

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)

MEMORANDUM

TO: Chief Justice and Justices of the Supreme Court
Chief Judge and Judges of the Court of Appeals
District Judges
Bernalillo County Metropolitan Court Judges
Magistrate Judges
Municipal Judges
Court Administrators
Court Personnel

FROM: Barry Massey, Communications Officer

SUBJECT: 2015 Session Laws of Interest to the Courts

DATE: June 9, 2015

Attached is a summary of legislation enacted during the 52nd Legislature, First Session, 2015, that may be of interest to the Judiciary. The Governor signed 158 bills, vetoed 15 bills by governor's message and pocket vetoed 18 bills. The Legislature also approved three joint resolutions, 215 memorials, and 11 joint memorials.

Please call me at (505) 827-4805 or email me at bmassey@nmcourts.gov if you have any questions.

2015 SUMMARIES OF NEW LAWS

A. SENATE

- [SB 61](#) AFFORDABLE HOUSING ACT CHANGES
- [SB 83](#) CRIMINAL SENTENCING ACT TECHNICAL CORRECTIONS
- [SB 107](#) COURT CIVIL JUDGMENT ACTION LANGUAGE
- [SB 123](#) CLARIFY LIVESTOCK DEFINITION
- [SB 125](#) CHANGE COUNTY ROAD SPEED LIMITS
- [SB 146](#) MINING ACCIDENT NOTIFICATION REQUIREMENTS
- [SB 158](#) PUBLIC WORKS PROJECT CLAIM EVIDENCE STANDARDS
- [SB 189](#) GOOD SAMARITAN LIABILITY
- [SB 208](#) FRAUD AGAINST TAXPAYERS DEFINITIONS
- [SB 226](#) USE OF PUBLIC WATER & LANDOWNER PROTECTION
- [SB 238](#) CRAFT BREWER LICENSES
- [SB 276](#) STATE ENGINEER LOCATIONS
- [SB 299](#) NURSE PRACTITIONER SCOPE OF PRACTICE
- [SB 300](#) ALCOHOL SALES AT MUNICIPAL GOLF COURSES
- [SB 311](#) SELF-STORAGE NOTIFICATIONS, SALES AND LATE FEES
- [SB 325](#) HEALTH AGREEMENT NO-COMPETE PROVISIONS
- [SB 356](#) TAX ADMINISTRATIVE HEARINGS OFFICE ACT
- [SB 367](#) OPTOMETRIST PRESCRIBING POWERS
- [SB 389](#) OIL & GAS RULE APPEAL REQUIREMENTS
- [SB 398](#) RUNNING AT LARGE OF LIVESTOCK
- [SB 412](#) ESCROW COMPANY BONDS & AUDITS
- [SB 433](#) INCLUDE E-CIGARETTES IN TOBACCO PRODUCTS ACT
- [SB 446](#) INTERSTATE DISTANCE EDUCATION ACT
- [SB 510](#) CRIME VICTIM REPARATIONS TIME & FEES
- [SB 622](#) MULTIPLE-TRIP PERMIT FOR SOME VEHICLES
- [SB 669](#) ADJUSTING TAX DISTRIBUTIONS TO LOCAL GOVTS.

B. HOUSE

- [HB 49](#) COUNTY NOTICES BY EMAIL
- [HB 53](#) NO COMPELLING STUDENTS TO USE SOME DRUGS
- [HB 65](#) AUTOCYCLE DEFINITIONS & REQUIREMENTS
- [HB 67](#) PROPERTY TAX SCHEDULE CHANGE REQUESTS
- [HB 84](#) FREESTANDING BIRTH CENTER LICENSURE
- [HB 101](#) SEXUAL EXPLOITATION OF CHILDREN PENALTIES
- [HB 142](#) UNAUTHORIZED DISTRIBUTION OF SENSITIVE IMAGES

- [HB 155](#) LOBBYIST EMPLOYER REGISTRATION
- [HB 201](#) ADD SPECIES TO GAME FISH
- [HB 202](#) HUNTING AND FISHING INFRACTION PENALTIES
- [HB 213](#) CHILD-RESISTANT NICOTINE LIQUID PACKAGES
- [HB 218](#) DELINQUENT TAX ELECTRONIC LEVY WARRANTS
- [HB 243](#) LIQUOR LICENSES & DEFINITIONS
- [HB 277](#) KINSHIP GUARDIANSHIP CHANGES
- [HB 320](#) HOMEOWNER ASSOCIATIONS LIMITS ON FLAGS
- [HB 328](#) NO ALTERATION OR SALE OF COUNTERFEIT AIRBAGS
- [HB 335](#) LIQUOR CONTROL TASTING PERMIT VIOLATIONS
- [HB 369](#) INFORMED CONSENT FOR GENETIC TESTING
- [HB 403](#) PUBLIC EMPLOYEE LEAVE DONATION POLICIES
- [HB 463](#) BARBER LICENSURE AFTER APPRENTICESHIP
- [HB 487](#) CITY COURT FEE TRANSFER TO CITY GENERAL FUND
- [HB 489](#) INTERNET WINE SALES
- [HB 560](#) FORFEITURE PROCEDURES & REPORTING
- [HB 581](#) ADJUSTING TAX DISTRIBUTIONS TO LOCAL GOVTS.

The effective date of legislation not carrying an emergency clause or other specified date is June 19, 2015.

CATEGORIES

Business

- SB 146: Mining Accident Notification Requirements
- SB 238: Craft Brewer Licenses
- SB 311: Self-Storage Notifications, Sales and Late Fees
- SB 325: Health Agreement No-Compete Provisions
- SB 412: Escrow Company Bonds & Audits
- HB 243: Liquor Licenses & Definitions

Children

- SB 433: Include E-Cigarettes in Tobacco Products Act
- HB 53: No Compelled Medication Use for Students
- HB 101: Sexual Exploitation of Children Penalties
- HB 213: Child-Resistant Nicotine Liquid Packages

Civil

- SB 107: Court Civil Judgment Action Language

SB 189: Good Samaritan Liability
SB 208: Fraud Against Taxpayers Definitions
HB 213: Child-Resistant Nicotine Liquid Packages

Court Administration & Judiciary

SB 107: Court Civil Judgment Action Language
SB 510: Crime Victim Reparations Time & Fees
HB 277: Kinship Guardianship Changes

Criminal

SB 83: Criminal Sentencing Act Technical Changes
SB 433: Include E-Cigarettes In Tobacco Products Act
SB 510: Crime Victim Reparations Time & Fees
HB 101: Sexual Exploitation of Children Penalties
HB 142: Unauthorized Distribution of Sensitive Images
HB 201: Add Species to Game Fish
HB 202: Hunting and Fishing Infraction Penalties
HB 328: No Alteration or Sale of Counterfeit Airbags

Education

SB 446: Interstate Distance Education Act
HB 53: No Compelled Medication Use for Students

Energy & Utilities

SB 389: Oil & Gas Rule Appeal Requirements

Government

SB 356: Tax Administrative Hearings Office Act
SB 389: Oil & Gas Rule Appeal Requirements
SB 398: Running at Large of Livestock
HB 155: Lobbyist Employer Registration

Health/Medical

SB 299: Nurse Practitioner Scope of Practice
SB 325: Health Agreement No-Compete Provisions
SB 367: Optometrist Prescribing Powers
SB 433: Include E-Cigarettes In Tobacco Products Act
HB 53: No Compelled Medication Use for Students
HB 84: Freestanding Birth Center Licensure
HB 213: Child-Resistant Nicotine Liquid Packages

Motor Vehicles

SB 622: Multiple-Trip Permit for Some Vehicles
HB 65: Autocycle Definitions & Requirements
HB 328: No Alteration or Sale of Counterfeit Airbags

Other

SB 61: Affordable Housing Act Changes
SB 123: Clarify Livestock Definition
SB 158: Public Works Project Claim Evidence Standards
SB 300: Alcohol Sales At Municipal Golf Courses
HB 320: Homeowner Association Limits on Flags

Taxation

SB 208: Fraud Against Taxpayers Definitions
SB 356: Tax Administrative Hearings Office Act
HB 49: County Notices By Email
HB 67: Property Tax Schedule Change Requests
HB 218: Delinquent Tax Electronic Levy Warrants

Transportation

SB 125: Change County Road Speed Limits
SB 622: Multiple-Trip Permit for Some Vehicles
HB 65: Autocycle Definitions & Requirements

Water

SB 226: Use of Public Water & Landowner Protection
SB 276: State Engineer Locations

A. SENATE

AFFORDABLE HOUSING ACT CHANGES

SB 61

The law amends and enacts statutory sections within the Affordable Housing Act (“AHA”), Section 6-27-1 NMSA 1978 et seq., to require the Attorney General (“AG”) to investigate an alleged violation of the AHA reported by the NM Mortgage Finance Authority (“MFA”). The law permits the AG to execute and serve a written civil investigative demand requiring

production of relevant documents or recordings, prior to the institution of a permitted civil action brought on behalf of the state and alleging a violation of the AHA. The action may be brought in the district court of the county in which the person alleged to have violated the AHA resides or in which the person's principal place of business is located. The law provides that the AG is not required to post bond when seeking a temporary or permanent injunction in the civil action. Under the law, if a court in a civil action finds that a person willfully committed an act in violation of the AHA, the AG is permitted to seek to recover a civil penalty of \$5,000 or less per violation, in addition to any equitable relief imposed by the court.

The law permits the AG, in addition to or as an alternative to pursuing a civil action, to pursue criminal charges against a person for an alleged violation of the AHA under the applicable provisions of the Criminal Code. The law provides that venue for any criminal action shall be in the judicial district where the violation occurred.

The law defines "person" to mean an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities.

The law also adds an exception to the AHA's long-term affordability requirement, permitting sale shortly after completion and removal from the affordable housing market, in the event of foreclosure or deeds taken in lieu of foreclosure. The law clarifies that rules required to be adopted by the MFA to ensure timely sale of such properties shall require a governmental entity to take specified actions, including the following:

- determine that the property is not marketable for a price sufficient to recover public funds invested in the project;
- exercise reasonable efforts to ensure proceeds from the sale are used solely for purposes pursuant to the AHA and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project; and
- provide the terms for the sale of the property at fair market value, and the removal of the contractual obligation requiring long-term occupancy of the property by low- or moderate-income households.

The effective date of the law is July 1, 2015.

CRIMINAL SENTENCING ACT TECHNICAL CORRECTIONS

SB 83

The law amends Section 31-18-25 NMSA 1978, within the Criminal Sentencing Act, Section 31-18-12 NMSA 1978 et seq., and providing a mandatory sentence of life imprisonment upon conviction of a second violent sexual offense under specified conditions, to make the following technical corrections:

- changes the use of “he” to “the defendant,” when referring to a convicted violent sexual offender; and
- in defining “violent sexual offense,” refers to Subsection D of Section 30-9-11 NMSA 1978 to define “criminal sexual penetration in the first degree,” rather than Subsection C, which sets out the elements for “aggravated criminal sexual penetration”; and refers to Subsection E of Section 30-9-11 NMSA 1978 to define “criminal sexual penetration in the second degree,” rather than Subsection D, which sets out the elements for “criminal sexual penetration in the first degree.”

N.B.: Section 30-9-11 NMSA 1978 was amended by the legislature in 2007 to add the offense of “aggravated criminal sexual penetration” to the statutory section. (Senate Judiciary Committee Substitute for SB 528 and SB 439 passed both houses and was signed into law on March 29, 2007.) Section 31-18-25(F) NMSA 1978 was not corrected to provide the proper new references to the crimes of criminal sexual penetration in the first degree and criminal sexual penetration in the second degree.

COURT CIVIL JUDGMENT ACTION LANGUAGE

SB 107

The law amends Section 37-1-3 NMSA 1978, governing limitations of actions based upon notes and written instruments, and the computation of limitation periods, to remove the reference to “any judgment of any court not of record”, or magistrate courts, and clarifies the time limit to file an action on a magistrate court civil judgment.

N.B.: The previous law caused confusion regarding the length of time (6 years) allowed to execute on civil judgments in magistrate court and

contradicted Section 37-1-2 NMSA 1978, which allows 14 years from the date of the judgment to revive it through a petition. By deleting “or upon any judgment of any court not of record”, the inconsistencies are removed.

CLARIFY LIVESTOCK DEFINITION

SB 123

The law amends Section 77-9-3 NMSA 1978, governing the necessity of branding and rebranding livestock, to provide that goats or sheep are not required to be branded with a hot iron. The law permits goats and sheep to be identified by a legible tattoo, paint brand or other device as approved by the New Mexico Livestock Board. The law also adds swine, poultry, ratites, ostriches, emus, rheas, camelids and farmed cervidae to the list of livestock exempt from the Section 77-9-3 branding requirements.

The law amends and repeals sections of the Livestock Code, Section 77-2-1 NMSA et seq., to provide for a consistent definition of “livestock” throughout the Livestock Code.

N.B.: Section 77-9-4 NMSA 1978 provides a misdemeanor penalty, per head, in accordance with Section 31-19-1 NMSA 1978, for failure to brand or rebrand.

CHANGE COUNTY ROAD SPEED LIMITS

SB 125

The law amends Section 66-7-301 NMSA 1978, within the Motor Vehicle Code and governing speed regulation, to reduce the maximum speed that can be driven on a county road without a posted speed limit from 75 miles per hour to 55 miles per hour.

The effective date of the law is January 1, 2016.

MINING ACCIDENT NOTIFICATION REQUIREMENTS

SB 146

The law amends Section 69-5-17 NMSA 1978, requiring the imposition by the State Mine Inspector of a civil penalty of up to \$100,000 for failure of a mine operator to give notice to the Mine Accident Emergency Operations Center within 30 minutes of ascertaining the occurrence of an accident in or

about a mine or the machinery connected to a mine. The law defines “accident,” as used in this statutory section, to mean “accident” as provided in Section 69-8-2 NMSA 1978, providing definitions of terms as used in the Mining Safety Act, rather than the current reference to the definition in 30 C.F.R. 50. The law amends Section 69-8-2 to clarify and separate out the definition of “accident” with regard to: (1) a “surface mine”; and (2) an “underground mine or the surface areas of an underground mine” and to again remove the reference to the definition of accident in 30 C.F.R. 50.2.

The effective date of the law is July 1, 2015.

PUBLIC WORKS PROJECT CLAIM EVIDENCE STANDARDS

SB 158

The law amends Section 13-4-19 NMSA 1978 to provide that the state shall have the right to sue on the payment bond for all taxes due arising out of construction services rendered under a public works contract, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978 by a contractor that does not have its principal place of business in New Mexico. Under the law, the court may allow, as part of the costs, interest and reasonable attorney fees.

The law also clarifies the recovery due a person, firm or corporation that has furnished labor or materials for work provided for in a public works contract who has not been paid in full for the labor or materials within 90 days after the day on which the last of the labor was done or performed or materials were furnished or supplied for which claim is made. The law permits the person, firm or corporation to sue for the amount of the balance unpaid at the time of the institution of the suit. The law directs that the amount due shall be determined according to the subcontract or other contractual relationship directly with the contractor furnishing the payment bond.

N.B.: the law provides that remedies under a payment bond for wages include whatever wages were bargained for in the contract with the contractor. A public works contract must include a provision for payment of wages consistent with the Public Works Minimum Wage Act which, in turn, requires fringe benefits be paid to workers as specified therein. See Section 13-4-11, NMSA 1978.

GOOD SAMARITAN LIABILITY

SB 189

The law amends statutory sections within the Cardiac Arrest Response Act (“CARA”), Section 24-10C-1 NMSA 1978 et seq., to provide a new standard under the Act by which civil liability can be imposed on a “good Samaritan.” Specifically, the law amends Section 24-10C-7 NMSA 1978 to clarify that a good Samaritan who renders emergency care or treatment by the use of an automated external defibrillator (“AED”) pursuant to the CARA shall not be subject to civil liability, provided that the good Samaritan has acted without willful, wanton or reckless behavior that is the cause of injury or death and in compliance with the requirements of the CARA.

The law also amends Section 24-10C-7 to extend immunity from civil liability for those rendering emergency care or treatment by the use of an AED, provided that they have acted with reasonable care and in compliance with the CARA, to the following:

- a person that “provides or makes available to the public” an AED;
- the manager or operator of the property or facility where the AED is located; and
- “a person that authorizes, directs or supervises the installation or placement of an AED

(The law removes the definition of “physician,” replacing that term, as used throughout the CARA” with the term “trained targeted responder,” as defined in the CARA, and requiring a person acquiring an AED to ensure that a trained targeted responder is designated to oversee all aspects of the AED program.)

The law amends Section 24-10C-3 NMSA 1978 to change the definition of a “good Samaritan” to mean a person, acting without compensation, who provides emergency automated external defibrillator (“AED”) services to a person “in need of defibrillation” rather than a person “in apparent cardiac arrest.” The law further changes the definition to require that the good Samaritan act “without willful, wanton or reckless behavior that is the cause of injury of death,” rather than act “in good faith as an ordinary prudent person would have in the same or similar circumstances.” The law defines “person” to mean an individual,

corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

FRAUD AGAINST TAXPAYERS DEFINITIONS

SB 208

The law amends statutory sections within the Fraud Against Taxpayers Act (“Act”), Section 44-9-1 NMSA 1978 et seq., to clarify that the Act applies to political subdivisions and charter schools, as well as the state. The law amends the Section 44-9-2 NMSA 1978 definition of “claim” to mean 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,” defined as a political subdivision of the state or a charter school. The law’s additional amendments provide the following:

- permits the Attorney General to delegate the authority to investigate or to bring a civil action to the political subdivision to which false claim was made, providing the political subdivision with every power conferred upon the Attorney General pursuant to the Act (Section 44-9-4);
- permits a political subdivision to intervene in a civil action by a Qui Tam plaintiff (Section 44-9-5), to seek to dismiss the action and to settle the action, and to petition the court for a limit on the Qui Tam plaintiff’s participation in the case (Section 44-9-6);
- permits the political subdivision to receive all proceeds collected in an action or settlement not awarded to a Qui Tam plaintiff, as well as reasonable expenses incurred in the action plus reasonable attorney fees, including the fees of the Attorney General or counsel employed by the political subdivision that shall be paid by the defendant (Section 44-9-7);
- exempts a political subdivision from liability for expenses or fees that a Qui Tam plaintiff may incur in investigating or bringing an action pursuant to the Act (Section 44-9-10); and
- requires the political subdivision, as with the state or a Qui Tam plaintiff, in an action brought pursuant to the Act, to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence (Section 44-9-12).

USE OF PUBLIC WATER & LANDOWNER PROTECTION

SB 226

The law amends Section 17-4-6 NMSA 1978, governing hunting and fishing on private property, to prohibit a person who is hunting, fishing, trapping, camping, hiking, sightseeing, operating a watercraft or engaged in any other recreational use from walking or wading onto private property through non-navigable public water, or from accessing public water via private property, unless the private property owner or lessee or person in control of private lands has expressly consented in writing. The law provides that the Act shall not be interpreted to affect or influence whether a water is a navigable water or a water of the United States for purposes of the federal Clean Water Act of 1977, 33 U.S. C. 1251 et seq..

The effective date of the law is July 1, 2015.

CRAFT BREWER LICENSES

SB 238

The law permits a small brewer or a winegrower licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act, that also holds a restaurant license or dispenser's license, to be issued a small brewer and winegrower limited wholesaler's license, limiting sale and shipment to product manufactured by the small brewer or winegrower. The law amends Section 60-7A-12 NMSA 1978 to permit a licensed small brewer or winegrower to hold an interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant or a dispenser's license and a small brewer and winegrower limited wholesaler's license issued pursuant to the Liquor Control Act.

The effective date of the law is July 1, 2015.

STATE ENGINEER LOCATIONS

SB 276

The law amends Section 72-2-16 NMSA to require that administrative hearings held by the Office of the State Engineer be held in the county in which the water right at issue is adjudicated, licensed or permitted, unless the parties and the state engineer stipulate another site for the hearing. (An appeal to the District Court is not permitted until the State Engineer has held

a hearing and entered a decision.)

The law also amends Section 74-6-6 NMSA 1978, within the Water Quality Act, to require the Water Quality Control Commission to set the time and place of hearing on regulations or water quality standards within an area that is substantially affected by the regulation or standard.

NURSE PRACTITIONER SCOPE OF PRACTICE

SB 299

The law amends the following statutory sections to include non-physician primary care practitioners where previously only the word “physician” appeared, in some instances permitting these professionals to undertake lawful action without penalty or fine:

- **Section 7-2-18.1 (within the Income Tax Act and governing credit for expenses for dependent child day care necessary to enable gainful employment to prevent indigency)**, amended to permit an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person’s scope of practice to certify a person as a “disabled person” rendering such person unable to engage in gainful employment;
- **Section 12-10A-13 (within the Public Health Emergency Response Act and governing vaccination and treatment)**, amended to permit an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person’s scope of practice to issue a certificate stating that a minor’s physical condition is such that a vaccination administered during a state of public health emergency would seriously endanger the minor’s life or health;
- **Section 22-10A-34 (within the School Personnel Act and governing communicable diseases, prohibited employment and penalty)**, amended to permit an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person’s scope of practice to issue a certificate stating that a person is free from all communicable diseases in a transmissible state dangerous to the health of students, sufficient to satisfy the requirement that each person employed in a public or private school present such certificate to the governing authority of the school where employed, upon initial employment;
- **Section 24-7A-1 (within the Uniform Health-Care Decisions Act and providing definitions)**, amended to define “life-sustaining

treatment” to mean a qualifying treatment or procedure determined by the “primary care practitioner,” rather than the “primary physician”, defines “primary care practitioner” to mean a health-care practitioner designated by an individual or the individual’s agent, guardian or surrogate to have primary responsibility for the individual’s health care, and defines “supervising health-care practitioner” to mean the primary care practitioner or if there is no primary care practitioner or if the primary care practitioner is not reasonably available, the health-care practitioner who has undertaken primary responsibility for an individual’s health care;

- **Section 24-7A-4 (within the Uniform Health-Care Decisions Act and governing the optional form that may be used to create an advance health-care directive)**, amended to refer to a “primary care practitioner” rather than a “primary physician.”
- **Section 24-7A-6.1 (within the Uniform Health-Care Decisions Act and governing life-sustaining treatment for unemancipated minors)**, amended to require both a primary care practitioner and a health care practitioner that works with unemancipated minors of the minor’s age in the ordinary course of that health-care practitioner’s practice to determine the mental and emotional capacity of an unemancipated minor for purposes of the provisions of this statutory section, and requiring the primary care practitioner to make reasonable efforts to notify an uninformed parent or guardian before implementing a decision to withhold or withdraw life-sustaining treatment;
- **Section 24-7A-7 (within the Uniform Health-Care Decisions Act and governing obligations of a health-care practitioner)**, amended to apply all obligations previously required of a “health-care provider” to a “health-care practitioner”;
- **Section 24-7A-11 (within the Uniform Health-Care Decisions Act and governing capacity)**, amended to require both a primary care practitioner and a health care professional to make a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual health-care instruction or the authority of an agent;
- **Section 24-8-4 (within the Family Planning Act and governing the prohibition against interference with medical judgment of certain health care professionals)**, amended to include a physician assistant, advanced practice registered nurse or certified nurse-midwife working

- within that person's scope of practice, in addition to a physician, within the list of those upon whose judgment a determination has been made that there are valid medical reasons for a refusal to provide any family planning service, such that the refusal is not prohibited by the Family Planning Act;
- **Section 24-8-5 (within the Family Planning Act and governing the prohibition against imposition of standards and requirements as prerequisites for receipt of requested family planning services)**, amended to expand the scope of professionals to which the an entity may require a referral when the requested family planning service is something other than information about family planning or nonprescription items, to include a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, as well as a physician;
 - **Section 24-10C-6 (within the Cardiac Arrest Response Act and governing exemption)**, amended to permit a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, in addition to a physician, to prescribe an automated external defibrillator to a patient for use by the patient's caregiver on an individual patient, and exempting the use from the requirement that the individual function in an approved program;
 - **Section 32A-6A-12 (within the Children's Mental Health and Developmental Disabilities Act and governing the personal rights of a child in an out-of-home treatment or habilitation program and the scope of those rights)**, amended to grant to each child the right to receive visits from and unrestricted mailing and telephone privileges to the child's physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice;
 - **Section 33-2-13**, amended to require a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, in addition to a physician, to conform to the rules and regulations of the Penitentiary of NM, when visiting, and requiring that the same professionals express no opinion as to the disability of any prisoner except in records kept in the penitentiary;
 - **Section 52-1-55 (within the Workers' Compensation Act and governing physical examinations, statements regarding dependents, and pre-employment physical condition statements)**,

amended to include a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, in addition to a physician, within the list of professionals to whom it is the duty of the worker to submit to examination, for the purpose of determining the worker's physical condition;

- **Section 66-3-16 (within the Motor Vehicle Code and governing distinctive registration plates, persons with significant mobility limitation, and parking placards)**, amended to permit a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice to attest to an applicant's permanent or temporary significant mobility limitation in a medical statement for the purpose of applying for parking placards, and requiring the named professionals to provide the Motor Vehicle Division all information and records necessary to issue a permanent or temporary parking placard.

Additionally, the law requires that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

ALCHOL SALES AT MUNICIPAL GOLF COURSES

SB 300

The law amends Section 60-6A-10 NMSA 1978, governing a governmental license to sell alcoholic beverages at a governmental facility, to permit state museums and municipal golf courses to sell distilled spirits, as well as beer and wine. (Currently, these facilities can only sell beer and wine.)

SELF-STORAGE NOTIFICATIONS, SALES AND LATE FEES

SB 311

The law amends statutory sections within the Self-Service Storage Lien Act, Section 48-11-1 NMSA 1978 et seq., to permit an owner of a self-service storage facility to contact a storage facility occupant by verified mail or electronic mail pursuant to the occupant's option at the time of entering into a rental agreement, with regard to the notice of intent to enforce a lien.

The law requires the written notice be by verified mail or by electronic mail to the person's last known address or electronic address. The law further requires that, if an owner sends a notice by electronic mail and does not receive a response, return receipt or delivery confirmation from the electronic address to which the notice was sent within 3 business days, the owner deliver a one-time notice by verified mail to the person's last known address. The law permits any sale or other disposition of property to be conducted on a publicly accessible online web site, in addition to at the self-service storage facility or at the nearest suitable place within the county to where the personal property is held or stored.

The law provides that if the property subject to a lien is a vehicle, watercraft or trailer, the occupant is in default for a continuous 60-day period and the owner of the self-service storage facility chose not to sell the vehicle, the facility owner may have the vehicle towed from the self-storage facility by an independent towing carrier that is licensed by the Public Regulation Commission pursuant to the Motor Carrier. The law specifies the information to be sent by verified notice to the occupant's last known address or electronic address, within one day after the day on which a vehicle is towed.

The law adds definitions of the terms "electronic mail," "last known address" and "verified mail," as used within the Self-Storage Lien Act.

HEALTH AGREEMENT NO-COMPETE PROVISIONS

SB 325

The law provides that an agreement's non-compete provision restricting the right of a health care practitioner to provide clinical health care services shall be unenforceable upon the termination of the agreement, a renewal or extension of the agreement, or a health care practitioner's employment with a party seeking to enforce the agreement.

Nothing in the law limits the enforceability of a provision in an agreement requiring a health care practitioner who has worked for an employer for an initial period of less than 3 years to repay all or a portion of:

- a loan;
- relocation expense;
- a signing bonus or other remuneration to induce the health care practitioner to relocate or establish a health care practice in a

- specified geographic area; or
- recruiting, education and training expenses.

Neither does anything in the law limit the enforceability of a nondisclosure provision relating to confidential information and trade secrets, a nonsolicitation provision with respect to patients and employees of the party seeking to enforce the agreement for a period of one year or less after the last date of employment, or any other provision of an agreement that is not in violation of law, including a provision for liquidated damages. The law permits an agreement to provide for liquidated damages in an amount that is reasonable at the time the agreement is executed and in light of anticipated harm and difficulty of proving the amount of loss resulting from breach of the agreement by any party. Under the law, a provision in an agreement fixing unreasonably large liquidated damages is void as a penalty.

The law defines “agreement” as a written contract to which a health care practitioner is a party, and “health care practitioner” to mean a dentist, osteopathic physician, physician, podiatrist, and certified registered nurse anesthetist.

The law does not apply to agreements between health care practitioners who are shareholders, owners, partners or directors of a health care practice. The law’s provisions apply to agreements, or renewals or extensions of agreements, executed on or after July 1, 2015.

TAX ADMINISTRATIVE HEARINGS OFFICE ACT

SB 356

The law enacts the “Administrative Hearings Office Act” (“AHOA”), creating the “Administrative Hearings Office” (“office”) as administratively attached to the Department of Finance and Administration (“DFA”), pursuant to Section 9-1-7 NMSA 1978, and separate from the Taxation and Revenue Department (TRD). The law sets out procedures for tax protests, including the right to appeal from a decision to the court of appeals. (Section 8) The law also lists the procedures for motor vehicle administrative hearings and clarifies that a court is without jurisdiction to entertain a proceeding in which a person calls into question the application of the Motor Vehicle Code to that person, except as a consequence of the appeal by that person to the district court from the action and order of the hearing officer. (Section 9) Amendments to existing statutes that affect the court are as

follows:

- **Section 7-1-22 NMSA 1978 (within the Tax Administration Act and governing the exhaustion of administrative remedies):** grants jurisdiction to the Court of Appeals of an appeal by the taxpayer from the order of a hearing officer, rather than from the action and order of the Secretary as specified in Section 7-1-24.
- **Section 7-1-25 (within the Tax Administration Act and governing appeals from the hearing officer's decision and order):** amends to clarify that appeals to the Court of Appeals are from a hearing officer's decision and order rather than from the Secretary's.
- **Section 66-4-3 (within the Motor Vehicle Code and governing the refusal to issue a license; cancellation or suspension of license or use of temporary permits; hearing; and appeal):** clarifies that the TRD's action refusing a license for just cause or to cancel or suspend a license or use of a temporary registration permit, demonstration permit or transport permit for violation of the Motor Vehicle Code shall be taken only after a hearing before the office. An aggrieved party may file an appeal in the district court.
- **Section 66-5-204 (within the Motor Vehicle Code and governing administrative and court review):** permits an owner of a motor vehicle registered in NM to appeal a decision of the Secretary under the Mandatory Financial Responsibility Act to the office within a specified time period, and a person who continues to be aggrieved after the hearing officer's decision to appeal that decision in the district court pursuant to Section 39-3-1.1 NMSA 1978.
- **Section 66-8-112 (within the Motor Vehicle Code and governing revocation of a license or privilege to drive; notice; effective date; hearing; hearing costs; and review):** permits a person adversely affected by an order of the office to seek timely review in the appropriate district court.

Additional provisions of the AHOA are as follows:

A. New Provisions:

- **Section 3:** provides that the head of the office is the "chief hearing officer," ("chief"), to be removed only for malfeasance, misfeasance or abuse of office, and appointed for a term of 6 years, except that the initial term begins on July 1, 2015 and ends on December 31, 2015, with the opportunity for the officer to be reappointed to successive

terms. SB 356 provides that the initial chief shall be the person who is the chief of the Hearings Bureau of the TRD on July 1, 2015.

- **Section 4:** creates the nine-member “Chief Hearing Officer Selection Committee” (“committee”), administratively attached to the DFA pursuant to Section 9-1-7 NMSA 1978 and provides for the selection of the committee and its duties.
- **Section 5:** provides for the powers and duties of the chief, and clarifying that employees of the office, except the chief, are subject to the provisions of the Personnel Act.
- **Section 6:** requires the chief to adopt and promulgate a hearing officer code of conduct and to periodically evaluate each hearing officer’s performance. SB 356 requires that the chief ensure each hearing officer has decisional independence, except to permit the chief to consult with a hearing officer about a genuine question of law and review with a hearing officer any issue on appeal addressed by an appeals court. Under the AHOA, the office is required to hear all tax protests pursuant to the Tax Administration Act, property tax protests pursuant to the Property Tax Code, and all certificate-denial protests pursuant to Section 13-1-22 NMSA 1978, governing. The office is also required to conduct all adjudicatory hearings pursuant to the Motor Vehicle Code, and all driver’s license revocation hearings pursuant to the Implied Consent Act. The law requires the office to make and preserve a complete record of all proceedings and to maintain confidentiality regarding taxpayer information as required by Section 7-1-8 NMSA 1978. The AHOA provides that in a hearing conducted pursuant to the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code, the Rules of Evidence and the Rules of Civil Procedure for the District Courts do not apply. With regard to the Rules of Evidence, the law provides that the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. The AHOA permits a taxpayer or the TRD to request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which the protest is pending. The office is required to issue a copy of its written ruling to the TRD at the time the ruling is issued to the taxpayer. With regard to the Rules of Civil Procedure, the AHOA requires a hearing officer to conduct a hearing to allow the ample and fair presentation of complaints and defenses, as the circumstances justify, to render a decision in accordance with

the law and evidence presented and admitted. The AHOA permits a taxpayer or the TRD to request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which the protest is pending. The office is required to issue a copy of its written ruling to the TRD at the time the ruling is issued to the taxpayer. The AHOA permits a hearing officer to administer oaths and issue subpoenas for the attendance of witnesses and the production of documents, and for hearings conducted for a license suspension pursuant to Section 66-5-30 NMSA 1978, the hearing officer may require a reexamination of the license.

- **Section 7:** prohibits a hearing officer from engaging or participating in any way in the enforcement or formulation of general tax policy other than to conduct hearings, and from engaging in ex-parte communications concerning the substantive issues of any matter that has been protested while the matter is pending.

B. Additional Existing Statutory Provisions Amended by the AHOA:

- **Section 7-1-3:** provides definitions for “hearing officer” and “taxpayer.”
- **Section 7-1-4.2:** provides to taxpayers the right to be represented or advised by the office in accordance with the AHOA at any time in administrative actions with TRD, in addition to counsel or other qualified representatives, and provides the right to seek review of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with Section 7-1-24 and the AHOA.
- **Section 7-1-8.3:** permits a TRD employee to reveal a decision and order made by an officer pursuant to the AHOA with respect to a protest filed with the Secretary on or after July 1, 1993, and any written ruling on questions of evidence or procedure made by a hearing officer pursuant to the AHOA, provided that the taxpayer requesting the ruling shall not be revealed.
- **Section 7-1-8.4:** permits a TRD employee to reveal to the office information in relation to a protest or other hearing regarding the taxpayer that is a party to the action. This restriction shall not prevent revelation of TRD policy or interpretation of law arising from circumstances of a taxpayer that is not a party. The office is required to maintain confidentiality regarding taxpayer information as required

by Section 7-1-8 NMSA 1978.

- **Section 7-1-24:** clarifies that hearings conducted on protests are pursuant to the AHOA.
- **Section 7-1-26:** provides that a person claiming a refund may elect to pursue no more than one remedy, including: (1) directing a written protest to the secretary containing specific details of circumstance, an allegation of indebtedness, a demand for a refund, and recitation of the facts of the claim for refund; (2) commence a civil action in the district court for Santa Fe County.
- **Section 7-1-29.1:** clarifies that an “administrative proceeding” includes actions before the office. Provides that with regard to the awarding of costs and fees, the taxpayer shall not be treated as the prevailing party if, prior to July 1, 2015, TRD establishes or, on or after July 1, 2015 the hearing officer finds that the position of TRD in the proceeding was based upon a reasonable application of the law to the facts of the case.
- **Sections 7-38-21 and 7-38-22:** permit a property owner to protest the value or classification of the owner’s property by filing, as provided in the Property Tax Code, a petition of protest with the office.
- **Section 7-38-23:** requires the chief to designate a hearing officer to conduct a protest hearing conducting pursuant to the provisions of the Property Tax Code, with the hearing officer’s order to be in the name of the chief.
- **Section 7-38-28:** permits a property owner to appeal an order made by a hearing officer by filing an appeal pursuant to Section 39-3-1.1 NMSA 1978.
- **Section 9-11-6.2:** restricts directives issued by the Secretary as regulations, rulings, instructions or orders to written statements of the Secretary or a delegate of the Secretary, rather than also of a hearing officer.
- **Section 13-1-22 (current) and Section 13-1-22 (to become effective July 1, 2022):** places the power to rule on the grant or denial of a resident business or resident veteran business preference with regard to the provision of false information to the TRD with the office rather than the TRD.
- **Section 40-5A-6:** permitting a proceeding pursuant to the law governing suspension and revocation of a license granted by a board, for failure to comply with a judgment and order for support or subpoena or warrants relating to paternity or child support

- proceedings, to be conducted by the office, in addition to a board.
- **Section 66-2-11:** recognizes the authority or requirement of the office to give notice under the Motor Vehicle Code or any other law regulating the operation of vehicles, in addition to the TRD.
 - **Section 66-2-17:** restricts the subject matter of the section to administrative hearing procedure for hearing conducted pursuant to the AHOA, removing all reference to appeals from the Secretary's decision and order and exhaustion of administrative remedies.
 - **Section 66-5-19:** provides that the Motor Vehicle Division ("division") of the TRD may, upon receiving satisfactory evidence of any violation of restrictions on a license, suspend the license, but clarifies that the licensee is entitled to a hearing as upon a suspension under Sections 66-5-1.1 through 66-5-47 NMSA 1978 and as provided in the AHOA.
 - **Section 66-5-30:** requires the division to immediately notify the licensee in writing, upon the authorized suspension of the license of a person, of the licensee's right to a hearing before the office and, upon the licensee's request shall notify the office, which has schedule the hearing as required by statute. Clarifies that the hearing shall be held as provided in the AHOA, with the hearing officer required to rescind the order of suspension or continue, modify or extend the suspension of the license or revoke the license.
 - **Section 66-5-236:** requires the TRD to notify a person that the person may request a hearing before the office on the suspension of a motor vehicle registration.
 - **Section 66-8-111.1:** requires immediate service of written notice of revocation and of right to a hearing before the office pursuant to the Implied Consent Act on a person who refused to permit chemical testing or on a person who submits to a chemical test the results of which indicate an unlawful alcohol concentration in the person's blood or breath.

The law enacts a temporary provision for the transfer of personnel, functions, appropriations, money, property, contractual obligations, statutory references and rules.

The law repeals Section 7-1-24.1 NMSA 1978, governing disputing liabilities, conduct of hearing and hearing officers under the Tax Administration Act, Section 7-1-1 NMSA 1978 et seq.

The effective date of the law is July 1, 2015.

OPTOMETRIST PRESCRIBING POWERS

SB 367

The law amends statutory sections within the Optometry Act, Section 61-2-1 NMSA 1978 et seq., as follows:

- amends Section 61-2-6 NMSA 1978 to clarify that the Board of Optometry (“board”) has the authority to determine what constitutes the practice of optometry in accordance with the Optometry Act and has jurisdiction to exercise any other powers and duties under that Act. The board is permitted to issue advisory opinions and declaratory rulings and to promulgate rules pursuant to that Act, but is prohibited from expanding the scope of practice of optometry beyond the provisions of the Optometry Act;
- amends Section 61-2-10.2 NMSA 1978 to permit qualified and certified optometrists to prescribe or administer hydrocodone and hydrocodone combination medications and epinephrine auto-injections to counter anaphylaxis, in addition to all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa. The law prohibits an optometrist from prescribing any other controlled substance classified in Schedule I or II of the Controlled Substances Act;
- amends Section 61-2-14 NMSA 1978 to clarify that it is a fourth degree felony crime for a person to use or attempt to use *any* pharmaceutical agent regulated under the NM Drug, Device and Cosmetic Act, rather than only a regulated topical ocular pharmaceutical agent or a regulated oral pharmaceutical agent, without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

The law amends Section 26-1-2 NMSA 1978, within the NM Drug, Device and Cosmetic Act to add “optometrist” to the definition of “practitioner,” and to the list of practitioners whose title may fill the blank on the label required to be affixed to a “prescription device.”

OIL & GAS RULE APPEAL REQUIREMENTS

SB 389

The law enacts a new statutory section within the Oil and Gas Act (“Act”), Section 70-2-1 NMSA 1978 et seq., to create the following requirements for adopting and appealing rules, including an amendment or repeal of a rule:

- no rule shall be adopted pursuant to the Act until after a hearing by the Oil Conservation Commission (“commission”);
- any rule adopted under the Act is required to be filed and published in accordance with the State Rules Act;
- no rule shall be filed until the latter of 20 days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978;
- a party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Act may appeal to the Court of Appeals within 30 days after filing of the rule under the State Rules Act;
- all appeals to the Court or Appeals shall be upon the record made by the commission; and
- upon appeal, the Court of Appeals shall set aside the rule only if found to be arbitrary, capricious or an abuse of discretion, not supported by substantial evidence in the record, or otherwise not in accordance with law.

RUNNING AT LARGE OF LIVESTOCK

SB 398

The law amends Section 77-14-6 NMSA 1978, within the Livestock Code, to permit, rather than require, the Board of County Commissioners (“board”) to make an order prohibiting the running at large of livestock within the limits of a platted townsite and platted addition, or within the limits of conservancy or irrigation districts, or within the limits of a military reservation or enclave. Under the law, the board is required to publish the order as prescribed in the statute.

ESCROW COMPANY BONDS & AUDITS

SB 412

The law amends statutory sections within the Escrow Company Act, Section 58-22-1 NMSA 1978 et seq., as follows:

- amends Section 58-22-9 NMSA 1978 to require that with an

annual renewal of a license, a licensee submit copies of prescribed federal and state income tax information, which shall be confidential and not public records, and, as required by accounting control rules promulgated by the Financial Institutions Division (“division”) of the Regulation and Licensing Department, a copy of reconciliations and corresponding bank statements for the 3 months immediately preceding the renewal application;

- amends Section 58-22-10 NMSA 1978 to require an escrow company to obtain a surety bond in the minimum amount of \$100,000 running to the people of New Mexico, and provides that a company licensed pursuant to the Escrow Company Act that, prior to the effective date of this law, was not required to file a surety or other bond with the director shall have until January 1, 2016 to comply with the provisions of Section 55-22-10 NMSA 1978;
- amends Section 58-22-15 NMSA 1978 to clarify that for the purpose of this statutory section governing grounds for denying a license, the division shall be considered a law enforcement agency and the director of the division may acquire arrest record information from another law enforcement agency pursuant to Section 29-10-5 NMSA 1978;
- amends Section 58-22-18 NMSA 1978 to require that specified minimum information be disclosed in a notice to the seller and the buyer of property, within the 10-day period following a buyer depositing the final payment on an account, with the licensee retaining a copy of the required notice, available for examination by the director pursuant to Section 58-22-17 NMSA 1978; and
- amends Section 58-22-19 NMSA 1978 to provide that division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action are not public records subject to the Inspection of Public Records Act, may be disclosed only with the consent of the director, and are not subject to subpoena.

The effective date of the law is July 1, 2015.

INCLUDE E-CIGARETTES IN TOBACCO PRODUCTS ACT SB 433

The law amends statutory sections within what is now cited as the “Tobacco Products, E-Cigarette and Nicotine Liquid Container Act” (“Act”), Section 30-49-1 NMSA 1978 et seq., to prohibit a person from knowingly selling, offering to sell, bartering or giving a tobacco product, e-cigarette or nicotine liquid container to a minor. Additionally, the following activities are prohibited by the Act (Section 30-49-3 NMSA 1978):

- a minor procuring or attempting to procure a tobacco product, e-cigarette or nicotine liquid container for the minor’s own use or for use by another minor;
- a person selling, offering to sell or delivering a tobacco product, e-cigarette or nicotine liquid container in a form other than an original factory-sealed package;
- a person selling or offering to sell any nicotine liquid container at retail in this state unless such container is child-resistant (for this purpose, “nicotine liquid container” does not include a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer); and
- the online internet sale of e-cigarettes or nicotine liquid containers to a minor in New Mexico.

Additionally, the law amends the following statutory sections to include e-cigarettes and nicotine liquid containers to the sections’ prohibitions and permissions:

- Section 30-49-5 NMSA 1978, governing refusal to sell tobacco products, e-cigarettes or liquid containers to person unable to produce ID card;
- Section 30-49-6 NMSA 1978, governing presentation of false evidence of age or ID;
- Section 30-49-7 NMSA 1978, governing vending machines and restrictions on sales of tobacco products, e-cigarettes and nicotine liquid containers;
- Section 30-49-8 NMSA 1978, governing prohibition of distribution of tobacco products, e-cigarettes or nicotine liquid containers as free samples, and exceptions;
- Section 30-49-9 NMSA 1978, governing required signs at point of sale; and

- Section 30-49-10 NMSA 1978, governing monitored compliance and inspections of facilities by the Alcohol and Gaming Division of the Regulation and Licensing Department.

The law also amends Section 30-49-11 NMSA 1978 to preempt a municipality or county, including a home rule municipality or urban county, from adopting an ordinance or regulation pertaining to sales of tobacco products, e-cigarettes or nicotine liquid containers that is inconsistent with the provisions of the Act.

The law clarifies that violation of Sections 30-49-3 and Sections 30-49-7 through 30-49-9 NMSA 1978 is a misdemeanor and the offender shall be sentenced pursuant to 31-19-1 NMSA 1978, with each violation constituting a separate and distinct offense. The law also clarifies that any minor who violates Sections 30-49-3(B) or 30-49-6 NMSA 1978 shall be punished by a fine of \$100 or less or 48 hours of community service.

The law provides that the provisions of the Act do not apply to the lawful purchase of use by a minor of a tobacco-cessation product approved by the federal Food and Drug Administration.

The law requires the Public Education Department to revise its tobacco, alcohol and drug free school districts policy to include e-cigarettes and nicotine liquid containers, as defined in Section 30-49-2 NMSA 1978, by August 1, 2015. The law also amends Section 30-49-2 to define the terms “child-resistant”, “e-cigarette”, and “nicotine liquid container.”

N.B.: See HB 213, governing child-resistant packaging for nicotine liquid.

INTERSTATE DISTANCE EDUCATION ACT

SB 446

The law creates the “Interstate Distance Education Act” (“Act”) within Chapter 21 NMSA 1978, governing State and Private Education Institutions, to require the Higher Education Department (“department”) to establish an Interstate Distance Education Program. The law requires a post-secondary educational institution applicant accepted for participation in the interstate distance education program to enter into an agreement with the department.

The law requires the department to regularly monitor the compliance of participating post-secondary educational institutions, and requires the department, upon the receipt of a complaint about a participating institution, to timely monitor the resolution process and resolution by the institution and document the resolution, or to investigate the complaint, conduct or coordinate a resolution process appropriate for responding to the complaint and document the resolution. The law also permits the department to sanction a participating institution that: 1) fails to resolve a complaint or comply with the department's efforts to respond to a complaint about the institution; or 2) violates a provision of the Act or an agreement to participate in the program. The law permits the department to impose sanctions, including:

- requiring the payment of fees, fine or other monetary remedies; or
- the termination or nonrenewal of the participation agreement entered into pursuant to the Act.

The law requires the department to publish rules for conducting the Interstate Distance Education Program and to report on the program to the Legislative Finance Committee and the Legislative Education Study Committee by July 31, 2016 and each subsequent year.

The law also amends Section 21-24-3 NMSA 1978, within the Out-Of-State Proprietary School Act, to provide an exception to applicability for courses offered under a participation agreement pursuant to the applicable provisions of the Interstate Distance Education Act.

CRIME VICTIM REPARATIONS TIME & FEES

SB 510

The law amends Section 31-22-8 NMSA 1978 within the Crime Victims Reparation Act ("CVRA"), to expand the list of crimes to which the CVRA applies and for which reparation to victims may be made to include:

- stalking;
- assault against a household member; and
- battery against a household member.

The bill also removes the crimes of aggravated arson and aggravated stalking from the list, and requires the currently included crime of dangerous use of explosives to result in bodily harm.

The law amends Section 31-22-14 NMSA 1978 to permit the Crime Victims Reparation Commission (“commission”) to extend the time for filing an application for reparation for good cause shown by a claimant or a victim.

The law requires the newly created Mandatory Crime Victims Reparation Fee be assessed and collected by a district court, metropolitan court and magistrate court, from a person convicted of a misdemeanor or felony offense. The bill requires the fee to be levied at the time of sentencing, in accordance with the following schedule:

- (1) felony conviction = \$75.00 fee
- (2) misdemeanor conviction = \$50.00 fee

The law requires these fees to be deposited in the Crime Victims Reparation Fund. The AOC is interpreting a misdemeanor conviction to apply to crimes associated with the standard misdemeanor penalty.

The effective date of the law is July 1, 2015.

MULTIPLE-TRIP PERMIT FOR SOME VEHICLES

SB 622

The law enacts a new statutory section of Chapter 66, Article 7 NMSA 1978 to allow the issuance of a special multiple-trip permit for a single vehicle with a load in excess of the weight allowed in Section 66-7-410 NMSA 1978 if the vehicle meets specified length, weight and axle conditions, and other requirements as established by rule of the Secretary of Public Safety, including the payment of a reasonable fee. These vehicles will not be subject to Section 66-7-416(C) penalties for unreasonable use of or operation upon any bridge or structure by a vehicle, tractor or engine not in accordance with Section 66-7-410 weight limits.

The effective date of the law is January 1, 2016.

ADJUSTING TAX DISTRIBUTIONS TO LOCAL GOVERNMENTS

SB 669 (Duplicates HB 581)

The law amends Section 7-1-6.15 NMSA 1978, governing procedures for the Taxation and Revenue Department to adjust distributions and transfers of gross receipts taxes and certain other taxes to counties and municipalities. The new procedures apply when adjustments reach a certain amount,

potentially protecting local governments from a severe financial hardship if the state seeks to recover incorrect revenue distributions. The amendments are to address *City of Eunice v. N.M. Taxation and Revenue Department* 2014-NMCA-085 (writ of certiorari quashed by Supreme Court order of May 11, 2015). In that case, the department was barred from recovering erroneous distributions of more than \$2 million because of statutory time limitations.

Among the amendments to 7-1-6.15, the law expands the time period in which the state may seek to recover distributions, allows the secretary to waive recoverable amounts and provides a 90-day period for a municipality or county to enter into an agreement for repaying the department.

The law also amends 7-1-8.9 NMSA 1978 to expand the gross receipts tax information that can be disclosed to cities and counties while preserving confidentiality of the taxpayer.

The effective date of the law is July 1, 2015.

B. HOUSE

COUNTY NOTICES BY EMAIL

HB 49

The law amends Section 7-38-84 NMSA 1978, within the Property Tax Code (“code”) and governing the mailing of any notice required to be made to a property owner by the code. The law permits a county assessor or county treasurer to provide required notices to a property owner using an email address provided by the property owner, if the property owner notifies the assessor or treasurer, by email or in writing, of the owner’s preference to receive such notices by email rather than regular first class mail. The law requires the notice to be consistent with the requirements of the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. The law provides that a property owner’s request to receive notices by email shall be effective until revoked in writing or by email to the county assessor and the county treasurer. The law further provides that wherever the code required a method of notification or mailing done only by the county assessor or county treasurer, other than by regular first class mail, the notice is effective if given in accordance with the provisions of the code.

The law provides that an email address provided by a property owner pursuant to this law shall not be considered a valuation record pursuant to Section 7-38-19 NMSA 1978 and shall be retained by the county assessor as a confidential record that is not subject to inspection pursuant to the Inspection of Public Records Act.

The effective date of the law is July 1, 2015.

NO COMPELLED MEDICATION USE FOR STUDENTS

HB 53

The law enacts a new statutory section within the Public School Code (“code”), Section 22-1-1 NMSA 1978 et seq., to prohibit school personnel from denying any student access to programs or services because the parent or guardian of the student has refused to place the student on psychotropic medication. The law also prohibits school personnel from requiring a student to undergo psychological screening unless the parent or guardian of that student gives prior written consent before each instance of psychological screening.

The law permits school personnel to share school-based observations of a student’s academic, functional and behavioral performance with the student’s parent or guardian and offer program options and other forms of assistance that are available to the parent or guardian and the student based on those observations. Under the law, however, an employee or agent of a school district or governing body is prohibited from compelling or attempting to compel any specific actions by the parent or guardian or to require that a student take a psychotropic medication. The law also provides that nothing in the law shall be construed to create a prohibition against a teacher or other school personnel from consulting or sharing a classroom-based observation with a parent or guardian regarding a student’s academic and functional performance or a student’s behavior in the classroom or school, as well as the need for evaluation for special services.

The law amends Section 32A-4-6 NMSA 1978, within the Abuse and Neglect Act portion of the Children’s Code, to provide that a child shall not be taken into protective custody solely on the grounds that the child’s parent, guardian or custodian refuses to consent to the administration of a psychotropic medication to the child.

The law defines “school personnel” to mean school personnel that the Public Education Department has licensed. The law also defines “psychotropic medication.”

AUTOCYCLE DEFINITIONS & REQUIREMENTS

HB 65

The law amends statutory sections within the Motor Vehicle Code (“code”), Section 66-1-1 NMSA 1978 et seq., pertaining to an “autocycle,” defined as a three-wheeled motorcycle on which the driver and all passengers ride in a completely enclosed, tandem seating area, equipped as specified in the definition. The law requires autocycles to be registered as motorcycles, and provides that proof of financial responsibility may characterize them as motorcycles, but a driver of an autocycle is not required to have a motorcycle endorsement to operate an autocycle.

The law amends Section 66-7-355 NMSA 1978 to exempt autocycles from the statute’s requirements for operators and passengers riding on motorcycles. The law also amends Section 66-7-356 NMSA 1978 to exempt autocycles operators and passengers from the mandatory use of protective helmets required for motorcycle operators and passengers.

PROPERTY TAX SCHEDULE CHANGE REQUESTS

HB 67

The law amends statutory sections pertaining to the authority and action that may be taken to change a property tax schedule, as follows:

Section 7-38-77 NMSA 1978 (governing the authority to make changes in property tax schedule after its delivery to the county treasurer)

- permits the county treasurer to correct obvious errors in the mathematical computation of taxes;
- permits the county treasurer to correct obvious errors by the county assessor in: (a) the name or address of the property owner or other persons shown on the schedule; (b) the description of the subject property, even if the correction results in a change in the amount shown on the schedule as taxes due; (c) the data entry of the value classification, allocation of value and limitation on increases in value pursuant to Sections 7-36-21.2 and 7-36-21.3 NMSA 1978 of property subject to property taxation by the

- county assessor; or (d) the application of eligible, documented and qualified exemptions; and
- clarifies that “obvious errors” does not include the method used to determine the valuation for, or a difference of opinion in the value of, the property subject to property taxation.

Section 7-38-78 NMSA 1978 (governing action by property owner in district court to change property tax schedule)

- provides that actions brought under this section may not directly challenge the method used to determine the valuation for the property subject to property taxation; and
- clarifies that an action brought under this section due to errors in the description of the property for property taxation purposes may be brought, even if the correction results in a change in the amount shown on the schedule as taxes due.

FREESTANDING BIRTH CENTER LICENSURE

HB 84

The law amends statutory sections within the Public Health Act, Section 24-1-1 NMSA 1978 et seq., to include a “freestanding birth center” within the definition of a “health facility” required to be licensed by the Department of Health (“department”). In addition to the licensing procedures, inspection and sanction authorizations granted to the department, and required and available hearings and appeals applicable to all health facilities pursuant to Section 24-1-5 NMSA 1978, the law specifically provides that a freestanding birth center that is accredited by the Commission for Accreditation of Birth Centers or its successor accreditation body shall be granted a license renewal based on that accreditation. The law also amends Section 24-1-5 to provide that a health facility that has been inspected and licensed by the department, that has received certification for participation in federal reimbursement programs and that has been fully accredited by a national accrediting organization approved by the federal Centers for Medicare and Medicaid Services or the department shall be granted a license renewal based on that accreditation. The law also provides that health facilities receiving less than full accreditation by an approved accrediting body may be granted a license renewal based on that accreditation. These provisions would permit any federal Centers for Medicare and Medicaid Services-approved or DOH-approved healthcare facility accrediting organization to serve as the basis for licensure renewal of

a freestanding birth center.

SEXUAL EXPLOITATION OF CHILDREN PENALTIES

HB 101

The law amends Section 30-6A-4(B) NMSA 1978 within the Sexual Exploitation of Children Act to revise penalties for sexual exploitation of children by prostitution, by providing a second degree felony penalty for a person who knowingly hires or offers to hire a child under 16 to engage in any prohibited sexual act. (Subsection B previously provided a second-degree felony penalty for any person hiring or offering to hire a child over 13 and under 16 to engage in any prohibited sexual act.)

UNAUTHORIZED DISTRIBUTION OF SENSITIVE IMAGES

HB 142

The law creates the crime of “unauthorized distribution of sensitive images,” consisting of distributing, publishing or otherwise make available, by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person’s consent, with the intent to:

- harass, humiliate or intimidate that person;
- incite another to harass, humiliate or intimidate that person;
- cause that person to reasonably fear for that person’s own or family members’ safety;
- cause that person to suffer unwanted physical contact or injury; or
- cause that person to suffer substantial emotional distress; *and*

where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.

The law provides a misdemeanor penalty for a first conviction for the crime of unauthorized distribution of sensitive images, and a fourth degree felony penalty for a second or subsequent conviction.

The law further provides that nothing in the law shall be construed to impose liability on: (1) an interactive computer service, an information service or a telecommunications provider for content provided by another person; or (2) a person who reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates content in furtherance of a legitimate

public purpose, including the compilation or dissemination of news by newspapers and licensed broadcasters.

The law defines the following terms: “electronic communications device”; “information service”; “interactive computer service”; “intimate act”; “sensitive images”; and “telecommunications provider”.

The effective date of the law is July 1, 2015.

LOBBYIST EMPLOYER REGISTRATION

HB 155

The law amends and enacts statutory sections within the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978 et seq., as follows:

Section 2-11-3 (governing the filing of a lobbyist registration statement, contents and modification to the statement)

- increases the annual filing fee for lobbyists from \$25 to \$50 for each of the lobbyist’s employers; and
- requires the Secretary of State (“secretary”) to publish the registration statement on the secretary’s lobbying disclosure web site, no more than 5 days after a registration is filed.

Section 2-11-6 (governing the expenditure report to be filed by a lobbying, contents and reporting periods)

- requires the secretary to publish a required expenditure report to be filed by each lobbyist or lobbyist’s employer who makes or incurs specified expenditures or political contributions, in accordance with Section 2-11-7; and
- requires the expenditure report to list the cumulative total of the expenditures made or incurred by the employer or lobbyist during the covered reporting period, indicating the amount spent and a description of the expenditure. The list is to be separated into specified categories.

Section 2-11-7 (governing the registration and expenditure statement, preservation as a public record, and online reports)

- requires each registration and expenditure statement required by the Lobbyist Regulation Act by archived and accessible on the secretary’s lobbyist disclosure web site for at least 10 years from

the date of filing as a public record, open to public inspection at any reasonable time;

- provides that unless an action or prosecution is pending that requires preserving the report, it may be destroyed 10 years after the date of filing;
- requires lobbyist registrations and expenditure statements to be kept and maintained on the secretary's web site and available in searchable and downloadable formats.
- requires the secretary to update the web site no less than monthly throughout the year and as expeditiously as possible when the Legislature is in session; and
- defines "accessible," with respect to the secretary's lobbyist disclosure web site, to mean that all records are easily searchable, sortable and downloadable by the public.

ADD SPECIES TO GAME FISH

HB 201

The law amends Section 17-2-3 NMSA 1978, governing the definitions of protected wildlife species and game fish, to include tilapia and striped bass, hybrid striped bass, white bass and other fish within the family Moronidae, within the definition of "game fish." (Section 17-2-10 NMSA 1978 provides misdemeanor penalties, including fines and a term of imprisonment of six months or less, for violations of game and fish laws or regulations.)

HUNTING AND FISHING INFRACTION PENALTIES

HB 202

The law amends Section 17-2-10.1 NMSA 1978 to provide a penalty assessment option for the following hunting and fishing offenses:

- Fishing, hunting or trapping without the proper stamp or validation as required by law or adopted by State Game Commission rule (Section 17-2-7), \$50.00; and
- Manner and method rule infraction contrary to adoption by State Game Commission rule (Section 17-2-7), \$125.00.

CHILD-RESISTANT NICOTINE LIQUID PACKAGES

HB 213

The law enacts a new statutory section governing child-resistant packaging for nicotine liquid and prohibiting a person from selling or offering to sell any nicotine liquid container at retail in New Mexico unless the container is child-resistant.

The law permits the Attorney General to institute a civil action in district court for a violation of this law or to prevent a violation of this law. The law provides for relief, including a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty not to exceed \$1,000 for each violation.

The law includes definitions for the following terms: “child-resistant”; “electronic delivery device”; and “nicotine liquid container”.

N.B.: See SB 433, including nicotine liquid containers in the Tobacco Products Act.

DELINQUENT TAX ELECTRONIC LEVY WARRANTS

HB 218

The law amends Sections 7-1-31 and 7-1-32 NMSA 1978, within the Tax Administration Act, as follows:

Section 7-1-31 (governing seizure of property by levy for collection of taxes)

- permits the Taxation and Revenue Department to serve a warrant of levy on a financial institution in electronic format pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act, upon agreement between the department and a financial institution; and
- permits a “certified law enforcement employee of the Department of Public Safety,” in addition to the department secretary or secretary’s delegate or any sheriff, to serve warrants of levy.

Section 7-1-32 (governing contents of warrant of levy)

- permits a warrant of levy (other than one served on a financial institution pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act) to be signed electronically.

The effective date of the law is July 1, 2015.

LIQUOR LICENSES & DEFINITIONS

HB 243

The law amends and enacts statutory sections within the Liquor Control Act, Section 60-3A-1 NMSA 1978, et seq., as follows:

- **Section 60-3A-3:** adds powdered alcohol and frozen or freeze-dried alcohol to the definition of “alcoholic beverages”; adds a definition of “cider” to mean an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent alcohol by volume and not more than seven percent alcohol by volume; and “growler” to mean a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider for consumption off premises;
- **Section 60-6A-6.1** (governing a craft distiller’s license): increases from two to three the number of other locations off the craft distiller’s premises, at which a licensed craft distiller may conduct spirituous liquor tastings and sell by the glass, or in unbroken packages for consumption and not for resale, spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer;
- **Section 60-6A-11** (governing a winegrower’s license): permits a licensed winegrower to sell wine or cider in a growler for consumption off premises;
- **Section 60-6A-26.1** (governing a small brewer’s license): increases from two to three the number of other locations off the small brewer’s premises, at which a licensed small brewer may conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer’s off-premises location, but not for resale, beer produced and bottled by or for the small brewer or beer produced and bottled by or for another New Mexico small brewer, and permits a licensed small brewer to sell beer in a growler for consumption off premises;

- **Section 60-6B-4** (governing issuance or transfer of license and approval of appropriate governing body): requires that notice of a public hearing on the question of whether the Director of the Alcohol and Gaming Division of the Regulation and Licensing Department (“department”) should approve a proposed issuance or transfer of a license be published at least twice, with the initial notice published at least 30 days before the hearing, be published on a local option district’s web site, if the district has a web site, in addition to required print publication, with notice to set forth the date, time and place of the hearing.

Additionally, the law permits the establishment of alternating proprietorship so that manufacturing facilities and equipment may be shared between those holding like licenses – e.g. a licensed craft distiller may use the manufacturing facilities and equipment of another licenses craft distiller, with the approval of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury, and subject to the provisions of the Liquor Control Act. The law also permits the formation of a cooperative by one or more persons holding a retailer’s license or a dispenser’s license and who is allowed to sell alcoholic beverages in unbroken packages that are for consumption off premises and are not for resale, for the purposes of the advertisement or purchase of alcoholic beverages for retail sale.

The law amends Section 60-8A-1(C) NMSA 1978 to clarify that this subsection, making it unlawful for an importer, manufacturer, nonresident licensee or any kind or class of wholesaler, directly or indirectly, or through an affiliate, to sell, offer for sale or contract to sell to a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee alcoholic beverages of any kind or class on consignment or under a conditional sale or on a basis other than a bona fide sale, does not apply to transactions involving solely the bona fide return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, including a return of alcoholic beverages that are damaged, at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee’s employees or customers.

The effective date of the law is July 1, 2015.

KINSHIP GUARDIANSHIP CHANGES

HB 277

The law amends statutory sections within the Kinship Guardianship Act, Section 40-10B-1 NMSA 1978, as follows:

- removes the requirement that a petitioner seeking the appointment of a guardian allege the marital status of the child (Section 40-10B-5(B));
- clarifies that the court shall set a date for hearing on a petition, for no less than 30 and no more than 90 days from the date of filing the petition (Section 40-10B-6(A)); and
- changes the burden of proof in cases involving an Indian Child to clear and convincing evidence from the previous standard of beyond a reasonable doubt (Section 40-10B-6(C)).

HOMEOWNER ASSOCIATIONS LIMITS ON FLAGS

HB 320

The law amends and enacts statutory sections within the Homeowner Association Act, Section 47-16-1 NMSA 1978 et seq., to prohibit an association from adopting or enforcing a restriction related to the flying or displaying of flags that is more restrictive than the applicable federal or state law or county or municipal ordinance.

The law amends Section 47-16-15(C) NMSA 1978 to provide that except as provided in Sections 47-16-4 and 47-16-8 NMSA and this law, the Homeowner Association Act does not invalidate existing provisions of the articles of incorporation, declaration, bylaws or rules of a homeowner association created before July 1, 2013. The effective date of the law is July 1, 2015.

NO ALTERATION OR SALE OF COUNTERFEIT AIRBAGS

HB 328

The law enacts a new statutory section within the Motor Vehicle Code, Section 66-1-1 NMSA 1978 et seq., to provide a misdemeanor penalty pursuant to Section 31-19-1 NMSA 1978 for the following actions involving an airbag:

- (1) knowingly failing to install an airbag in a motor vehicle after representing to another person that the person will install an airbag in

the motor vehicle;

(2) knowingly installing or reinstalling a counterfeit or nonfunctional airbag in a motor vehicle;

(3) knowingly importing, manufacturing or selling or offering for sale a counterfeit or nonfunctional airbag to be installed in a motor vehicle;

(4) knowingly selling any device, installing or reinstalling in any vehicle any device or take any action that causes the vehicle's diagnostic system to inaccurately indicate that the vehicle is equipped with a functional airbag when a counterfeit airbag, nonfunctional airbag or no airbag is installed;

(5) knowingly representing to another that a counterfeit or nonfunctional airbag is an original equipment manufacturer part;

(6) knowingly and intentionally altering an airbag in a manner that causes the airbag to become a counterfeit or nonfunctional airbag or otherwise defective;

(7) knowingly selling, leasing or renting a motor vehicle that at the time of the sale, lease or rental has a counterfeit or nonfunctional airbag installed;

(8) knowingly renting or offering for hire a motor vehicle that is not equipped with airbags required to be in the motor vehicle by the applicable federal safety regulations for the make, model and year of the vehicle; or

(9) knowingly assisting another in violating the provisions of this law with the intent that the crime be committed.

The law provides that a violation of the law resulting in great bodily harm or death is a fourth degree felony pursuant to Section 31-18-15 NMSA 1978.

The law clarifies that it is not applicable to airbags, counterfeit airbags or nonfunctional airbags in a motor vehicle operated solely on a closed course or track.

The law defines the following terms: "airbag"; "counterfeit airbag"; "great bodily harm"; "knowingly" or "known"; and "nonfunctional airbag".

The effective date of the law is July 1, 2015.

LIQUOR CONTROL TASTING PERMIT VIOLATIONS

HB 335

The law amends Section 60-6A-33 NMSA 1978, within the Liquor Control Act, to provide the following administrative penalties for violations of the Liquor Control Act that occur during tastings conducted pursuant to the person's tasting permit:

- **First violation:** a fine of \$1,000 or less or a restriction on issuance of tasting permits to the person for a period of 2 months, or both;
- **Second violation within a year of first violation:** a fine of \$2,000 or a restriction on issuance of tasting permits to the person for a period of 6 months, or both; and
- **Third violation within a year of the first violation:** a citation against the license held by the person, a fine up to \$5,000 or less and a restriction on issuance of tasting permits to the person for a period of 1 year.

The effective date of the law is July 1, 2015.

N.B.: Currently, any violation of the Liquor Control Act counts against the main liquor license. Pursuant to NMAC 15.10.61.8, three violations in a twelve-month period could result in revocation of the license. The law still provides for sanctions for violations of the Liquor Control Act, but does not immediately impact the main liquor license for a violation at a tasting event. (Per Fiscal Impact Report)

INFORMED CONSENT FOR GENETIC TESTING

HB 369

The law amends statutory sections within the Genetic Information Privacy Act, Section 24-21-1 NMSA 1978 et seq., to add an exception to the prohibition against genetic analysis without written and informed consent for a laboratory conducting an analysis or test of a specified individual pursuant to a written order to the laboratory from a health care practitioner or the health care practitioner's agent, including by electronic transmission.

The law defines "laboratory" to mean a facility accredited pursuant to the federal Clinical Laboratory Improvement Amendments for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological or other examination of

materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings and includes procedures to determine, measure or otherwise describe the presence or absence of various substances or organisms in the body.

The law replaces the term “person” with the term “individual” throughout the Genetic Information Privacy Act, when referring to a human being containing genetic material.

PUBLIC EMPLOYEE LEAVE DONATION POLICIES

HB 403

The law requires state agencies, political subdivisions and school districts to implement policies that provide for employees who earn annual or sick leave the opportunity to donate such leave to another employee for a medical emergency. The policy is required to provide:

- that a reasonable amount of leave may be donated by an employee annually and that each employee shall maintain a certain minimum amount of leave before making a donation of leave in excess of that amount;
- that the donation may be limited to a donation between employees within an organizational unit;
- for an application process for donated leave that includes a method of soliciting donated leave, documentation of the identity of the donor and recipient of leave, a certified document by a health care provider that describes the nature, severity and anticipated duration of the emergency medical condition of the recipient and that includes a statement that the recipient is unable to work all or a portion of the recipient’s work hours, and other information that the employing agency may reasonably require;
- that an employee who wishes to request donated leave shall first use all annual, sick and personal day leave that the employee has accrued and any compensatory time due prior to receiving donated leave;
- for conversion of the value of the donor’s donated leave based on the donor’s hourly rate of pay to hours of leave for the recipient based on the recipient’s hourly rate of pay; and
- that unused donated leave at the end of a medical emergency or

when no longer needed shall revert to the donating employees on a prorated basis.

The law provides that to the extent any provision of this law conflicts with a current collective bargaining agreement negotiated pursuant to the Public Employee Bargaining Act, the provisions of this law shall not apply.

BARBER LICENSURE AFTER APPRENTICESHIP

HB 463

The law amends Section 61-17A-8 NMSA 1978, within the Barbers and Cosmetologists Act, to require issuance of a barber license to a person who files a completed application, accompanied by the required fees and documentation, and who, in addition to other requirements, has completed a course in barbering of at least one thousand two hundred hours in a school *or apprenticeship* approved by the board.

The amendment to Section 61-17A-8 also requires that a barbering license be issued to a person who files a completed application, accompanied by the required fees and documentation, meets the statute's Subsection A education, age, course or apprenticeship hours and examination requirements and shows proof of having successfully completed a registered barbering apprenticeship approved by the state apprenticeship agency and the Board of Barbers and Cosmetologists.

CITY COURT FEE TRANSFER TO CITY GENERAL FUND

HB 487

The law amends Section 35-14-11(E) NMSA 1978 to raise the population threshold level from 3,000 to 10,000 that enables a municipality to transfer unneeded balances in revenues collected from municipal court citations to the municipality's General Fund. Subsection D requires the collected money to first be used for specified activities. Subsection E permits the qualifying municipality to transfer a balance that is over the amount projected to be needed for the next fiscal year for the purposes set forth in Subsection D.

The effective date of the law is July 1, 2015.

INTERNET WINE SALES

HB 489

The law amends Section 60-6A-11 NMSA 1978, within the Liquor Control Act, to provide that a licensed winegrower may accept and fulfill an order for wine that is placed via an internet web site, whether the financial transaction related to the order is administered by the licensee or the licensee's agent.

The effective date of the law is July 1, 2015.

FORFEITURE PROCEDURES & REPORTING

HB 560

The law amends and enacts statutory sections within the Forfeiture Act, Section 31-17-1 NMSA 1978 et seq., to require that forfeiture pursuant to the Forfeiture Act follow a criminal conviction.

Specifically, HB 560 amends and enacts the following statutory sections:

- **Section 31-27-2:** amends the purpose of the Forfeiture Act to clarify that only criminal forfeiture is allowed in NM, and provides that the Forfeiture Act does not apply to contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the Forfeiture Act.
- **Section 31-27-3:** adds definitions for “abandoned property,” “actual knowledge,” “contraband,” “conveyance” and “instrumentality,” and amends the definition of “property subject to forfeiture” to mean property or an instrumentality, as used in the Forfeiture Act.
- **Section 31-27-4:** provides that a person is subject to forfeiture if: (1) the person was arrested for an offense to which forfeiture applies; (2) the person is convicted by a criminal court of the offense; and (3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B. (Subsection A) Following a person's conviction for an offense to which forfeiture applies, a court may order the person to forfeit property the person acquired through commission of the offense, property directly traceable to property acquired through the commission of the offense, and any instrumentality the person used in the commission of the offense. (Subsection B) The law provides that nothing in this section shall prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding. (Subsection C) The bill permits a

court, subject to the provisions of Section 31-27-5 NMSA 1978 and at the request of the state, to issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to the Forfeiture Act and other applicable state laws. (Subsection D) HB 560 permits property subject to forfeiture to be seized at any time, without a prior court order, if: (1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property; (2) the property subject to seizure is the subject of a previous judgment in favor of the state; or (3) the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure. (Subsection E)

- **Section 31-27-4.1 (new material governing receipt for seized property and replevin hearing):** requiring an itemized receipt be provided upon forfeiture; permitting a defendant or another person claiming interest in seized property, at any time before 60 days prior to a related criminal trial, to claim an interest in seized property by a motion to the court to issue a writ of replevin; granting a right to a hearing on a timely motion before the resolution of any related criminal matter or forfeiture proceeding and within 30 days of the date on which the motion is filed; requiring the state to file an answer or responsive motion that shows probable cause for the seizure, at least 10 days before a hearing on a motion filed; requiring the court to grant a claimant's motion upon specified finding by the court; provides that in lieu of ordering the issuance of the writ of replevin, a court may order the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action, or any other relief the court deems to be just.
- **Section 31-27-5:** requires the state to file a complaint of ancillary forfeiture proceedings within 30 days of making a seizure of property or simultaneously upon filing a related criminal indictment, or return the property to the person from whom it was seized. A complaint of ancillary forfeiture proceedings shall include an affidavit from a law

enforcement officer, only when the property was seized without an order of seizure, containing the legal and factual grounds why an order of seizure was not required. The complaint is also required to include, in the complaint caption and in the complaint, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest, among other specified contents. The bill requires a copy of the complaint to be published at least 3 times in a newspaper of general circulation in the district of the court having jurisdiction or on the sunshine portal until the forfeiture proceeding is resolved.

- **Section 31-27-6:** governing forfeiture proceedings, determination, substitution of property, constitutionality and appeal and requires an answer to a complaint of forfeiture, by a person claiming an interest in seized property, filed within 30 days of the date of service of the complaint, to include facts to support the claimant's alleged interest in the property. Provides that the forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. The bill provides that discovery conducted in an ancillary forfeiture proceeding is subject to the rules of criminal procedure. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than \$20,000 shall be held before a judge only. The bill prohibits a court from accepting a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding. In addition to other requirements and procedures specified, HB 560 provides that at any time following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was unconstitutionally excessive pursuant to the state or federal constitution. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors. HB 560 permits a party to a forfeiture proceeding to appeal a district court's decision regarding the seizure,

forfeiture and distribution of property pursuant to the Forfeiture Act.

- **Section 31-27-7:** provides that the state acquires provisional title to seized property at the time the property was used or acquired in connection with an offense that subjects the property to forfeiture, and that title to the property vests with the state when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the state acquired provisional title, provided that the title is subject to claims by third parties that are adjudicated pursuant to the Forfeiture Act. Proceeds from the sale of forfeited property received by the state from another jurisdiction are to be deposited in the general fund. The bill provides that a property interest forfeited to the state pursuant to the Forfeiture Act is subject to the interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property.
- **Section 31-27-7.1 (new material governing innocent owners):** prohibits the property of an innocent owner, as provided in this section, from being forfeited. A claimed innocent owner has the burden of production to show that the person holds a legal right, title or interest in the property seized, and held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value. To successfully forfeit the property of an established innocent owner, the state is required to prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture. If the state fails to meet its burdens, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property. The same burdens and procedures and requirements apply for a person who acquired an ownership interest in property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner, as well as requiring the state to prove by clear and convincing evidence that the person was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.
- **Section 31-27-8:** prohibits a law enforcement agency from retaining forfeited or abandoned property.
- **Section 11 (new material governing reporting):** requires every law enforcement agency to prepare an annual report of the agency's seizures and forfeitures conducted pursuant to the Forfeiture Act and

- conducted pursuant to the federal forfeiture law.
- **Section 12 (new material governing return of property, damages and costs):** requires a law enforcement agency holding seized property to return the seized property to the owner of the property within a reasonable period of time that does not exceed 5 days after: (1) a court finds that a person had a bona fide security interest in the property; (2) a court finds that the owner was an innocent owner; (3) the acquittal of or dismissal of related criminal charges against the owner of the property; or (4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by *nolle prosequi*.
 - **Section 13 (new material governing transfer of forfeitable property to the federal government):** provides circumstances under which a law enforcement agency shall and shall not transfer seized property to the federal government.
 - **Sections 18-6-11, 18-6-11.2, 30-16B-8, 30-31-34 and 30-31-35:** provide for forfeiture, when appropriate, in accordance with the Forfeiture Act.
 - **Section 30-31A-9:** removes from the list of property subject to forfeiture: all imitation controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the Imitation Controlled Substances Act.
 - **Section 30-42-4:** makes technical corrections.

The effective date of the law is July 1, 2015.

ADJUSTING TAX DISTRIBUTIONS TO LOCAL GOVERNMENTS

HB 581 (Duplicates SB 669)

The law amends Section 7-1-6.15 NMSA 1978, governing procedures for the Taxation and Revenue Department to adjust distributions and transfers of gross receipts taxes and certain other taxes to counties and municipalities. The new procedures apply when adjustments reach a certain amount, potentially protecting local governments from a severe financial hardship if the state seeks to recover incorrect revenue distributions. The amendments are to address *City of Eunice v. N.M. Taxation and Revenue Department* 2014-NMCA-085 (writ of certiorari quashed by Supreme Court order of May 11, 2015). In that case, the department was barred from recovering erroneous distributions of more than \$2 million because of statutory time limitations.

Among the amendments to 7-1-6.15, the law expands the time period in which the state may seek to recover distributions, allows the secretary to waive recoverable amounts and provides a 90-day period for a municipality or county to enter into an agreement for repaying the department.

The law also amends 7-1-8.9 NMSA 1978 to expand the gross receipts tax information that can be disclosed to cities and counties while preserving confidentiality of the taxpayer.

The effective date of the law is July 1, 2015.