

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Leavell DATE TYPED: 03/16/01 HB _____
 SHORT TITLE: Amend Gaming Control Act SB 728/aSfI #1/aHBIC
 ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

Companion to HB18
 Possible Conflict with HB18 and SB314

SOURCES OF INFORMATION

Gaming Control Board
 Administrative Office of the Courts (AOC)
 Office of the Attorney General (AG)
 Human Services Department, Child Support Enforcement Division

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment strikes all of Senate Floor Amendment #1 described below.

Synopsis of SF1 #1 Amendment

The Senate Floor Amendment No. 1 deletes the chairman of the State Racing Commission and the Chairman of the Board of the New Mexico Lottery Authority as ex officio members of the Gaming Control Board. The Gaming Control Board would now only consist of three members appointed by the Governor.

Synopsis of Original Bill

Senate Bill 728 makes changes to the Gaming Control Act for consistency, efficiency of operations and clarification. Following is a summary by section of Senate bill 728 provisions as provided by the Gaming Control Board:

Senate Bill 728/aSFI #1/aHBIC -- Page 2

Section 1. A specific date (1970) is established to determine whether a gaming device is considered an antique for purposes of determining the legality of the device. The bill also amends the definition of “gambling device” and “lottery” to include money, tokens or other consideration and to include any machine that is designed, constructed or readily adaptable for use in gambling.

Section 2. The bill amends the definition of “game” by identifying various types of consideration that may activate a “game,” providing that a game may, but does not necessarily, award a prize, and specifying that playing cards in a private residence where no one makes money operating the activity is not a prohibited activity. Amendments also include a change in the definition of “gaming machine” to clarify that the design of the machine, not its use, determines whether it is a legal device under the Act.

Section 3. The amendment provides that no more than two of the appointed Board members may be of the same political party. As currently written, no more than three members may be from the same party. Current language could include ex officio members from the Racing Commission and the Lottery Commission in the restriction, and the political parties of Gaming Control Board members could dictate the parties of the chairpersons of the Racing Commission and Lottery Commission.

Section 4. The bill allows the Board to delegate its authority to impose fines.

Section 5. The amendment eliminates the requirement that rulemaking hearings be conducted in Santa Fe.

Section 6. The executive director may issue administrative citations where there is reasonable belief that a violation has occurred.

Section 7. The bill amends background investigation procedures by providing that the Board’s law enforcement officers, rather than the Department of Public Safety, will conduct background investigations on applicants for employment with the Board. The bill also allows the Board’s law enforcement officers to receive an applicant’s criminal history information from other law enforcement agencies.

Section 8. The bill changes “manufacturer licensee” to “licensed as a manufacturer.” The change makes the reference consistent with language in other parts of Section 60-2E-13. Other amendments state that it is illegal to possess an unlicensed gaming machine.

Section 9. The Board may obtain tax information on applicants from the Taxation and Revenue Department.

Section 10. Grammatical change (“that” to “who”).

Section 11. The amendment conforms licensure requirements for distributors and manufacturers by providing that a license is necessary for anyone who distributes gaming machines from within New Mexico for use or play outside New Mexico.

Section 12. The bill deletes language concerning requests to the Board for remand of a matter to a hearing officer for additional evidence.

Section 13. "Slot machine" is changed to "gaming machine." "Slot machine" is not a defined term and does not appear elsewhere in the Act.

Section 14. The amendment increases the time frame in which a hearing officer must submit his recommendation to the Board from 10 to 30 days. The amendment also provides that administrative hearings will be conducted in Albuquerque or, at the licensee's request, in the place or area affected.

Section 15. Administrative appeals to the Court of Appeals must be filed within 30 days after the Board takes action.

Section 16. The bill changes the process by which the Human Services Department obtains information on winners of prizes in excess of \$600. The proposed amendment requires gaming operator licensees to provide to Human Services specific information about winners of \$600 or more so that Human Services can determine whether to impose liens for unpaid child support.

Section 17. New language specifies that it is illegal for a person to intentionally possess an unlicensed gaming device. The bill also amends provisions for seizure of gaming devices to conform to Criminal Code provisions for seizure and destruction of unlicensed gaming devices upon court order.

Section 18. The bill contains an emergency clause.

Significant Issues

The Human Services Department reports the provisions of this bill would affect the collection of child support liens on gaming winnings for the following reasons: mandatory liens on winnings would be converted to permissive lien on winnings; the Child Support Enforcement Division (CSED) would only have to be notified of winners once a month, long after the monies are disbursed; gaming operators liability would be removed from failing to notify CSED of winners; and verification of winner's identity is not required allowing for false names, social security numbers, and other information to be used.

PERFORMANCE IMPLICATIONS

The Gaming Control Board will transition into performance based budgeting in FY03. Although performance measures haven't been formally developed or adopted for this agency, the Gaming Control Board indicates the provisions of this bill will assist in carrying out the provisions of the Gaming Control Act specifically as outlined below:

Enactment of the bill will enhance the Board's ability to regulate licensed gambling and limit unlicensed gambling by clarifying definitions relating to gaming devices, specifying crimes relating to possession of gaming devices, allowing for delegation of authority, and conforming language internally and with the Criminal Code. Changes in definitions will help ensure consistency among the Act, the Criminal Code and gaming technology. The bill also streamlines processes, including procedures to be used by Human Services for imposing liens on winnings over \$600 for unpaid child support. The current provision appears to have been copied from the Lottery Act. It assumes the Board, like the Lottery Commission, pays winnings and, therefore, is in a position to withhold winnings from persons owing child support payments. The Board, however, does not make payouts.

The provision in the bill allowing the Board to delegate its authority to impose fines also will improve administration and enforcement of the Act. This would allow the executive director to settle cases within parameters established by the Board, because settlement often will include agreed-upon fines.

Changes in the location for rulemaking hearings will help ensure full hearings. The current requirement that rulemaking hearings be conducted in Santa Fe is a deterrent to full public hearings because a significant number of the Board's licensees cannot, or do not, attend hearings in Santa Fe.

In addition, administration of the Act would be enhanced by the proposed changes in background investigation procedures for applicants for employment. The Act currently provides that the Department of Public Safety ("DPS") will conduct those investigations. DPS, however, has entered a cooperative agreement with the Board so that the investigations are conducted in-house by the Board's law enforcement officers. The amendment allowing in-house investigations streamlines the process and reflects current procedures under cooperative agreement of both agencies.

Licensing activities may be improved under the provision allowing the Board to obtain information directly from Taxation and Revenue concerning an applicant's tax history. The IRS currently provides federal tax information to the Board, with consent of the applicant. The same process with respect to state taxes will expedite the licensing process.

ADMINISTRATIVE IMPLICATIONS

The Public Safety, Taxation and Revenue and Human Services Departments will be affected in the following ways:

Section 7 of the bill (pp. 25-28) amends background investigation procedures by providing that the Board's law enforcement officers, rather than the Department of Public Safety, will conduct background investigations on applicants for employment with the Board and allows the Board's law enforcement officers to receive an applicant's criminal history information from other law enforcement agencies.

Section 9 (pp. 30-32) allows the Gaming Control Board to obtain from the Taxation and Revenue Department copies of tax returns filed by or on behalf of the applicant or its affiliates and information concerning liens imposed on the applicant or its affiliates by the Taxation and Revenue Department.

Changes in Section 16 of the bill shifts the responsibility of identifying persons with unpaid child support obligations from the Gaming Control Board to the Human Services Department.

CONFLICT/RELATIONSHIP

This bill could conflict with HB18 and companion bill SB314 if those bills are passed without amendments providing that the Gaming Control Board is not required to return illegal gambling devices.

OTHER SUBSTANTIVE ISSUES

The Human Services Department proposes alternatives to be included in this bill as follows:

Leave the existing lien statute intact, but increase the limit from \$600.00 to \$1,200.00 to match the federal Internal Revenue Service requirements for tax withholding, and clarify responsibilities. The following change is recommended.

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

- A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act, shall periodically certify to the board the names and social security numbers of persons owing a debt to or collected by the human services department. The board shall furnish such list to all licensed gaming establishments or gaming operator licensees. The Human services department shall impose liens against winnings described in this section in the amount of the debt collected by, or owned by the winner to, the department.
- B. Prior to the payment of a gaming machine amount in excess of **twelve hundred dollars (\$1,200)** [six hundred dollars (\$600)], the {board} **gaming operator licensee** shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department.
- C. If the winner is on the list of persons owing a debt to or collected by the agency, the **gaming operator licensee** [board] shall [make a good-faith attempt to] **withhold any winnings** and notify the human services department **not less than 5 working days of any such winner**, and the department then has a lien against the winnings in the amount of the debt owed to or collected by the agency. [The board has no liability to the human services department or the person on whose behalf the department is collecting the debt if the board fails to match a winner's name to a name on the list or is unable to notify the department of a match.] The department shall provide the **gaming operator licensee** [board with] written **confirmation** [notice] of a support lien [promptly] within five working days after the **gaming operator licensee** [board] notifies the department of a match.
- D. [If the amount won is to be paid directly by the board, the amount of the debt owed to or collected by the human services department shall be held by the board] [f] For a period of thirty days from **the date the gaming operator licensee notifies the department**, [the board's confirmation of the amount of the debt] **the gaming operator licensee shall hold the winnings of a person matched against the list furnished by the human services department** to allow the department to institute any necessary **administrative proceedings, lien enforcement**, garnishment or wage withholding proceedings. If a [garnishment or withholding] proceeding is not initiated within the thirty-day period, the **gaming operator licensee may** [board shall] release the amount won to the winner.
- E. The human services department, in its discretion, may release or partially release the support lien upon written notice to the [board] **gaming operator licensee**. **Neither a gaming operator licensee nor the board shall be liable under any state law to any person for disclosing information to the human services department**

under this section or for any other action taken in good faith to comply with the requirements of this section.

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

POSSIBLE QUESTIONS

1. Should a time limitation be established for the Gaming Control Board's acceptance, rejection or modification of a hearing officer's recommendation?

JMG/ar