

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 403

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO HORSE RACING; ADMINISTRATIVELY ATTACHING THE STATE RACING COMMISSION TO THE GAMING CONTROL BOARD; PROHIBITING ANY HORSE RACING ACTIVITY WITHOUT A LICENSE; PROVIDING FOR APPEAL FROM STATE RACING COMMISSION ADJUDICATORY DECISIONS TO THE COURT OF APPEALS; REQUIRING A LIFETIME BAN FROM HORSE RACING FOR CERTAIN OFFENSES; PROVIDING FOR TEMPORARY LICENSES; CLARIFYING STEWARDS' POWERS; ADDRESSING THE REVIEW OF STEWARDS' DECISIONS; RENAMING THE RACEHORSE TESTING FUND THE "RACEHORSE TESTING AND ENFORCEMENT FUND"; MAKING POSSESSION OF CERTAIN DRUGS ON THE LICENSED PREMISES OF A RACETRACK A FOURTH DEGREE FELONY; MAKING AN APPROPRIATION.

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

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

.199117.2

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1 "60-1A-3. COMMISSION CREATED--APPOINTMENT OF MEMBERS--  
2 TERMS OF OFFICE.--

3 A. The "state racing commission" is created and is  
4 administratively attached to the [~~tourism department~~] board.

5 B. The commission shall consist of five members, no  
6 more than three of whom shall be members of the same political  
7 party. The commission members shall be appointed by the  
8 governor and be confirmed by the senate. All members of the  
9 commission shall hold at-large positions on the commission.

10 C. At least three of the members of the commission  
11 shall be practical breeders of racehorses within New Mexico.

12 D. A commission member shall have primary residence  
13 in New Mexico and shall be of high character and reputation so  
14 that public confidence in the administration of horse racing is  
15 maintained.

16 E. The term of each member of the commission shall  
17 be six years from the date of the member's appointment. The  
18 member shall serve until a successor is appointed. In the case  
19 of a vacancy in the membership of the commission, the governor  
20 shall fill the vacancy by appointment for the unexpired term.

21 F. A person shall not be eligible for appointment  
22 as a member of the commission who is an officer, official or  
23 director in a corporation conducting horse racing within the  
24 state.

25 G. Members of the commission shall receive no

underscored material = new  
[bracketed material] = delete

1 salary, but each member of the commission shall receive per  
2 diem and mileage pursuant to the Per Diem and Mileage Act.

3 H. The commission may appoint an executive director  
4 and establish the executive director's duties and  
5 compensation."

6 SECTION 2. A new Section 60-1A-4.1 NMSA 1978 is enacted  
7 to read:

8 "60-1A-4.1. [NEW MATERIAL] LICENSE REQUIRED--  
9 PARTICIPATION IN UNLICENSED HORSE RACING--VIOLATIONS--  
10 PENALTIES.--

11 A. It is a violation of the Horse Racing Act for a  
12 person to hold or attempt to hold a public or private horse  
13 race or race meet for profit, gain or compensation or where any  
14 type of wagering or betting on the outcome of the race or for  
15 any other purpose occurs unless the person has been issued a  
16 racetrack license by the commission and has been authorized by  
17 the commission to hold the horse race or race meet on specific  
18 dates. A person who violates the provisions of this section is  
19 guilty of a fourth degree felony and upon conviction shall be  
20 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
21 1978.

22 B. It is a violation of the Horse Racing Act for a  
23 person to participate in or attempt to participate in or to  
24 attend a public or private horse race or race meet held for  
25 profit, gain or compensation or where any type of wagering or

.199117.2

underscored material = new  
[bracketed material] = delete

1 betting on the outcome of the race or for any other purpose  
2 occurs unless the racetrack has been licensed by the commission  
3 and the commission has authorized the race or race meet for  
4 specific days. A person who violates the provisions of this  
5 section is guilty of a misdemeanor and shall be sentenced  
6 pursuant to the provisions of Section 31-19-1 NMSA 1978."

7 SECTION 3. Section 60-1A-5 NMSA 1978 (being Laws 2007,  
8 Chapter 39, Section 5, as amended) is amended to read:

9 "60-1A-5. COMMISSION RULES--ALL LICENSES--SUSPENSION,  
10 REVOCATION OR DENIAL OF LICENSES--FINES AND LOSS OF PURSE--  
11 PENALTIES--HEARINGS--APPEAL.--

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

16 B. Every license issued by the commission shall  
17 require the licensee to comply with the rules adopted by the  
18 commission. A racetrack licensee shall post printed copies of  
19 the rules in conspicuous places on the racing grounds and shall  
20 maintain them during the period when live horse races are being  
21 conducted.

22 C. The commission may suspend, revoke or deny  
23 renewal of a license or impose a fine on or order the loss of a  
24 purse of a person who violates the provisions of the Horse  
25 Racing Act or rules adopted pursuant to that act. The

.199117.2

underscored material = new  
[bracketed material] = delete

1 commission shall provide a licensee facing suspension,  
2 revocation or denial of renewal of a license or facing  
3 imposition of a fine or loss of a purse reasonable notice and  
4 an opportunity for a hearing. The suspension, revocation or  
5 denial of renewal of a license shall not relieve the licensee  
6 from prosecution for the violations or from the payment of  
7 fines and penalties assessed the licensee by the commission.

8 D. A hearing shall be held within twenty days of  
9 the date the notice of hearing was sent to the licensee. The  
10 hearing may be held before the commission or before a hearing  
11 officer designated by the commission. Unless the hearing is  
12 held before a hearing officer, within thirty days after the end  
13 of the hearing the commission shall render findings of fact,  
14 conclusions of law and a decision setting forth the actions it  
15 will take. If the hearing is held before a hearing officer,  
16 the hearing officer shall submit to the commission within  
17 thirty days after the end of the hearing written findings of  
18 fact, conclusions of law and a recommendation for commission  
19 action. Within thirty days after receiving the hearing  
20 officer's submission, the commission shall render its findings  
21 of fact, conclusions of law and a decision setting forth the  
22 actions the commission will take.

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

underscored material = new  
[bracketed material] = delete

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

4 ~~[E-]~~ F. Fines shall be paid into the current school  
5 fund.

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

14 H. A licensee subject to an adjudicatory decision  
15 by the commission may appeal the decision to the court of  
16 appeals as follows:

17 (1) the appeal shall be on the record made at  
18 the hearing and shall not be de novo;

19 (2) the appeal shall be taken within thirty  
20 days of the date of receipt of the commission's written  
21 decision by the licensee; otherwise, the decision is  
22 conclusive;

23 (3) the Rules of Appellate Procedure provide  
24 the procedure for perfecting the appeal;

25 (4) the filing of the notice of appeal shall

underscored material = new  
[bracketed material] = delete

1 not stay the enforcement of the decision of the commission,  
2 but, subject to the licensee giving a supersedeas bond  
3 conditioned for the satisfaction of and compliance with the  
4 commission's decision together with costs, interest and damages  
5 for delay if the appeal is dismissed or the decision is upheld  
6 and after a hearing and a showing of good cause by the  
7 licensee, a stay of the decision may be granted:

8 (a) by the commission; or  
9 (b) by the court of appeals if the  
10 commission denies a stay or fails to act upon an application  
11 for a stay within eleven days after receipt of the application;

12 (5) the court shall set aside a decision of  
13 the commission only if it is found to be:

14 (a) arbitrary, capricious or an abuse of  
15 discretion;

16 (b) not supported by substantial  
17 evidence in the record; or

18 (c) otherwise not in accordance with the  
19 law; and

20 (6) the licensee shall pay all costs for an  
21 appeal found to be frivolous by the court of appeals."

22 SECTION 4. Section 60-1A-8 NMSA 1978 (being Laws 2007,  
23 Chapter 39, Section 8) is amended to read:

24 "60-1A-8. RACETRACK LICENSES--APPLICATIONS--SPECIFIC  
25 REQUIREMENTS.--

.199117.2

underscored material = new  
[bracketed material] = delete

1           ~~[A. It is a violation of the Horse Racing Act for a~~  
2 ~~person to hold a public horse race or a race meet for profit or~~  
3 ~~gain in any manner unless the person has been issued a~~  
4 ~~racetrack license by the commission and has been authorized by~~  
5 ~~the commission to hold the horse race or race meet on specific~~  
6 ~~dates.~~

7           ~~B.]~~ A. An application for a racetrack license shall  
8 be submitted in writing on forms designated by the commission.  
9 An applicant shall affirm that information contained in the  
10 application is true and accurate. The application shall be  
11 signed by the applicant or the applicant's agent, and the  
12 signature shall be notarized.

13           ~~[G.]~~ B. A racetrack license shall be valid for a  
14 period not to exceed one year. The commission may renew a  
15 racetrack license upon expiration of the term of the license.

16           ~~[D.]~~ C. Renewal applications for racetrack licenses  
17 shall be filed no later than June 1 of each year. The race  
18 dates for the upcoming year shall be set by the commission  
19 after the commission receives all renewal applications.

20           ~~[E.]~~ D. An application shall specify the dates and  
21 days of the week of the race meet that the applicant is  
22 requesting the commission to approve.

23           ~~[F.]~~ E. An application shall be filed not less than  
24 sixty days prior to the first day the proposed horse race or  
25 race meet is to be held.

.199117.2

underscored material = new  
[bracketed material] = delete

1           ~~[G.]~~ F. The fee for a new racetrack license issued  
2 pursuant to this section shall not exceed five thousand dollars  
3 (\$5,000).

4           ~~[H.]~~ G. The commission may schedule a date for a  
5 hearing on the application for a new racetrack license to  
6 determine the eligibility of the applicant pursuant to the  
7 Horse Racing Act or as needed for determining the eligibility  
8 for the renewal of a racetrack license. The applicant shall be  
9 notified of the hearing at least five days prior to the date of  
10 the hearing. The applicant has the right to present testimony  
11 in support of the application. Notice shall be mailed to the  
12 address of the applicant appearing upon the application for the  
13 racetrack license. Notice of the hearing date, time and  
14 location shall be postmarked by United States mail five days  
15 prior to the date of the hearing. Deposit of the hearing  
16 notice in United States mail constitutes notice.

17           ~~[I.]~~ H. If, after a hearing on the application, the  
18 commission finds the applicant ineligible pursuant to the  
19 provisions of the Horse Racing Act or rules adopted by the  
20 board, the racetrack license shall be denied.

21           ~~[J.]~~ I. If there is more than one application for a  
22 racetrack license pending at the same time, the commission  
23 shall determine the racing days that will be allotted to each  
24 successful applicant. Upon renewal, the commission shall  
25 determine the racing days that will be allotted to each

.199117.2

underscored material = new  
[bracketed material] = delete

1 applicant upon terms and conditions established by the  
2 commission.

3 ~~[K-]~~ J. A person shall not have a direct, indirect  
4 or beneficial interest of any nature, whether or not financial,  
5 administrative, policymaking or supervisory, in more than two  
6 horse racetracks in New Mexico. For purposes of this  
7 subsection, a person shall not be considered to have a direct,  
8 indirect or beneficial interest in a horse racetrack if the  
9 person owns or holds less than ten percent of the total  
10 authorized, issued and outstanding shares of a corporation that  
11 is licensed to conduct a race meet in New Mexico, unless the  
12 person has some other direct, indirect or beneficial interest  
13 of any nature, whether or not financial, administrative,  
14 policymaking or supervisory, in more than two licensed horse  
15 racetracks.

16 ~~[L-]~~ K. To determine interest held in a racetrack,  
17 to the extent that the interest is based on stock ownership:

18 (1) stock owned, directly or indirectly, by or  
19 for a corporation, partnership, estate or trust shall be  
20 considered as being owned proportionately by its shareholders,  
21 partners or beneficiaries;

22 (2) an individual shall be considered as  
23 owning the stock, directly or indirectly, if it is held by an  
24 immediate family member. For purposes of this paragraph, an  
25 "immediate family member" includes only the individual's

.199117.2

underscoring material = new  
[bracketed material] = delete

1 siblings, spouse or children; and

2 (3) stock constructively owned by a person by  
3 reason of the application of Paragraph (1) of this subsection  
4 shall be considered to be actually owned by the person; and  
5 stock shall be constructively owned by an individual by reason  
6 of the application of Paragraph (2) of this subsection if the  
7 purpose of the constructive ownership is to make a person other  
8 than the individual applicant appear as the owner of the stock.

9 ~~[M-]~~ L. A corporation holding a racetrack license  
10 shall not issue to a person shares of its stock amounting to  
11 ten percent or more of the total authorized, issued and  
12 outstanding shares, and a corporation holding a racetrack  
13 license shall not issue shares of its stock that would, when  
14 combined with that stock transferee's existing shares owned,  
15 total more than ten percent of the total authorized, issued and  
16 outstanding shares of the corporation, unless:

17 (1) the corporation gives written notice to  
18 the commission at least sixty days before the contemplated  
19 stock transfer that the person to whom the stock is being  
20 transferred will become an owner of ten percent or more of the  
21 total authorized, issued and outstanding shares of the  
22 corporation; and

23 (2) the corporation receives written approval  
24 from the commission of the proposed transfer.

25 ~~[N-]~~ M. A determination made by the commission of a

underscored material = new  
[bracketed material] = delete

1 matter pursuant to this section shall be final and not subject  
2 to appeal."

3 SECTION 5. Section 60-1A-11 NMSA 1978 (being Laws 2007,  
4 Chapter 39, Section 11, as amended) is amended to read:

5 "60-1A-11. GRANTING A LICENSE--STANDARDS--LIFETIME BAN--

6 A. A license shall not be issued or renewed unless  
7 the applicant has satisfied the commission that the applicant:

8 (1) is of good moral character, [~~honesty and~~]  
9 is honest and has integrity;

10 (2) does not currently have a license  
11 suspended by a horse racing licensing authority in another  
12 jurisdiction;

13 (3) does not have prior activities, criminal  
14 record, reputation, habits or associations that:

15 (a) pose a threat to the public  
16 interest;

17 (b) pose a threat to the effective  
18 regulation and control of horse racing; or

19 (c) create or enhance the dangers of  
20 unsuitable, unfair or illegal practices, methods and activities  
21 in the conduct of horse racing, the business of operating a  
22 horse racetrack licensed pursuant to the Horse Racing Act or  
23 the financial activities incidental to operating a horse  
24 racetrack;

25 (4) is qualified to be licensed consistent

.199117.2

underscored material = new  
[bracketed material] = delete

1 with the Horse Racing Act;

2 (5) has sufficient business probity,  
3 competence and experience in horse racing as determined by the  
4 commission;

5 (6) has proposed financing that is sufficient  
6 for the nature of the license and from a suitable source that  
7 meets the criteria set forth in this subsection; and

8 (7) is sufficiently capitalized pursuant to  
9 standards set by the commission to conduct the business covered  
10 by the license.

11 B. The commission shall establish by rule  
12 additional qualifications for a licensee as it deems in the  
13 public interest.

14 C. A person issued or applying for an occupational  
15 license who has positive test results for a controlled  
16 substance or who has been convicted of a violation of a federal  
17 or state controlled substance law shall be denied a license or  
18 shall be subject to revocation of an existing license unless  
19 sufficient evidence of rehabilitation is presented to the  
20 commission.

21 D. If the commission finds that an applicant for an  
22 occupational license or an occupational licensee has been  
23 convicted of ~~[any of the provisions of Subsection E of this~~  
24 ~~section, the applicant shall be denied the occupational license~~  
25 ~~or the occupational licensee shall have the occupational~~

.199117.2

underscored material = new  
[bracketed material] = delete

1 ~~license revoked. An occupational license shall not be issued~~  
2 ~~by the commission to an applicant or occupational licensee for~~  
3 ~~a period of five years from the date of denial or revocation~~  
4 ~~pursuant to this subsection] three or more lifetime violations~~  
5 ~~of Subsection A of Section 60-1A-28 NMSA 1978 or violations in~~  
6 ~~other jurisdictions that would be considered by the commission~~  
7 ~~to be violations of that subsection if they occurred in New~~  
8 ~~Mexico, the commission shall deny the applicant's application~~  
9 ~~or revoke the licensee's license and the applicant or former~~  
10 ~~licensee shall be permanently barred from receiving a license~~  
11 ~~pursuant to the Horse Racing Act.~~

12 E. An occupational license ~~[may]~~ shall be denied or  
13 ~~revoked [if the applicant or occupational licensee]~~ for a  
14 period of five years from the date of denial or revocation if  
15 the commission finds that an applicant for an occupational  
16 license or an occupational licensee, for the purpose of  
17 stimulating or depressing a racehorse or affecting its speed or  
18 stamina during a race or workout, [is found to have] has:

19 (1) administered, attempted to administer or  
20 conspired to administer to a racehorse, internally, externally  
21 or by injection, a drug, chemical, stimulant or depressant, or  
22 other performance-altering substance as defined by the  
23 association of racing commissioners international,  
24 incorporated, or a successor organization or, if none, by  
25 another nationally recognized organization that has published

.199117.2

underscored material = new  
[bracketed material] = delete

1 substantially similar guidelines that are generally accepted in  
2 the horse racing industry as determined by the commission,  
3 unless the applicant or occupational licensee has been  
4 specifically permitted to do so by the commission or a steward;  
5 or

6 (2) attempted to use, used or conspired with  
7 others to use an electrical or mechanical device, implement or  
8 instrument, except a commission-approved riding crop, unless  
9 the applicant or occupational licensee has been specifically  
10 permitted by the commission or a steward to use the device,  
11 implement or instrument.

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

15 G. Pursuant to rules promulgated by the commission,  
16 the commission may issue a temporary or provisional  
17 occupational license to a person who is licensed for the same  
18 occupation in another jurisdiction with license requirements at  
19 least as stringent as those required by the Horse Racing Act  
20 and rules promulgated by the commission."

21 SECTION 6. Section 60-1A-12 NMSA 1978 (being Laws 2007,  
22 Chapter 39, Section 12) is amended to read:

23 "60-1A-12. STEWARDS--POWERS--DUTIES.--

24 A. There shall be three stewards, licensed and  
25 employed by the commission, to supervise each horse race meet.

.199117.2

underscored material = new  
[bracketed material] = delete

1 One of the stewards shall be designated the presiding official  
2 steward of the race meet. Stewards, other than the presiding  
3 official steward, shall be employed subject to the approval of  
4 the racetrack licensee. All stewards shall be licensed or  
5 certified by a nationally recognized horse racing organization.  
6 Stewards may impose suspension of a license or fines, or both,  
7 or may order the loss of a purse for violations of the Horse  
8 Racing Act and commission rules and shall exercise [these]  
9 other powers and perform duties prescribed by commission rules.

10 B. A decision or action of a steward may be  
11 reviewed or reconsidered by the commission if a written request  
12 for review or reconsideration is made to the commission within  
13 five days of the steward's decision or action; otherwise, the  
14 right to a review or reconsideration is waived. A request by a  
15 licensee for a review or reconsideration shall be accompanied  
16 by a review fee of one thousand dollars (\$1,000) to offset the  
17 costs or part of the costs of the review or reconsideration,  
18 which shall be deposited in the racehorse testing and  
19 enforcement fund. The review or reconsideration shall be  
20 subject to the hearing, decision and appeal provisions of  
21 Section 60-1A-5 NMSA 1978 as if the matter was originally  
22 before the commission for hearing. If the commission overrules  
23 the stewards' decision or action, the review fee shall be  
24 refunded to the licensee."

25 SECTION 7. Section 60-1A-14.1 NMSA 1978 (being Laws 2013,

.199117.2

underscored material = new  
[bracketed material] = delete

1 Chapter 102, Section 1) is amended to read:

2 "60-1A-14.1. RACEHORSE TESTING AND ENFORCEMENT FUND--  
3 CREATED--PURPOSE.--

4 A. The "racehorse testing and enforcement fund" is  
5 created in the state treasury. The purpose of the fund is:

6 (1) to ensure the testing of racehorses at a  
7 laboratory that meets or exceeds the current national  
8 laboratory standards for the testing of drugs or other foreign  
9 substances not naturally occurring in a horse, as established  
10 by the association of racing commissioners international,  
11 incorporated;

12 (2) to provide additional resources to the  
13 commission to enforce the requirements and prohibitions of the  
14 Horse Racing Act and commission rules; and

15 (3) to make refunds pursuant to Subsection B  
16 of Section 60-1A-12 NMSA 1978.

17 B. The fund consists of:

18 (1) one-half of the daily capital outlay tax  
19 appropriated and transferred pursuant to Paragraph (4) of  
20 Subsection A of Section 60-1A-20 NMSA 1978; [~~and~~]

21 (2) fees paid pursuant to Subsection B of  
22 Section 60-1A-12 NMSA 1978; and

23 (3) appropriations, gifts, grants and  
24 donations made to the fund.

25 C. Income from investment of the fund shall be

underscored material = new  
[bracketed material] = delete

1 credited to the fund.

2 D. The commission shall administer the racehorse  
3 testing and enforcement fund, and money in the fund is  
4 appropriated to the commission:

5 (1) for the handling and testing of blood  
6 serum plasma, urine or other appropriate test samples taken  
7 from racehorses pursuant to Section 60-1A-14 NMSA 1978;

8 (2) to offset enforcement costs; and

9 (3) to make refunds pursuant to Subsection B  
10 of Section 60-1A-12 NMSA 1978.

11 E. Any unexpended or unencumbered balance remaining  
12 in the racehorse testing and enforcement fund at the end of a  
13 fiscal year in excess of [~~six hundred thousand dollars~~  
14 ~~(\$600,000)~~] one million dollars (\$1,000,000) shall revert to  
15 the general fund.

16 F. Expenditures from the fund shall be made on  
17 warrant of the secretary of finance and administration pursuant  
18 to vouchers signed by the executive director of the  
19 commission."

20 **SECTION 8.** Section 60-1A-20 NMSA 1978 (being Laws 2007,  
21 Chapter 39, Section 20, as amended) is amended to read:

22 "60-1A-20. DAILY CAPITAL OUTLAY TAX--CAPITAL OUTLAY  
23 OFFSET--STATE FAIR COMMISSION DISTRIBUTION--DAILY LICENSE  
24 FEES.--

25 A. A "daily capital outlay tax" of two and three-  
.199117.2

underscoring material = new  
~~[bracketed material] = delete~~

1 sixteenths percent is imposed on the gross amount wagered each  
2 day at a racetrack where horse racing is conducted on the  
3 premises of a racetrack licensee and also on the gross amount  
4 wagered each day when a racetrack licensee is engaged in  
5 simulcasting pursuant to the Horse Racing Act. After deducting  
6 the amount of offset allowed pursuant to this section, any  
7 remaining daily capital outlay tax shall be paid by the  
8 commission to the taxation and revenue department from the  
9 retainage of a racetrack licensee from on-site wagers made on  
10 the licensed premises of the racetrack licensee for deposit in  
11 the general fund. Of the daily capital outlay tax imposed  
12 pursuant to this subsection:

13 (1) for a class A racetrack licensee, not more  
14 than one-half of the daily capital outlay tax imposed on the  
15 first two hundred fifty thousand dollars (\$250,000) of the  
16 daily handle may be offset by the amount that the class A  
17 racetrack licensee expends for capital improvements or for  
18 long-term financing of capital improvements at the racetrack  
19 licensee's existing facility;

20 (2) for a class B racetrack licensee, not more  
21 than one-half of the daily capital outlay tax imposed on the  
22 first two hundred fifty thousand dollars (\$250,000) of the  
23 daily handle may be offset:

24 (a) in an amount not to exceed one-half  
25 of the offset allowed, the amount expended by the class B

.199117.2

underscored material = new  
[bracketed material] = delete

1 racetrack licensee for capital improvements; and

2 (b) in an amount not to exceed one-half  
3 of the offset allowed, the amount expended by the class B  
4 racetrack licensee for advertising, marketing and promoting  
5 horse racing in the state;

6 (3) through December 31, 2014, for both class  
7 A and class B racetrack licensees, an amount equal to one-half  
8 of the daily capital outlay tax is appropriated and transferred  
9 to the state fair commission for expenditure on capital  
10 improvements at the state fairgrounds and for expenditure on  
11 debt service on negotiable bonds issued for the state  
12 fairgrounds' capital improvements; and

13 (4) on and after January 1, 2015, for both  
14 class A and class B racetrack licensees, an amount equal to  
15 one-half of the daily capital outlay tax is appropriated and  
16 transferred to the racehorse testing and enforcement fund.

17 B. An additional daily license fee of five hundred  
18 dollars (\$500) shall be paid to the commission by the racetrack  
19 licensee for each day of live racing on the premises of the  
20 racetrack licensee.

21 C. Accurate records shall be kept by the racetrack  
22 licensee to show gross amounts wagered, retainage, breakage and  
23 amounts received from interstate common pools and distributions  
24 from gross amounts wagered, retainage, breakage and amounts  
25 received from interstate common pools, as well as other

.199117.2

underscored material = new  
[bracketed material] = delete

1 information the commission may require. Records shall be open  
2 to inspection and shall be audited by the commission, its  
3 authorized representatives or an independent auditor selected  
4 by the commission. The commission may prescribe the method in  
5 which records shall be maintained. A racetrack licensee shall  
6 keep records that are accurate, legible and easy to understand.

7 D. Notwithstanding any other provision of law,  
8 a political subdivision of the state shall not impose an  
9 occupational tax on a horse racetrack owned or operated by  
10 a racetrack licensee. A political subdivision of the state  
11 shall not impose an excise tax on a horse racetrack owned  
12 or operated by a racetrack licensee. Local option gross  
13 receipts taxes authorized by the state may be imposed to the  
14 extent authorized and imposed by a subdivision of the state  
15 on a horse racetrack owned or operated by a racetrack  
16 licensee."

17 SECTION 9. Section 60-1A-25 NMSA 1978 (being Laws 2007,  
18 Chapter 39, Section 25) is amended to read:

19 "60-1A-25. VIOLATIONS OF HORSE RACING ACT--POSSESSION OF  
20 DRUGS--FOURTH DEGREE FELONY.--Except as otherwise provided in  
21 the Horse Racing Act, a person who willfully violates, attempts  
22 to violate or conspires to violate a requirement of the Horse  
23 Racing Act or a prohibition specifically set forth in the Horse  
24 Racing Act is guilty of a fourth degree felony and shall be  
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

.199117.2

underscoring material = new  
~~[bracketed material]~~ = delete

1 1978."

2 SECTION 10. Section 60-1A-28 NMSA 1978 (being Laws 2007,  
3 Chapter 39, Section 28, as amended) is amended to read:

4 "60-1A-28. AFFECTING SPEED OR STAMINA OF A RACEHORSE--  
5 DRUG POSSESSION--PENALTIES.--

6 A. A person administering, attempting to administer  
7 or conspiring with others to administer to a racehorse a drug,  
8 chemical, stimulant or depressant or other performance-altering  
9 substance defined as a class 1 or class 2 penalty class A drug  
10 by the association of racing commissioners international,  
11 incorporated, or a successor organization or, if none, by  
12 another nationally recognized organization that has published  
13 substantially similar guidelines that are generally accepted in  
14 the horse racing industry as determined by the commission  
15 whether internally, externally or by injection for the purpose  
16 of stimulating or depressing the racehorse or affecting the  
17 speed or stamina of the racehorse during a horse race or  
18 workout is guilty of a fourth degree felony and upon conviction  
19 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

20 B. A person who uses, attempts to use or conspires  
21 with others to use during a horse race or workout an  
22 electrically or mechanically prohibited device, implement or  
23 instrument, other than a commission-approved riding crop, is  
24 guilty of a fourth degree felony and upon conviction shall be  
25 sentenced pursuant to Section 31-18-15 NMSA 1978.

.199117.2

underscoring material = new  
[bracketed material] = delete

1 C. A person who sponges the nostrils or trachea of  
2 a racehorse or who uses anything to injure a racehorse for the  
3 purpose of stimulating or depressing the racehorse or affecting  
4 the speed or stamina of the racehorse during a horse race or  
5 workout is guilty of a fourth degree felony and upon conviction  
6 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

7 D. It is prima facie evidence of intent to commit  
8 any of the crimes set forth:

9 (1) in Subsection A of this section for a  
10 person to be found within the racing grounds of a racetrack  
11 licensee, including the stands, stables, sheds or other areas  
12 where racehorses are kept, who possesses with the intent to  
13 use, sell, give away or otherwise transfer to another person a  
14 drug, chemical, stimulant or depressant or other performance-  
15 altering substance defined as a class 1 or class 2 penalty  
16 class A drug by the association of racing commissioners  
17 international, incorporated, or a successor organization or, if  
18 none, by another nationally recognized organization that has  
19 published substantially similar guidelines that are generally  
20 accepted in the horse racing industry as determined by the  
21 commission, to stimulate or depress a racehorse or to affect  
22 the speed or stamina of a racehorse;

23 (2) in Subsection B of this section for a  
24 person to be found within the racing grounds of a racetrack  
25 licensee, including the stands, stables, sheds or other areas

.199117.2

underscored material = new  
[bracketed material] = delete

1 where racehorses are kept, who possesses with the intent to  
2 use, sell, give away or otherwise transfer to another person an  
3 electrically or mechanically prohibited device, implement or  
4 instrument, other than a commission-approved riding crop; and

5 (3) in Subsection C of this section for a  
6 person to be found within the racing grounds of a racetrack  
7 licensee, including the stands, stables, sheds or other areas  
8 where racehorses are kept, who possesses with the intent to  
9 use, sell, give away or otherwise transfer to another person  
10 paraphernalia or substances used to sponge the nostrils or  
11 trachea of a racehorse or that may be used to injure a  
12 racehorse for the purpose of stimulating or depressing the  
13 racehorse or affecting its speed or stamina during a horse race  
14 or workout.

15 E. A person who possesses or uses a drug, substance  
16 or medication on the licensed premises that has not been  
17 approved by the United States food and drug administration for  
18 use in humans or animals without the prior approval of the  
19 commission is guilty of a fourth degree felony and upon  
20 conviction shall be sentenced pursuant to Section 31-18-5 NMSA  
21 1978."

22 SECTION 11. APPROPRIATIONS.--

23 A. One hundred thousand dollars (\$100,000) is  
24 appropriated from the general fund to the administrative office  
25 of the courts for expenditure in fiscal year 2016 and

.199117.2

underscored material = new  
[bracketed material] = delete

1 subsequent fiscal years for the court of appeals to handle  
2 direct appeals from adjudicatory decisions of the state racing  
3 commission. Any unexpended or unencumbered balance remaining  
4 at the end of a fiscal year shall not revert to the general  
5 fund.

6 B. One hundred thousand dollars (\$100,000) is  
7 appropriated from the general fund to the office of attorney  
8 general for expenditure in fiscal year 2016 and subsequent  
9 fiscal years to administratively prosecute civil violations of  
10 the Horse Racing Act and state racing commission rules and to  
11 represent the commission in appeals from those prosecutions.  
12 Any unexpended or unencumbered balance remaining at the end of  
13 a fiscal year shall not revert to the general fund.

14 SECTION 12. TEMPORARY PROVISION.--The racehorse testing  
15 and enforcement fund is the new name for the racehorse testing  
16 fund and is not a new fund created by this act.

17 SECTION 13. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2015.