and certifies in writing that the qui tam plaintiff provided a significant contribution in advancing the case, then the qui tam plaintiff shall receive the share of proceeds set forth in Paragraph (1) of this subsection.

B. If the state or political subdivision does not proceed with an action brought by a qui tam plaintiff and the state or political subdivision prevails in the action, the qui tam plaintiff shall receive an amount that is not less than twenty-five percent or more than thirty percent of the proceeds of the action or settlement, as the court deems reasonable for collecting the civil penalty and damages.

C. Whether or not the state or political subdivision proceeds with an action brought by a qui tam plaintiff:

(1) if the court finds that the action was brought by a person that planned or initiated the violation of Section 44-9-3 NMSA 1978 upon which the action was based, the court may reduce the share of the proceeds that the person would otherwise receive under Subsection A or B of this section, taking into account the role of the person as the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation; or

(2) if the person bringing the action is convicted of criminal conduct arising from that person's role in the violation of Section 44-9-3 NMSA 1978 upon which the action was based, that person shall be dismissed from the civil action and shall not receive a share of the proceeds. The dismissal shall not prejudice the right of the state or political subdivision to continue the action.

D. Any award to a qui tam plaintiff shall be paid out of the proceeds of the action or settlement, if any. The qui tam plaintiff shall also receive an amount for reasonable expenses incurred in the action plus reasonable attorney fees that shall be paid by the defendant.

E. The state or political subdivision is entitled to all proceeds collected in an action or settlement not awarded to a qui tam plaintiff. The state or political subdivision is also entitled to reasonable expenses incurred in the action plus reasonable attorney fees, including the fees of the attorney general or state agency counsel or counsel employed by the political subdivision that shall be paid by the defendant.

F. Proceeds and penalties collected by the state or political subdivision shall be deposited as follows:

(1) proceeds in the amount of the false claim paid and attorney fees and costs shall be returned to the fund or funds from which the money, property or services came;

(2) civil penalties shall be deposited in the current school fund pursuant to Article 12, Section 4 of the constitution of New Mexico;

(3) except as provided in Paragraph (4) of this subsection, all remaining proceeds shall be deposited as follows:

(a) one-half into a fund for the use of the attorney general in furtherance of the obligations imposed upon that office by the Fraud Against Taxpayers Act; and

(b) one-half into the general fund; or

(4) remaining proceeds collected by counties or municipalities as political subdivisions acting on their own behalf shall be disposed of in accordance with the direction of the governing body of the county or municipality.

History: Laws 2007, ch. 40, § 7; 2015, ch. 128, § 6.

44-9-8. Award of attorney fees and costs to defendant.

If the state or political subdivision does not proceed with the action and the qui tam plaintiff conducts the action, the court may award a defendant reasonable attorney fees and costs if the defendant prevails and the court finds the action clearly frivolous, clearly vexatious or brought primarily for the purpose of harassment.

History: Laws 2007, ch. 40, § 8; 2015, ch. 128, § 7.

44-9-9. Certain actions barred.

A. No court shall have jurisdiction over an action brought pursuant to Section 44-9-5 NMSA 1978 by a present or former employee of the state or political subdivision unless the employee, during employment with the state or political subdivision and in good faith, exhausted existing internal procedures for reporting false claims and the state or political subdivision failed to act on the information provided within a reasonable period of time.

B. No court shall have jurisdiction over an action brought pursuant to Section 44-9-5 NMSA 1978 against an elected or appointed state official, a member of the state legislature or a member of the judiciary if the action is based on evidence or information known to the state agency to which the false claim was made or to the attorney general when the action was filed.

C. Unless the attorney general or political subdivision determines and certifies in writing that the action is in the interest of the state or political subdivision, no court shall have jurisdiction over an action brought pursuant to Section 44-9-5 NMSA 1978 when that action is based on allegations or transactions that are the subject of a criminal, civil or administrative proceeding in which the state or political subdivision is a party.

D. Upon motion of the attorney general or political subdivision, a court may, in its discretion, dismiss an action brought pursuant to Section 44-9-5 NMSA 1978 if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed.

History: Laws 2007, ch. 40, § 9; 2015, ch. 128, § 8.

44-9-10. State or political subdivision not liable.

The state or political subdivision shall not be liable for expenses or fees that a qui tam plaintiff may incur in investigating or bringing an action pursuant to the Fraud Against Taxpayers Act.

History: Laws 2007, ch. 40, § 10; 2015, ch. 128, § 9.

44-9-11. Employer interference with employee disclosure; private action for retaliation.

A. An employer shall not make, adopt or enforce a rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act [44-9-1 NMSA 1978].

B. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the lawful acts of the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act.

C. An employer that violates Subsection B of this section shall be liable to the employee for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for any special damage sustained as a result of the violation and, if appropriate, punitive damages. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

History: Laws 2007, ch. 40, § 11.

44-9-12. Limitation of actions; estoppel; standard of proof.

A. A civil action pursuant to the Fraud Against Taxpayers Act may be brought at any time. A civil action pursuant to the Fraud Against Taxpayers Act may be brought for conduct that occurred prior to the effective date of that act, but not for conduct that occurred prior to July 1, 1987.

B. Notwithstanding any other provision of law, a final judgment rendered in a criminal proceeding charging fraud or false statement, whether upon a guilty verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of a fraud against taxpayers action where the criminal proceeding concerns the same transaction that is the subject of the fraud against taxpayers action.

C. In an action brought pursuant to the Fraud Against Taxpayers Act, the state or political subdivision or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

History: Laws 2007, ch. 40, § 12; 2015, ch. 128, § 10.

44-9-13. Joint and several liability.

Liability shall be joint and several for any act committed by two or more persons in violation of the Fraud Against Taxpayers Act [44-9-1 NMSA 1978].

History: Laws 2007, ch. 40, § 13.

44-9-14. Remedy not exclusive.

The remedies provided for in the Fraud Against Taxpayers Act [44-9-1 NMSA 1978] are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

History: Laws 2007, ch. 40, § 14.

ARTICLE 10
Uniform Unsworn Foreign Declarations Act

44-10-1. Short title.

Sections 1 through 8 of this act may be cited as the "Uniform Unsworn Foreign Declarations Act".

History: Laws 2009, ch. 78, § 1.

44-10-2. Definitions.

As used in the Uniform Unsworn Foreign Declarations Act:

A. "boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States;

B. "law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order and an administrative rule, regulation or order;

C. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

D. "sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound or process.

E. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

F. "sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate and affidavit; and

G. "unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

History: Laws 2009, ch. 78, § 2.

44-10-3. Applicability.

The Uniform Unsworn Foreign Declarations Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. The Uniform Unsworn Foreign Declarations Act does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

History: Laws 2009, ch. 78, § 3.

44-10-4. Validity of unsworn declaration.

A. Except as otherwise provided in Subsection B of this section, if a law of New Mexico requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act has the same effect as a sworn declaration.

B. The Uniform Unsworn Foreign Declarations Act does not apply to:

(1) a deposition;

(2) an oath of office;

(3) an oath required to be given before a specified official other than a notary public;

(4) a declaration to be recorded in records affecting real property pursuant to Section 14-9-1 or 14-9-7 NMSA 1978; or

(5) an oath required for self-proved wills by Section 45-2-504 NMSA 1978.

History: Laws 2009, ch. 78, § 4.

44-10-5. Required medium.

If a law of New Mexico requires that a sworn declaration be presented in a particular medium, an unsworn declaration shall be presented in that medium.

History: Laws 2009, ch. 78, § 5.

44-10-6. Form of unsworn declaration.

An unsworn declaration pursuant to the Uniform Unsworn Foreign Declarations Act shall be in substantially the following form:

"I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the _____ day of _____, _____, at

(date) (month) (year)

,

(city or other location, and state)

_____.

(country)

_____
(printed name)

_____
(signature)".

History: Laws 2009, ch. 78, § 6.

44-10-7. Uniformity of application and construction.

In applying and construing the Uniform Unsworn Foreign Declarations Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2009, ch. 78, § 7.

44-10-8. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Unsworn Foreign Declarations Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2009, ch. 78, § 8.