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SENATE BILL 728

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO GAMING; CHANGING PROVISIONS OF THE GAMING CONTROL ACT AND THE CRIMINAL CODE; CHANGING DEFINITIONS RELATING TO GAMING DEVICES; PROVIDING THAT POSSESSION OF AN UNLICENSED GAMING DEVICE IS ILLEGAL; MAKING TECHNICAL CORRECTIONS AND CLARIFICATIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 30-19-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 19-1, as amended) is amended to read:

"30-19-1. DEFINITIONS RELATING TO GAMBLING.--As used in Chapter 30, Article 19 NMSA 1978:

A. "antique gambling device" means a gambling device ~~[twenty-five years of age or older]~~ manufactured before 1970 and substantially in original condition that is not used

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1 for gambling or commercial gambling or located in a gambling
2 place;

3 B. "bet" means a bargain in which the parties
4 agree that, dependent upon chance, even though accompanied by
5 some skill, one stands to win or lose anything of value
6 specified in the agreement. A bet does not include:

7 (1) bona fide business transactions that are
8 valid under the law of contracts, including:

9 (a) contracts for the purchase or sale,
10 at a future date, of securities or other commodities; and

11 (b) agreements to compensate for loss
12 caused by the happening of the chance, including contracts for
13 indemnity or guaranty and life or health and accident
14 insurance;

15 (2) offers of purses, prizes or premiums to
16 the actual contestants in any bona fide contest for the
17 determination of skill, speed, strength or endurance or to the
18 bona fide owners of animals or vehicles entered in such
19 contest;

20 (3) a lottery as defined in this section; or

21 (4) betting otherwise permitted by law;

22 C. "gambling device" means a mechanical,
23 electromechanical or electronic contrivance other than an
24 antique gambling device that is not licensed for use pursuant
25 to the Gaming Control Act and that, [fœr] upon insertion of a

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1 coin, token or other object, or upon payment of a
2 consideration, affords the player an opportunity to obtain
3 anything of value, the award of which is determined by chance,
4 even though accompanied by some skill, whether or not the
5 prize is automatically paid by the device and whether the
6 contrivance also may sell or deliver something of value on a
7 basis other than chance; "gambling device" includes any
8 contrivance, equipment or a machine that is used in connection
9 with gambling or that is designed, constructed or readily
10 adaptable to such use, even if the contrivance, equipment or
11 machine is not in working order;

12 D. "gambling place" means a building or tent, a
13 vehicle, whether self-propelled or not, or a room within any
14 of them that is not within the premises of a person licensed
15 as a lottery retailer or that is not licensed pursuant to the
16 Gaming Control Act, one of whose principal uses is:

- 17 (1) making and settling of bets;
18 (2) receiving, holding, recording or
19 forwarding bets or offers to bet;
20 (3) conducting lotteries; or
21 (4) playing gambling devices; and

22 E. "lottery" means an enterprise wherein, for [a]
23 money, token or other consideration, the participants are
24 given an opportunity to win a prize, the award of which is
25 determined by chance, even though accompanied by some skill.

1 "Lottery" does not include the New Mexico state lottery
2 established and operated pursuant to the New Mexico Lottery
3 Act or gaming that is licensed and operated pursuant to the
4 Gaming Control Act. As used in this subsection,
5 "consideration" means anything of pecuniary value required to
6 be paid to the promoter in order to participate in a gambling
7 or gaming enterprise. "

8 Section 2. Section 60-2E-3 NMSA 1978 (being Laws 1997,
9 Chapter 190, Section 5, as amended) is amended to read:

10 "60-2E-3. DEFINITIONS. --As used in the Gaming Control
11 Act:

12 A. "affiliate" means a person who, directly or
13 indirectly through one or more intermediaries, controls, is
14 controlled by or is under common control with a specified
15 person;

16 B. "affiliated company" means a company that:

17 (1) controls, is controlled by or is under
18 common control with a company licensee; and

19 (2) is involved in gaming activities or
20 involved in the ownership of property on which gaming is
21 conducted;

22 C. "applicant" means a person who has applied for
23 a license or for approval of an act or transaction for which
24 approval is required or allowed pursuant to the provisions of
25 the Gaming Control Act;

1 D. "application" means a request for the issuance
2 of a license or for approval of an act or transaction for
3 which approval is required or allowed pursuant to the
4 provisions of the Gaming Control Act, but "application" does
5 not include a supplemental form or information that may be
6 required with the application;

7 E. "associated equipment" means equipment or a
8 mechanical, electromechanical or electronic contrivance,
9 component or machine used in connection with gaming;

10 F. "board" means the gaming control board;

11 G. "certification" means a notice of approval by
12 the board of a person required to be certified by the board;

13 H. "certified technician" means a person certified
14 by a manufacturer licensee to repair and service gaming
15 devices, but who is prohibited from programming gaming
16 devices;

17 I. "company" means a corporation, partnership,
18 limited partnership, trust, association, joint stock company,
19 joint venture, limited liability company or other form of
20 business organization that is not a natural person; "company"
21 does not mean a nonprofit organization;

22 J. "distributor" means a person who supplies
23 gaming devices to a gaming operator but does not manufacture
24 gaming devices;

25 K. "equity security" means an interest in a

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1 company that is evidenced by:

2 (1) voting stock or similar security;

3 (2) a security convertible into voting stock
4 or similar security, with or without consideration, or a
5 security carrying a warrant or right to subscribe to or
6 purchase voting stock or similar security;

7 (3) a warrant or right to subscribe to or
8 purchase voting stock or similar security; or

9 (4) a security having a direct or indirect
10 participation in the profits of the issuer;

11 L. "executive director" means the chief
12 administrative officer appointed by the board pursuant to
13 Section 60-2E-7 NMSA 1978;

14 M. "finding of suitability" means a certification
15 of approval issued by the board permitting a person to be
16 involved directly or indirectly with a licensee, relating only
17 to the specified involvement for which it is made;

18 N. "game" means an activity in which, upon
19 insertion of a coin, token or other object or upon payment of
20 consideration, a player [receives] may receive a prize or
21 other thing of value, the award of which is determined by
22 chance even though accompanied by some skill; "game" does not
23 include an activity played with cards in a private residence
24 in which no person makes money for operating the activity
25 except through winnings as a player;

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1 O. "gaming" means offering a game for play;

2 P. "gaming activity" means ~~[any]~~ an endeavor
3 associated with the manufacture or distribution of gaming
4 devices or the conduct of gaming;

5 Q. "gaming device" means associated equipment or a
6 gaming machine and includes a system for processing
7 information that can alter the normal criteria of random
8 selection that affects the operation of a game or determines
9 the outcome of a game; [~~"gaming device" does not include a
10 system or device that affects a game solely by stopping its
11 operation so that the outcome remains undetermined;~~]

12 R. "gaming employee" means a person connected
13 directly with a gaming activity; "gaming employee" does not
14 include:

15 (1) bartenders, cocktail servers or other
16 persons engaged solely in preparing or serving food or
17 beverages;

18 (2) secretarial or janitorial personnel;

19 (3) stage, sound and light technicians; or

20 (4) other nongaming personnel;

21 S. "gaming establishment" means the premises on or
22 in which gaming is conducted;

23 T. "gaming machine" means a mechanical,
24 electromechanical or electronic contrivance or machine that,
25 upon insertion of a coin, token or similar object, or upon

1 payment of any consideration, is available to play or operate
2 a game, whether the payoff is made automatically from the
3 machine or in any other manner and whether the machine or
4 contrivance also may sell or deliver something of value on a
5 basis other than chance; "gaming machine" includes any
6 contrivance or machine that is designed, constructed or
7 readily adaptable to such use, even if the contrivance or
8 machine is not in working order;

9 U. "gaming operator" means a person who conducts
10 gaming;

11 V. "holding company" means a company that directly
12 or indirectly owns or has the power or right to control a
13 company that is an applicant or licensee, but a company that
14 does not have a beneficial ownership of more than ten percent
15 of the equity securities of a publicly traded corporation is
16 not a holding company;

17 W. "immediate family" means natural persons who
18 are related to a specified natural person by affinity or
19 consanguinity in the first through the third degree;

20 X. "independent administrator" means a person who
21 administers an annuity, who is not associated in any manner
22 with the gaming operator licensee for which the annuity was
23 purchased and is in no way associated with the person who will
24 be receiving the annuity;

25 Y. "institutional investor" means a state or

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1 federal government pension plan or a person that meets the
2 requirements of a qualified institutional buyer as defined in
3 Rule 144A of the federal Securities Act of 1933, and is:

4 (1) a bank as defined in Section 3(a)(6) of
5 the federal Securities Exchange Act of 1934;

6 (2) an insurance company as defined in
7 Section 2(a)(17) of the federal Investment Company Act of
8 1940;

9 (3) an investment company registered under
10 Section 8 of the federal Investment Company Act of 1940;

11 (4) an investment adviser registered under
12 Section 203 of the federal Investment Advisers Act of 1940;

13 (5) collective trust funds as defined in
14 Section 3(c)(11) of the federal Investment Company Act of
15 1940;

16 (6) an employee benefit plan or pension fund
17 that is subject to the federal Employee Retirement Income
18 Security Act of 1974, excluding an employee benefit plan or
19 pension fund sponsored by a publicly traded corporation
20 registered with the board; or

21 (7) a group comprised entirely of persons
22 specified in Paragraphs (1) through (6) of this subsection;

23 Z. "intermediary company" means a company that:

24 (1) is a holding company with respect to a
25 company that is an applicant or licensee; and

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1 (2) is a subsidiary with respect to any
2 holding company;

3 AA. "key executive" means an executive of a
4 licensee or other person having the power to exercise
5 significant influence over decisions concerning any part of
6 the licensed operations of the licensee or whose compensation
7 exceeds an amount established by the board in a rule;

8 BB. "license" means an authorization required by
9 the board for engaging in gaming activities;

10 CC. "licensee" means a person to whom a valid
11 license has been issued;

12 DD. "manufacturer" means a person who
13 manufactures, fabricates, assembles, produces, programs or
14 makes modifications to any gaming device for use or play in
15 New Mexico or for sale, lease or distribution outside New
16 Mexico from any location within New Mexico;

17 EE. "net take" means the total of the following,
18 less the total of all cash paid out as losses to winning
19 patrons and those amounts paid to purchase annuities to fund
20 losses paid to winning patrons over several years by
21 independent administrators:

22 (1) cash received from patrons for playing a
23 game;

24 (2) cash received in payment for credit
25 extended by a licensee to a patron for playing a game; and

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1 (3) compensation received for conducting a
2 game in which the licensee is not a party to a wager;

3 FF. "nonprofit organization" means:

4 (1) a bona fide chartered or incorporated
5 branch, lodge, order or association, in existence in New
6 Mexico prior to January 1, 1997, of a fraternal organization
7 that is described in Section 501(c)(8) or (10) of the federal
8 Internal Revenue Code of 1986 and that is exempt from federal
9 income taxation pursuant to Section 501(a) of that code; or

10 (2) a bona fide chartered or incorporated
11 post, auxiliary unit or society of, or a trust or foundation
12 for the post or auxiliary unit, in existence in New Mexico
13 prior to January 1, 1997, of a veterans' organization that is
14 described in Section 501(c)(19) or (23) of the federal
15 Internal Revenue Code of 1986 and that is exempt from federal
16 income taxation pursuant to Section 501(a) of that code;

17 GG. "person" means a legal entity;

18 HH. "premises" means land, together with all
19 buildings, improvements and personal property located on the
20 land;

21 II. "progressive jackpot" means a prize that
22 increases over time or as gaming machines that are linked to a
23 progressive system are played and upon conditions established
24 by the board may be paid by an annuity;

25 JJ. "progressive system" means one or more gaming

1 machines linked to one or more common progressive jackpots;

2 KK. "publicly traded corporation" means a
3 corporation that:

4 (1) has one or more classes of securities
5 registered pursuant to the securities laws of the United
6 States or New Mexico;

7 (2) is an issuer subject to the securities
8 laws of the United States or New Mexico; or

9 (3) has one or more classes of securities
10 registered or is an issuer pursuant to applicable foreign laws
11 that the board finds provide protection for institutional
12 investors that is comparable to or greater than the stricter
13 of the securities laws of the United States or New Mexico;

14 LL. "registration" means a board action that
15 authorizes a company to be a holding company with respect to a
16 company that holds or applies for a license or that relates to
17 other persons required to be registered pursuant to the Gaming
18 Control Act;

19 MM. "subsidiary" means a company, all or a part of
20 whose outstanding equity securities are owned, subject to a
21 power or right of control or held, with power to vote, by a
22 holding company or intermediary company; and

23 NN. "work permit" means a card, certificate or
24 permit issued by the board, whether denominated as a work
25 permit, registration card or otherwise, authorizing the

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1 employment of the holder as a gaming employee. "

2 Section 3. Section 60-2E-5 NMSA 1978 (being Laws 1997,
3 Chapter 190, Section 7) is amended to read:

4 "60-2E-5. GAMING CONTROL BOARD CREATED. --

5 A. The "gaming control board" is created and
6 consists of five members. Three members are appointed by the
7 governor with the advice and consent of the senate, and two
8 members are ex officio: the chairman of the state racing
9 commission and the chairman of the board of the New Mexico
10 lottery authority. All members of the board shall be
11 residents of New Mexico and citizens of the United States.
12 One appointed member of the board shall have a minimum of five
13 years of previous employment in a supervisory and
14 administrative position in a law enforcement agency; one
15 appointed member of the board shall be a certified public
16 accountant in New Mexico who has had at least five years of
17 experience in public accountancy; and one appointed member of
18 the board shall be an attorney who has been admitted to
19 practice before the supreme court of New Mexico.

20 B. The appointed members of the board shall be
21 appointed for terms of five years, except, of the members who
22 are first appointed, the member with law enforcement
23 experience shall be appointed for a term of five years; the
24 member who is a certified public accountant shall be appointed
25 for a term of four years; and the member who is an attorney

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1 shall be appointed for a term of three years. Thereafter, all
2 members shall be appointed for terms of five years. No person
3 shall serve as a board member for more than two consecutive
4 terms or ten years total.

5 C. No person appointed to the board may be
6 employed in any other capacity or shall in any manner receive
7 compensation for services rendered to any person or entity
8 other than the board while a member of the board.

9 D. A vacancy on the board of an appointed member
10 shall be filled within thirty days by the governor with the
11 advice and consent of the senate for the unexpired portion of
12 the term in which the vacancy occurs. A person appointed to
13 fill a vacancy shall meet all qualification requirements of
14 the office established in this section.

15 E. The governor shall choose a chairman annually
16 from the board's appointed membership.

17 F. No more than [~~three~~] two appointed members of
18 the board shall be from the same political party.

19 G. The appointed members of the board shall be
20 full-time state officials and shall receive a salary set by
21 the governor.

22 H. The department of public safety shall conduct
23 background investigations of all members of the board prior to
24 confirmation by the senate. To assist the department in the
25 background investigation, a prospective board member shall

1 furnish a disclosure statement to the department on a form
2 provided by the department containing that information deemed
3 by the department as necessary for completion of a detailed
4 and thorough background investigation. The required
5 information shall include at least:

6 (1) a full set of fingerprints made by a law
7 enforcement agency on forms supplied by the department;

8 (2) complete information and details with
9 respect to the prospective board member's antecedents, habits,
10 immediate family, character, criminal record, business
11 activities, financial affairs and business associates covering
12 at least a ten-year period immediately preceding the date of
13 submitting the disclosure statement;

14 (3) complete disclosure of any equity
15 interest held by the prospective board member or a member of
16 his immediate family in a company that is an applicant or
17 licensee or an affiliate, affiliated company, intermediary
18 company or holding company in respect to an applicant or
19 licensee; and

20 (4) the names and addresses of members of the
21 immediate family of the prospective board member.

22 I. No person may be appointed or confirmed as a
23 member of the board if that person or member of his immediate
24 family holds an equity interest in a company that is an
25 applicant or licensee or an affiliate, affiliated company,

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1 intermediary company or holding company in respect to an
2 applicant or licensee.

3 J. A prospective board member shall provide
4 assistance and information requested by the department of
5 public safety or the governor and shall cooperate in any
6 inquiry or investigation of the prospective board member's
7 fitness or qualifications to hold the office to which he is
8 appointed. The senate shall not confirm a prospective board
9 member if it has reasonable cause to believe that the
10 prospective board member has:

11 (1) knowingly misrepresented or omitted a
12 material fact required in a disclosure statement;

13 (2) been convicted of a felony, a gaming
14 related offense or a crime involving fraud, theft or moral
15 turpitude within ten years immediately preceding the date of
16 submitting a disclosure statement required pursuant to the
17 provisions of Subsection H of this section;

18 (3) exhibited a history of willful disregard
19 for the gaming laws of this or any other state or the United
20 States; or

21 (4) had a permit or license issued pursuant
22 to the gaming laws of this or any other state or the United
23 States permanently suspended or revoked for cause.

24 K. At the time of taking office, each board member
25 shall file with the secretary of state a sworn statement that

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1 he is not disqualified under the provisions of Subsection I of
2 this section. "

3 Section 4. Section 60-2E-7 NMSA 1978 (being Laws 1997,
4 Chapter 190, Section 9) is amended to read:

5 "60-2E-7. BOARD'S POWERS AND DUTIES. --

6 A. The board shall implement the state's policy on
7 gaming consistent with the provisions of the Gaming Control
8 Act. It has the duty to fulfill all responsibilities assigned
9 to it pursuant to that act, and it has all authority necessary
10 to carry out those responsibilities. It may delegate
11 authority to the executive director, but it retains
12 accountability. The board is an adjunct agency.

13 B. The board shall:

14 (1) employ the executive director;

15 (2) make the final decision on issuance,
16 denial, suspension and revocation of all licenses pursuant to
17 and consistent with the provisions of the Gaming Control Act;

18 (3) develop, adopt and promulgate all
19 regulations necessary to implement and administer the
20 provisions of the Gaming Control Act;

21 (4) conduct itself, or employ a hearing
22 officer to conduct, all hearings required by the provisions of
23 the Gaming Control Act and other hearings it deems appropriate
24 to fulfill its responsibilities;

25 (5) meet at least once each month; and

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1 (6) prepare and submit an annual report in
2 December of each year to the governor and the legislature,
3 covering activities of the board in the most recently
4 completed fiscal year, a summary of gaming activities in the
5 state and any recommended changes in or additions to the laws
6 relating to gaming in the state.

7 C. The board may:

8 (1) impose civil fines not to exceed twenty-
9 five thousand dollars (\$25,000) for the first violation and
10 fifty thousand dollars (\$50,000) for subsequent violations of
11 any prohibitory provision of the Gaming Control Act or any
12 prohibitory provision of a regulation adopted pursuant to that
13 act;

14 (2) conduct investigations;

15 (3) subpoena persons and documents to compel
16 access to or the production of documents and records,
17 including books and memoranda, in the custody or control of
18 any licensee;

19 (4) compel the appearance of employees of a
20 licensee or persons for the purpose of ascertaining compliance
21 with provisions of the Gaming Control Act or a regulation
22 adopted pursuant to its provisions;

23 (5) administer oaths and take depositions to
24 the same extent and subject to the same limitations as would
25 apply if the deposition were pursuant to discovery rules in a

1 civil action in the district court;

2 (6) sue and be sued subject to the
3 limitations of the Tort Claims Act;

4 (7) contract for the provision of goods and
5 services necessary to carry out its responsibilities;

6 (8) conduct audits of applicants, licensees
7 and persons affiliated with licensees;

8 (9) inspect, examine, photocopy and audit all
9 documents and records of an applicant or licensee relevant to
10 his gaming activities in the presence of the applicant or
11 licensee or his agent;

12 (10) require verification of income and all
13 other matters pertinent to the gaming activities of an
14 applicant or licensee affecting the enforcement of any
15 provision of the Gaming Control Act;

16 (11) inspect all places where gaming
17 activities are conducted and inspect all property connected
18 with gaming in those places;

19 (12) summarily seize, remove and impound from
20 places inspected any gaming devices, property connected with
21 gaming, documents or records for the purpose of examination or
22 inspection;

23 (13) inspect, examine, photocopy and audit
24 all documents and records of any affiliate of an applicant or
25 licensee who the board knows or reasonably suspects is

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1 involved in the financing, operation or management of the
2 applicant or licensee. The inspection, examination,
3 photocopying and audit shall be in the presence of a
4 representative of the affiliate or its agent when practicable;
5 and

6 (14) except for the powers specified in
7 [~~Paragraphs (1) and~~] Paragraph (4) of this subsection, carry
8 out all or part of the foregoing powers and activities through
9 the executive director.

10 D. The board shall monitor all activity authorized
11 in an Indian Gaming Compact between the state and an Indian
12 nation, tribe or pueblo. The board shall appoint the state
13 gaming representative for the purposes of the compact."

14 Section 5. Section 60-2E-8 NMSA 1978 (being Laws 1997,
15 Chapter 190, Section 10) is amended to read:

16 "60-2E-8. BOARD REGULATIONS--DISCRETIONARY REGULATIONS--
17 PROCEDURE--REQUIRED PROVISIONS.--

18 A. The board may adopt any regulation:

19 (1) consistent with the provisions of the
20 Gaming Control Act; and

21 (2) it decides is necessary to implement the
22 provisions of the Gaming Control Act.

23 B. No regulation shall be adopted, amended or
24 repealed without a public hearing on the proposed action
25 before the board or a hearing officer designated by it. [The

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1 ~~public hearing shall be held in Santa Fe.]~~ Notice of the
2 subject matter of the regulation, the action proposed to be
3 taken, the time and place of the hearing, the manner in which
4 interested persons may present their views and the method by
5 which copies of the proposed regulation, amendment or repeal
6 may be obtained shall be published once at least thirty days
7 prior to the hearing date in a newspaper of general
8 circulation and mailed at least thirty days prior to the
9 hearing date to all persons who have made a written request
10 for advance notice of hearing. All regulations and actions
11 taken on regulations shall be filed in accordance with the
12 State Rules Act.

13 C. The board shall adopt regulations:

14 (1) prescribing the method and form of
15 application to be followed by an applicant;

16 (2) prescribing the information to be
17 furnished by an applicant or licensee concerning his
18 antecedents, immediate family, habits, character, associates,
19 criminal record, business activities and financial affairs,
20 past or present;

21 (3) prescribing the manner and procedure of
22 all hearings conducted by the board or a hearing officer;

23 (4) prescribing the manner and method of
24 collection and payment of fees;

25 (5) prescribing the manner and method of the

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1 issuance of licenses, permits, registrations, certificates and
2 other actions of the board not elsewhere prescribed in the
3 Gaming Control Act;

4 (6) defining the area, games and gaming
5 devices allowed and the methods of operation of the games and
6 gaming devices for authorized gaming;

7 (7) prescribing under what conditions the
8 nonpayment of winnings is grounds for suspension or revocation
9 of a license of a gaming operator;

10 (8) governing the manufacture, sale,
11 distribution, repair and servicing of gaming devices;

12 (9) prescribing accounting procedures,
13 security, collection and verification procedures required of
14 licensees and matters regarding financial responsibility of
15 licensees;

16 (10) prescribing what shall be considered to
17 be an unsuitable method of operating gaming activities;

18 (11) restricting access to confidential
19 information obtained pursuant to the provisions of the Gaming
20 Control Act and ensuring that the confidentiality of that
21 information is maintained and protected;

22 (12) prescribing financial reporting and
23 internal control requirements for licensees;

24 (13) prescribing the manner in which
25 winnings, compensation from gaming activities and net take

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1 shall be computed and reported by a gaming operator licensee;

2 (14) prescribing the frequency of and the
3 matters to be contained in audits of and periodic financial
4 reports from a gaming operator licensee consistent with
5 standards prescribed by the board;

6 (15) prescribing the procedures to be
7 followed by a gaming operator licensee for the exclusion of
8 persons from gaming establishments;

9 (16) establishing criteria and conditions for
10 the operation of progressive systems;

11 (17) establishing criteria and conditions for
12 approval of procurement by the board of personal property
13 valued in excess of twenty thousand dollars (\$20,000),
14 including background investigation requirements for a person
15 submitting a bid or proposal; and

16 (18) establishing an applicant fee schedule
17 for processing applications that is based on costs of the
18 application review incurred by the board whether directly or
19 through payment by the board for costs charged for
20 investigations of applicants by state departments and agencies
21 other than the board, which regulation shall set a maximum fee
22 of one hundred thousand dollars (\$100,000). "

23 Section 6. Section 60-2E-10 NMSA 1978 (being Laws 1997,
24 Chapter 190, Section 12) is amended to read:

25 "60-2E-10. EXECUTIVE DIRECTOR-- POWERS-- DUTIES. --

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1 A. The executive director shall implement the
2 policies of the board.

3 B. The executive director shall employ all
4 personnel who work for the board. The employees shall be
5 covered employees pursuant to the provisions of the Personnel
6 Act. Among those personnel he shall employ and designate an
7 appropriate number of individuals as law enforcement officers
8 subject to proper certification pursuant to the Law
9 Enforcement Training Act.

10 C. The executive director shall establish
11 organizational units he determines are appropriate to
12 administer the provisions of the Gaming Control Act.

13 D. The executive director:

14 (1) may delegate authority to subordinates as
15 he deems necessary and appropriate, clearly delineating the
16 delegated authority and the limitations on it, if any;

17 (2) shall take administrative action by
18 issuing orders and instructions consistent with the Gaming
19 Control Act and regulations of the board to assure
20 implementation of and compliance with the provisions of that
21 act and those regulations;

22 (3) may issue administrative citations to a
23 licensee upon a reasonable belief that the licensee has
24 violated or is violating a provision of the Gaming Control Act
25 or rules of the board;

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1 [~~(3)~~] (4) may conduct research and studies
2 that will improve the operations of the board and the
3 provision of services to the citizens of the state;

4 [~~(4)~~] (5) may provide courses of instruction
5 and practical training for employees of the board and other
6 persons involved in the activities regulated by the board with
7 the objectives of improving operations of the board and
8 achieving compliance with the law and regulations;

9 [~~(5)~~] (6) shall prepare an annual budget for
10 the board and submit it to the board for approval; and

11 [~~(6)~~] (7) shall make recommendations to the
12 board of proposed regulations and any legislative changes
13 needed to provide better administration of the Gaming Control
14 Act and fair and efficient regulation of gaming activities in
15 the state. "

16 Section 7. Section 60-2E-11 NMSA 1978 (being Laws 1997,
17 Chapter 190, Section 13) is amended to read:

18 "60-2E-11. INVESTIGATION OF EXECUTIVE DIRECTOR
19 CANDIDATES AND EMPLOYEES. --

20 A. A person who is under consideration in the
21 final selection process for appointment as the executive
22 director shall file a disclosure statement pursuant to the
23 requirements of this section, and the board shall not make an
24 appointment of a person as executive director until a
25 background investigation is completed by the [~~department of~~

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1 ~~public safety]~~ board's law enforcement officers and a report
2 is made to the board.

3 B. A person who has reached the final selection
4 process for employment by the executive director shall file a
5 disclosure statement pursuant to the requirements of this
6 section if the executive director or the board has directed
7 the person do so. The person shall not be further considered
8 for employment until a background investigation is completed
9 by the [~~department of public safety]~~ board's law enforcement
10 officers and a report is made to the executive director.

11 C. Forms for the disclosure statements required by
12 this section shall be developed by the board in cooperation
13 with the department of public safety. At least the following
14 information shall be required of a person submitting a
15 statement:

16 (1) a full set of fingerprints made by a law
17 enforcement agency on forms supplied by the board;

18 (2) complete information and details with
19 respect to the person's antecedents, habits, immediate family,
20 character, criminal record, business activities and business
21 associates, covering at least a ten-year period immediately
22 preceding the date of submitting the disclosure statement; and

23 (3) a complete description of any equity
24 interest held in a business connected with the gaming
25 industry.

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1 D. In preparing an investigative report, the
2 ~~[department of public safety]~~ board's law enforcement officers
3 may request and receive criminal history information from the
4 federal bureau of investigation or any other law enforcement
5 agency or organization. The ~~[department of public safety]~~
6 board's law enforcement officers shall maintain
7 confidentiality regarding information received from a law
8 enforcement agency that may be imposed by the agency as a
9 condition for providing the information to the department.

10 E. A person required to file a disclosure
11 statement shall provide any assistance or information
12 requested by the department of public safety or the board and
13 shall cooperate in any inquiry or investigation.

14 F. If information required to be included in a
15 disclosure statement changes or if information is added after
16 the statement is filed, the person required to file it shall
17 provide that information in writing to the person requesting
18 the investigation. The supplemental information shall be
19 provided within thirty days after the change or addition.

20 G. The board shall not appoint a person as
21 executive director, and the executive director shall not
22 employ a person, if the board or the executive director has
23 reasonable cause to believe that the person has:

24 (1) knowingly misrepresented or omitted a
25 material fact required in a disclosure statement;

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1 (2) been convicted of a felony, a gaming
2 related offense or a crime involving fraud, theft or moral
3 turpitude within ten years immediately preceding the date of
4 submitting a disclosure statement required pursuant to this
5 section;

6 (3) exhibited a history of willful disregard
7 for the gaming laws of this or any other state or the United
8 States; or

9 (4) had a permit or license issued pursuant
10 to the gaming laws of this or any other state or the United
11 States permanently suspended or revoked for cause.

12 H. Both the board and the executive director may
13 exercise absolute discretion in exercising their respective
14 appointing and employing powers. "

15 Section 8. Section 60-2E-13 NMSA 1978 (being Laws 1997,
16 Chapter 190, Section 15) is amended to read:

17 "60-2E-13. ACTIVITIES REQUIRING LICENSING. --

18 A. A person shall not conduct gaming unless he is
19 licensed as a gaming operator.

20 B. A person shall not sell, supply or distribute
21 any gaming device or associated equipment for use or play in
22 this state or for use or play outside of this state from a
23 location within this state unless he is licensed as a
24 distributor or manufacturer, but a gaming operator licensee
25 may sell or trade in a gaming device or associated equipment

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1 to a gaming operator licensee, distributor licensee or
2 manufacturer licensee.

3 C. A person shall not manufacture, fabricate,
4 assemble, program or make modifications to a gaming device or
5 associated equipment for use or play in this state or for use
6 or play outside of this state from any location within this
7 state unless he is licensed as a manufacturer [~~licensee~~]. A
8 manufacturer licensee may sell, supply or distribute only the
9 gaming devices or associated equipment that he manufactures,
10 fabricates, assembles, programs or modifies.

11 D. A gaming operator licensee or a person other
12 than a manufacturer licensee or distributor licensee shall not
13 possess an unlicensed gaming machine or control a place where
14 there is an unlicensed gaming machine. Any unlicensed gaming
15 machine, except one in the possession of a licensee while
16 awaiting transfer to a gaming operator licensee for licensure
17 of the machine, is subject to seizure and forfeiture [~~and~~
18 ~~confiscation~~] by any law enforcement agency or peace officer.

19 E. A person shall not service or repair a gaming
20 device or associated equipment unless he is licensed as a
21 manufacturer, is employed by a manufacturer licensee or is a
22 technician certified by a manufacturer licensee and employed
23 by a distributor licensee or a gaming operator licensee.

24 F. A person shall not engage in any activity for
25 which the board requires a license or permit without obtaining

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1 the license or permit.

2 G. Except as provided in Subsection B of this
3 section, a person shall not purchase, lease or acquire
4 possession of a gaming device or associated equipment except
5 from a licensed distributor or manufacturer.

6 H. A distributor licensee may receive a percentage
7 of the amount wagered, the net take or other measure related
8 to the operation of a gaming machine as a payment pursuant to
9 a lease or other arrangement for furnishing a gaming machine,
10 but the board shall adopt a regulation setting the maximum
11 allowable percentage. "

12 Section 9. Section 60-2E-14 NMSA 1978 (being Laws 1997,
13 Chapter 190, Section 16) is amended to read:

14 "60-2E-14. LICENSURE--APPLICATION. --

15 A. The board shall establish and issue the
16 following categories of licenses:

- 17 (1) manufacturer;
- 18 (2) distributor;
- 19 (3) gaming operator; and
- 20 (4) gaming machine.

21 B. The board shall issue certifications of
22 findings of suitability for key executives and other persons
23 for whom certification is required.

24 C. The board shall issue work permits for gaming
25 employees.

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1 D. A licensee shall not be issued more than one
2 type of license, but this provision does not prohibit a
3 licensee from owning, leasing, acquiring or having in his
4 possession licensed gaming machines if that activity is
5 otherwise allowed by the provisions of the Gaming Control Act.
6 A licensee shall not own a majority interest in, manage or
7 otherwise control a holder of another type of license issued
8 pursuant to the provisions of that act.

9 E. Applicants shall apply on forms provided by the
10 board and furnish all information requested by the board.
11 Submission of an application constitutes consent to a credit
12 check of the applicant and all persons having a substantial
13 interest in the applicant and any other background
14 investigations required pursuant to the Gaming Control Act or
15 deemed necessary by the board. The board may obtain from the
16 taxation and revenue department copies of tax returns filed by
17 or on behalf of the applicant or its affiliates and
18 information concerning liens imposed on the applicant or its
19 affiliates by the taxation and revenue department.

20 F. All licenses issued by the board pursuant to
21 the provisions of this section shall be reviewed for renewal
22 annually unless revoked, suspended, canceled or terminated.

23 G. A license shall not be transferred or assigned.

24 H. The application for a license shall include:

25 (1) the name of the applicant;

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1 (2) the location of the proposed operation;

2 (3) the gaming devices to be operated,
3 manufactured, distributed or serviced;

4 (4) the names of all persons having a direct
5 or indirect interest in the business of the applicant and the
6 nature of such interest; and

7 (5) such other information and details as the
8 board may require.

9 I. The board shall furnish to the applicant
10 supplemental forms that the applicant shall complete and file
11 with the application. Such supplemental forms shall require
12 complete information and details with respect to the
13 applicant's antecedents, habits, immediate family, character,
14 criminal record, business activities, financial affairs and
15 business associates, covering at least a ten-year period
16 immediately preceding the date of filing of the application."

17 Section 10. Section 60-2E-23 NMSA 1978 (being Laws 1997,
18 Chapter 190, Section 25, as amended) is amended to read:

19 "60-2E-23. FINDING OF SUITABILITY REQUIRED FOR
20 DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION
21 IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

22 A. Each officer, director and key executive of a
23 holding company, intermediary company or publicly traded
24 corporation [~~that~~] who the board determines is or is to become
25 actively and directly engaged in the administration or

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1 supervision of, or any other significant involvement with, the
2 activities of the subsidiary licensee or applicant shall apply
3 for a finding of suitability.

4 B. If any officer, director or key executive of
5 a holding company, intermediary company or publicly traded
6 corporation required to be found suitable pursuant to
7 Subsection A of this section fails to apply for a finding of
8 suitability within thirty days after being requested to do
9 so by the board, or is not found suitable by the board, or
10 if his finding of suitability is revoked after appropriate
11 findings by the board, the holding company, intermediary
12 company or publicly traded corporation shall immediately
13 remove that officer, director or key executive from any
14 office or position in which the person is engaged in the
15 administration or supervision of, or any other involvement
16 with, the activities of the certified subsidiary until the
17 person is thereafter found to be suitable. If the board
18 suspends the finding of suitability of any officer, director
19 or key executive, the holding company, intermediary company
20 or publicly traded corporation shall immediately and for the
21 duration of the suspension suspend that officer, director or
22 key executive from performance of any duties in which he is
23 actively and directly engaged in the administration or
24 supervision of, or any other involvement with, the
25 activities of the subsidiary licensee. "

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1 Section 11. Section 60-2E-30 NMSA 1978 (being Laws
2 1997, Chapter 190, Section 32) is amended to read:

3 "60-2E-30. LICENSING OF DISTRIBUTORS OF GAMING
4 DEVICES. --

5 A. It is unlawful for any person to operate,
6 carry on, conduct or maintain any form of distribution of
7 any gaming device for use or play in New Mexico or any form
8 of distribution of any gaming device in New Mexico for use
9 or play outside of New Mexico without first obtaining and
10 maintaining a distributor's or manufacturer's license.

11 B. If the board revokes a distributor's license:

12 (1) no new gaming device distributed by the
13 person may be approved;

14 (2) any previously approved gaming device
15 distributed by the distributor is subject to revocation of
16 approval if the reasons for the revocation of the license
17 also apply to that gaming device;

18 (3) no new gaming device or associated
19 equipment distributed by the distributor may be distributed,
20 sold, transferred or offered for use or play in New Mexico;
21 and

22 (4) any association or agreement between
23 the distributor and a gaming operator licensee shall be
24 terminated. An agreement between a distributor licensee and
25 a gaming operator licensee shall be deemed to include a

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1 provision for its termination without liability on the part
2 of either party upon a finding by the board that the other
3 party is unsuitable. Failure to include that condition in
4 the agreement is not a defense in any action brought
5 pursuant to this section to terminate the agreement.

6 C. The board may inspect every gaming device
7 that is distributed for use in New Mexico.

8 D. In addition to all other fees and charges
9 imposed by the Gaming Control Act, the board may determine,
10 charge and collect from each distributor an inspection fee,
11 which shall not exceed the actual cost of inspection and
12 investigation. "

13 Section 12. Section 60-2E-32 NMSA 1978 (being Laws
14 1997, Chapter 190, Section 34) is amended to read:

15 "60-2E-32. REASONS FOR INVESTIGATIONS BY BOARD--
16 COMPLAINT BY BOARD--BOARD TO APPOINT HEARING EXAMINER--
17 REVIEW BY BOARD--ORDER OF BOARD.--

18 A. The board shall make appropriate
19 investigations to:

20 (1) determine whether there has been any
21 violation of the Gaming Control Act or of any regulations
22 adopted pursuant to that act;

23 (2) determine any facts, conditions,
24 practices or matters that it deems necessary or proper to
25 aid in the enforcement of the Gaming Control Act or

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1 regulations adopted pursuant to that act;

2 (3) aid in adopting regulations;

3 (4) secure information as a basis for
4 recommending legislation relating to the Gaming Control Act;
5 or

6 (5) determine whether a licensee is able to
7 meet its financial obligations, including all financial
8 obligations imposed by the Gaming Control Act, as they
9 become due.

10 B. If after an investigation the board is
11 satisfied that a license, registration, finding of
12 suitability or prior approval by the board of any
13 transaction for which approval was required by the
14 provisions of the Gaming Control Act should be limited,
15 conditioned, suspended or revoked, or that a fine should be
16 levied, the board shall initiate a hearing by filing a
17 complaint and transmitting a copy of it to the licensee,
18 together with a summary of evidence in its possession
19 bearing on the matter and the transcript of testimony at any
20 investigative hearing conducted by or on behalf of the
21 board. The complaint shall be a written statement of
22 charges that sets forth in ordinary and concise language the
23 acts or omissions with which the respondent is charged. It
24 shall specify the statutes or regulations that the
25 respondent is alleged to have violated but shall not consist

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1 merely of charges raised in the language of the statutes or
2 regulations. The summary of the evidence shall be
3 confidential and made available only to the respondent until
4 such time as it is offered into evidence at any public
5 hearing on the matter.

6 C. The respondent shall file an answer within
7 thirty days after service of the complaint.

8 D. Upon filing the complaint the board shall
9 appoint a hearing examiner to conduct further proceedings.

10 E. The hearing examiner shall conduct
11 proceedings in accordance with the Gaming Control Act and
12 the regulations adopted by the board. At the conclusion of
13 the proceedings, the hearing examiner may recommend that the
14 board take any appropriate action, including revocation,
15 suspension, limitation or conditioning of a license or
16 imposition of a fine not to exceed fifty thousand dollars
17 (\$50,000) for each violation or any combination or all of
18 the foregoing actions.

19 F. The hearing examiner shall prepare a written
20 decision containing his recommendation to the board and
21 shall serve it on all parties. ~~[Any respondent who~~
22 ~~disagrees with the hearing examiner's recommendation may~~
23 ~~request the board, within ten days of service of the~~
24 ~~recommendation, to review the recommendation.]~~

25 G. ~~Upon proper request, the board shall review~~

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1 ~~the recommendation. The board may remand the case to the~~
2 ~~hearing examiner for the presentation of additional evidence~~
3 ~~upon a showing of good cause why such evidence could not~~
4 ~~have been presented at the previous hearing.~~

5 ~~H.]~~ G. The board shall by a majority vote
6 accept, reject or modify the recommendation.

7 ~~[F.]~~ H. If the board limits, conditions,
8 suspends or revokes any license or imposes a fine or limits,
9 conditions, suspends or revokes any registration, finding of
10 suitability or prior approval, it shall issue a written
11 order specifying its action.

12 ~~[J.]~~ I. The board's order is effective on the
13 date issued and continues in effect unless [and until]
14 reversed upon judicial review, except that the board may
15 stay its order pending a rehearing or judicial review upon
16 such terms and conditions as it deems proper. "

17 Section 13. Section 60-2E-50 NMSA 1978 (being Laws
18 1997, Chapter 190, Section 52) is amended to read:

19 "60-2E-50. CRIME--MANIPULATION OF GAMING DEVICE WITH
20 INTENT TO CHEAT.--A person who manipulates, with the intent
21 to cheat, any component of a gaming device in a manner
22 contrary to the designed and normal operational purpose of
23 the component, including varying the pull of the handle of a
24 ~~[slot]~~ gaming machine with knowledge that the manipulation
25 affects the outcome of the game or with knowledge of any

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1 event that affects the outcome of the game, is guilty of a
2 fourth degree felony and shall be sentenced pursuant to the
3 provisions of Section 31-18-15 NMSA 1978. "

4 Section 14. Section 60-2E-59 NMSA 1978 (being Laws
5 1997, Chapter 190, Section 61) is amended to read:

6 "60-2E-59. ADMINISTRATIVE APPEAL OF BOARD ACTION. --

7 A. Any person aggrieved by an action taken by
8 the board or one of its agents may request and receive a
9 hearing for the purpose of reviewing the action. To obtain
10 a hearing the aggrieved person shall file a request for
11 hearing with the board within thirty days after the date the
12 action is taken. Failure to file the request within the
13 specified time is an irrevocable waiver of the right to a
14 hearing, and the action complained of shall be final with no
15 further right to review, either administratively or by a
16 court.

17 B. The board shall adopt procedural regulations
18 to govern the procedures to be followed in administrative
19 hearings pursuant to the provisions of this section. At a
20 minimum, the regulations shall provide:

21 (1) for the hearings to be public;

22 (2) for the appointment of a hearing
23 officer to conduct the hearing and make his recommendation
24 to the board not more than ~~[ten]~~ thirty days after the
25 completion of the hearing;

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- 1 (3) procedures for discovery;
- 2 (4) assurance that procedural due process
- 3 requirements are satisfied;
- 4 (5) for the maintenance of a record of the
- 5 hearing proceedings and assessment of costs of any
- 6 transcription of testimony that is required for judicial
- 7 review purposes; and
- 8 (6) for the hearing to be held in [~~Santa Fe~~
- 9 ~~for enforcement hearings and hearings on actions of~~
- 10 ~~statewide application, and to be held]~~ Albuquerque or, upon
- 11 written request by the licensees, in the place or area
- 12 affected [~~for enforcement hearings and hearings on actions~~
- 13 ~~of limited local concern]~~.

14 C. Actions taken by the board after a hearing

15 pursuant to the provisions of this section shall be:

- 16 (1) written and shall state the reasons for
- 17 the action;
- 18 (2) made public when taken;
- 19 (3) communicated to all persons who have
- 20 made a written request for notification of the action taken;
- 21 and
- 22 (4) taken not more than thirty days after
- 23 the submission of the hearing officer's report to the
- 24 board. "

25 Section 15. Section 60-2E-60 NMSA 1978 (being Laws

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1 1997, Chapter 190, Section 62) is amended to read:

2 "60-2E-60. JUDICIAL REVIEW OF ADMINISTRATIVE
3 ACTIONS. --

4 A. Any person adversely affected by an action
5 taken by the board after review pursuant to the provisions
6 of Section [~~61 of the Gaming Control Act~~] 60-2E-59 NMSA 1978
7 may appeal the action to the court of appeals within thirty
8 days after the date the action is taken. The appeal shall
9 be on the record made at the hearing. To support his
10 appeal, the appellant shall make arrangements with the board
11 for a sufficient number of transcripts of the record of the
12 hearing on which the appeal is based. The appellant shall
13 pay for the preparation of the transcripts.

14 B. On appeal, the court of appeals shall set
15 aside the administrative action only if it is found to be:

- 16 (1) arbitrary, capricious or an abuse of
17 discretion;
- 18 (2) not supported by substantial evidence
19 in the whole record; or
- 20 (3) otherwise not in accordance with law. "

21 Section 16. Section 60-2E-61 NMSA 1978 (being Laws
22 1997, Chapter 190, Section 63) is amended to read:

23 "60-2E-61. LIEN ON WINNINGS FOR DEBT COLLECTED BY
24 HUMAN SERVICES DEPARTMENT-- PAYMENT TO DEPARTMENT--
25 PROCEDURE. --

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1 A. The human services department, acting as the
2 state's child support enforcement agency pursuant to Title
3 IV-D of the Social Security Act, [~~shall periodically certify~~
4 ~~to the board the names and social security numbers of~~
5 ~~persons owing a debt to or collected by the human services~~
6 ~~department]~~ may impose liens against winnings described in
7 this section in the amount of the debt collected by, or
8 owned by the winner to, the department.

9 B. Prior to the payment of a gaming machine
10 amount in excess of six hundred dollars (\$600), the [~~board]~~
11 gaming operator licensee shall [~~check the name of the winner~~
12 ~~against the list of names and social security numbers of~~
13 ~~persons owing a debt to or collected by the human services~~
14 ~~department.~~

15 C. ~~If the winner is on the list of persons owing~~
16 ~~a debt to or collected by the agency, the board shall make a~~
17 ~~good faith attempt to notify the human services department]~~
18 obtain from the winner written verification of the winner's
19 name, address, social security number or other taxpayer
20 identification number and other identifying information.
21 Not less than once per month, the gaming operator licensee
22 shall notify the human services department of any such
23 winner, and the department then has a lien against the
24 winnings in the amount of the debt owed to or collected by
25 the agency. The board [~~has~~] and the gaming operator

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1 licensee have no liability to the human services department
2 or the person on whose behalf the department is collecting
3 the debt if the [~~board fails to match a winner's name to a~~
4 ~~name on the list or~~] gaming operator licensee is unable to
5 notify the department of a [~~match. The department shall~~
6 ~~provide the board with written notice of a support lien~~
7 ~~promptly within five working days after the board notifies~~
8 ~~the department of a match.~~

9 D. ~~If the amount won is to be paid directly by~~
10 ~~the board, the amount of the debt owed to or collected by~~
11 ~~the human services department shall be held by the board for~~
12 ~~a period of thirty days from the board's confirmation of the~~
13 ~~amount of the debt to allow the department to institute any~~
14 ~~necessary garnishment or wage withholding proceedings. If a~~
15 ~~garnishment or withholding proceeding is not initiated~~
16 ~~within the thirty-day period, the board shall release the~~
17 ~~amount won to the winner.~~

18 E. ~~The human services department, in its~~
19 ~~discretion, may release or partially release the support~~
20 ~~lien upon written notice to the board] winner. Neither a
21 gaming operator licensee nor the board shall be liable under
22 any state law to any person for disclosing of information to
23 the human services department under this section or for any
24 other action taken in good faith to comply with the
25 requirements of this section.~~

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[F-] C. A support lien under this section is in addition to any other lien created by law. "

Section 17. A new section of the Gaming Control Act, Section 60-2E-63 NMSA 1978, is enacted to read:

"60-2E-63. [NEW MATERIAL] CRIME--UNLAWFUL POSSESSION OF GAMING DEVICE.--

A. It is unlawful for a person intentionally to possess an unlicensed gaming device or gaming machine, except a distributor licensee or a manufacturer licensee while awaiting transfer to a gaming operator licensee for licensure of the gaming device or gaming machine.

B. A person may possess an antique gambling device as defined in Section 30-19-1 NMSA 1978, provided the antique gambling device is not used in gambling.

C. Any person violating this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978. "

Section 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.