

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 manufactured before 1970 and substantially in original condition that is not used for gambling or commercial gambling or located in a gambling place;

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

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

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

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

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

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

(4) betting otherwise permitted by law;

C. "gambling device" means a contrivance other than an antique gambling device that is not licensed for use pursuant to the Gaming Control Act and that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the device;

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

(1) making and settling of bets;

(2) receiving, holding, recording or forwarding bets or offers to bet;

(3) conducting lotteries; or

(4) playing gambling devices; and

E. "lottery" means an enterprise wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. "Lottery" does not include the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act or gaming that is licensed and operated pursuant to the Gaming Control Act. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in a gambling or gaming enterprise. "

Section 2. Section 60-2E-1 NMSA 1978 (being Laws 1997, Chapter 190, Section 3) is amended to read:

"60-2E-1. SHORT TITLE. -- Chapter 60, Article 2E NMSA 1978 may be cited as the "Gaming Control Act". "

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

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

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is

controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

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

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

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

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

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

F. "board" means the gaming control board;

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

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

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

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

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

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

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

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

L. "executive director" means the chief administrative officer appointed by the board pursuant to

Section 60-2E-7 NMSA 1978;

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

N. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

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

P. "gaming activity" means an endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

Q. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game;

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

(1) bartenders, cocktail servers or other

persons engaged solely in preparing or serving food or beverages;

- (2) secretarial or janitorial personnel;
- (3) stage, sound and light technicians; or
- (4) other nongaming personnel;

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

T. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

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

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

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

X. "independent administrator" means a person who

administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Y. "institutional investor" means a state or federal government pension plan or a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

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

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

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

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

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

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

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

Z. "intermediary company" means a company that:

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

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

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

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

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

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

EE. "net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund

losses paid to winning patrons over several years by independent administrators:

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

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

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

FF. "nonprofit organization" means:

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

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

GG. "person" means a legal entity;

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

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

JJ. "public post-secondary educational institution" means an institution designated in Article 12, Section 11 of the constitution of New Mexico and an institution designated in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

KK. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

LL. "publicly traded corporation" means a corporation that:

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

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

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that, the board finds, provide protection for institutional investors that is comparable to or greater

than the stricter of the securities laws of the United States or New Mexico;

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

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

OO. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee."

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

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

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

board is an adjunct agency.

B. The board shall:

- (1) employ the executive director;
- (2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act;
- (3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act;
- (4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;
- (5) meet at least once each month; and
- (6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

- (1) impose civil fines not to exceed twenty-five thousand dollars (\$25,000) for the first violation and fifty thousand dollars (\$50,000) for

subsequent violations of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act;

(2) conduct investigations;

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

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

(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;

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

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

(8) conduct audits, relevant to their gaming activities, of applicants, licensees and persons affiliated with licensees;

(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee

relevant to his gaming activities in the presence of the applicant or licensee or his agent;

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

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

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

(13) inspect, examine, photocopy and audit documents and records, relevant to his gaming activities, of any affiliate of an applicant or licensee that the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable; and

(14) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

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

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

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

A. The board may adopt any regulation:

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

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

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made

a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act.

C. The board shall adopt regulations:

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

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

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

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

(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;

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

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

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

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

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

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

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

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

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

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of

persons from gaming establishments;

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

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

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

(19) establishing criteria and conditions for allowing temporary possession of gaming devices by post-secondary educational institutions and for trade shows."

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

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

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

B. The executive director shall employ all personnel who work for the board. The employees shall be

covered employees pursuant to the provisions of the Personnel Act. Among those personnel, he shall employ and designate an appropriate number of individuals as law enforcement officers subject to proper certification pursuant to the Law Enforcement Training Act.

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

D. The executive director:

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

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

(3) may issue administrative citations to any licensee upon a reasonable belief that the licensee has violated or is violating any provision of the Gaming Control Act or regulations of the board;

(4) may conduct research and studies that will improve the operations of the board and the provision of services to the citizens of the state;

(5) may provide courses of instruction and

practical training for employees of the board and other persons involved in the activities regulated by the board with the objectives of improving operations of the board and achieving compliance with the law and regulations;

(6) shall prepare an annual budget for the board and submit it to the board for approval; and

(7) shall make recommendations to the board of proposed regulations and any legislative changes needed to provide better administration of the Gaming Control Act and fair and efficient regulation of gaming activities in the state."

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

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

A. A person who is under consideration in the final selection process for appointment as the executive director shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as executive director until a background investigation is completed by the department of public safety and a report is made to the board.

B. A person who has reached the final selection process for employment by the executive director shall file a disclosure statement pursuant to the requirements of this

section if the executive director or the board has directed the person do so. The person shall not be further considered for employment until a background investigation is completed by the board's law enforcement officers and a report is made to the executive director.

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

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

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

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

D. In preparing an investigative report, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or

organization. The board's law enforcement officers shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department, except that the board's law enforcement officers may provide criminal history information and reports to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal gaming casino.

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

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

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

- (1) knowingly misrepresented or omitted a

material fact required in a disclosure statement;

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

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

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

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

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

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

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

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

may sell or trade in a gaming device or associated equipment to a gaming operator licensee, distributor licensee or manufacturer licensee.

C. Except as provided in Subsection D of this section, a person shall not manufacture, fabricate, assemble, program or make modifications to a gaming device or associated equipment for use or play in this state or for use or play outside of this state from any location within this state unless he is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that he manufactures, fabricates, assembles, programs or modifies.

D. Upon receiving a written request from a person who manufactures associated equipment, the board may waive the requirement for a manufacturer's license on the terms and conditions the board deems necessary as long as the waiver is consistent with the purpose of the Gaming Control Act.

E. Except as provided in Section 60-2E-13.1 NMSA 1978, a gaming operator licensee or a person other than a manufacturer licensee or distributor licensee shall not possess an unlicensed or illegal gaming device or possess or control a place where there is an unlicensed or illegal gaming device. Any unlicensed or illegal gaming device, except a gaming machine in the possession of a licensee

while awaiting transfer to a gaming operator licensee for licensure of the machine, or as provided in Section 60-2E-13.1 NMSA 1978, is subject to seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

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

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

H. Except as provided in Subsections B and D of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a distributor licensee or manufacturer licensee.

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

Section 9. A new section of the Gaming Control Act, Section 60-2E-13.1 NMSA 1978, is enacted to read:

"60-2E-13.1. TEMPORARY POSSESSION OF GAMING DEVICE FOR

LIMITED PURPOSE. --

A. A public post-secondary educational institution may temporarily possess gaming devices for the limited purpose of providing instruction on the technical aspects of gaming devices to persons seeking certification as technicians qualified to repair and maintain gaming devices. Any gaming device allowed for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

B. Trade shows and similar events for the purpose of demonstrating and marketing gaming devices may be conducted in the state at the discretion of the board. Any gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

C. A person may possess an unlicensed gaming device used by him for the purposes of testing or demonstration if that person is a manufacturer licensee or has obtained a waiver pursuant to the Gaming Control Act."

Section 10. Section 60-2E-14 NMSA 1978 (being Laws 1997, Chapter 190, Section 16) is amended to read:

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

A. The board shall establish and issue the

following categories of licenses:

- (1) manufacturer;
- (2) distributor;
- (3) gaming operator; and
- (4) gaming machine.

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

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

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

E. Applicants shall apply on forms provided by the board and furnish all information requested by the board. Submission of an application constitutes consent to a credit check of the applicant and all persons having a substantial interest in the applicant and any other background investigations required pursuant to the Gaming Control Act or deemed necessary by the board. The board may

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.

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

G. A license shall not be transferred or assigned.

H. The application for a license shall include:

- (1) the name of the applicant;
- (2) the location of the proposed operation;
- (3) the gaming devices to be operated, manufactured, distributed or serviced;
- (4) the names of all persons having a direct or indirect interest in the business of the applicant and the nature of such interest; and
- (5) such other information and details as the board may require.

I. The board shall furnish to the applicant supplemental forms that the applicant shall complete and file with the application. Such supplemental forms shall require complete information and details with respect to the applicant's antecedents, habits, immediate family,

character, criminal record, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application. "

Section 11. Section 60-2E-23 NMSA 1978 (being Laws 1997, Chapter 190, Section 25, as amended) is amended to read:

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

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation who the board determines is or is to become actively and directly engaged in the administration or supervision of, or in any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate

findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee."

Section 12. Section 60-2E-30 NMSA 1978 (being Laws 1997, Chapter 190, Section 32) is amended to read:

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

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

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

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

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

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

(4) any association or agreement between the distributor and a gaming operator licensee shall be terminated. An agreement between a distributor licensee and a gaming operator licensee shall be deemed to include a provision for its termination without liability on the part of either party upon a finding by the board that the other party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

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

D. In addition to all other fees and charges imposed by the Gaming Control Act, the board may determine, charge and collect from each distributor an inspection fee,

which shall not exceed the actual cost of inspection and investigation. "

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

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

A. The board shall make appropriate investigations to:

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

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the Gaming Control Act or regulations adopted pursuant to that act;

(3) aid in adopting regulations;

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

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

B. If after an investigation the board is

satisfied that a license, registration, finding of suitability or prior approval by the board of any transaction for which approval was required by the provisions of the Gaming Control Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations. The summary of the evidence shall be confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.

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

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

E. The hearing examiner shall conduct proceedings

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

F. The hearing examiner shall prepare a written decision containing his recommendation to the board and shall serve it on all parties.

G. The board shall by a majority vote accept, reject or modify the recommendation.

H. If the board limits, conditions, suspends or revokes any license or imposes a fine or limits, conditions, suspends or revokes any registration, finding of suitability or prior approval, it shall issue a written order specifying its action.

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

Section 14. Section 60-2E-50 NMSA 1978 (being Laws 1997, Chapter 190, Section 52) is amended to read:

"60-2E-50. CRIME--MANIPULATION OF GAMING DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including varying the pull of the handle of a gaming machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. "

Section 15. Section 60-2E-59 NMSA 1978 (being Laws 1997, Chapter 190, Section 61) is amended to read:

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

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

B. The board shall adopt procedural regulations to govern the procedures to be followed in administrative

hearings pursuant to the provisions of this section. At a minimum, the regulations shall provide:

(1) for the hearings to be public;

(2) for the appointment of a hearing officer to conduct the hearing and make his recommendation to the board not more than thirty days after the completion of the hearing;

(3) procedures for discovery;

(4) assurance that procedural due process requirements are satisfied;

(5) for the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and

(6) for the hearing to be held in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

C. Actions taken by the board after a hearing pursuant to the provisions of this section shall be:

(1) written and shall state the reasons for the action;

(2) made public when taken;

(3) communicated to all persons who have made a written request for notification of the action taken; and

(4) taken not more than thirty days after the submission of the hearing officer's report to the board. "

Section 16. Section 60-2E-60 NMSA 1978 (being Laws 1997, Chapter 190, Section 62) is amended to read:

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

A. Any person adversely affected by an action taken by the board after review pursuant to the provisions of Section 60-2E-59 NMSA 1978 may appeal the action to the court of appeals within thirty days after the date the action is taken. The appeal shall be on the record made at the hearing. To support his appeal, the appellant shall make arrangements with the board for a sufficient number of transcripts of the record of the hearing on which the appeal is based. The appellant shall pay for the preparation of the transcripts.

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

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

Section 17. Section 60-2E-61 NMSA 1978 (being Laws

1997, Chapter 190, Section 63) is amended to read:

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

A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the federal 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.

B. Prior to the payment of a gaming machine payout in excess of one thousand two hundred dollars (\$1,200), the board 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 board shall make a good-faith attempt to notify the human services department, 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 to 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

board with written notice of a support lien promptly within five working days after the 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 for a period of thirty days from the board's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding proceedings. If a garnishment or withholding proceeding is not initiated within the thirty-day period, the 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.

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

Section 18. A new section of the Gaming Control Act, Section 60-2E-62 NMSA 1978, is enacted to read:

"60-2E-62. CRIME--UNLAWFUL POSSESSION OF GAMING DEVICE.--

A. It is unlawful for a person intentionally to possess an unlicensed or illegal gaming device, except that:

(1) a distributor licensee or a manufacturer licensee may possess an unlicensed gaming

device while awaiting transfer of the gaming device to a gaming operator licensee for licensure; and

(2) a person may possess an unlicensed gaming device for the limited purposes provided for in Section 60-2E-13.1 NMSA 1978.

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

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

Section 19. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____

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