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SENATE BILL 199

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

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.

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. "Gambling device"
6 includes any contrivance, equipment or machine that is used in
7 connection with gambling or that is designed, constructed or
8 readily adaptable to such use, even if the contrivance,
9 equipment or machine is not in working order;

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

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

20 E. "lottery" means an enterprise wherein, for [a]
21 money, token or other consideration, the participants are
22 given an opportunity to win a prize, the award of which is
23 determined by chance, even though accompanied by some skill.
24 "Lottery" does not include the New Mexico state lottery
25 established and operated pursuant to the New Mexico Lottery

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1 Act or gaming that is licensed and operated pursuant to the
2 Gaming Control Act. As used in this subsection,
3 "consideration" means anything of pecuniary value required to
4 be paid to the promoter in order to participate in a gambling
5 or gaming enterprise. "

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

8 "60-2E-1. SHORT TITLE. -- [~~Sections 3 through 63 of this~~
9 ~~act~~] Chapter 60, Article 2E NMSA 1978 may be cited as the
10 "Gaming Control Act". "

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

13 "60-2E-3. DEFINITIONS. -- As used in the Gaming Control
14 Act:

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

19 B. "affiliated company" means a company that:
20 (1) controls, is controlled by or is under
21 common control with a company licensee; and

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

25 C. "applicant" means a person who has applied for

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1 a license or for approval of an act or transaction for which
2 approval is required or allowed pursuant to the provisions of
3 the Gaming Control Act;

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

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

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

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

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

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

25 J. "distributor" means a person who supplies

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1 gaming devices to a gaming operator but does not manufacture
2 gaming devices;

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

5 (1) voting stock or similar security;

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

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

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

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

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

21 N. "game" means an activity in which, upon
22 insertion of a coin, token or other object, or upon payment of
23 a consideration, a player [receives] may receive a prize or
24 other thing of value, the award of which is determined by
25 chance even though accompanied by some skill; "game" does not

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1 include an activity played with cards in a private residence
2 in which no person makes money for operating the activity
3 except through winnings as a player;

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

5 P. "gaming activity" means ~~[any]~~ an endeavor
6 associated with the manufacture or distribution of gaming
7 devices or the conduct of gaming;

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

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

18 (1) bartenders, cocktail servers or other
19 persons engaged solely in preparing or serving food or
20 beverages;

21 (2) secretarial or janitorial personnel;

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

23 (4) other nongaming personnel;

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

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1 T. "gaming machine" means a mechanical,
2 electromechanical or electronic contrivance or machine that,
3 upon insertion of a coin, token or ~~[similar]~~ other object, or
4 upon payment of ~~[any]~~ a consideration, is available to play or
5 operate a game, whether the payoff is made automatically from
6 the machine or in any other manner; "gaming machine" includes
7 any contrivance or machine that is designed, constructed or
8 readily adaptable to such use, even if the contrivance or
9 machine is not in working order;

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

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

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

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

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

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

7 (2) an insurance company as defined in
8 Section 2(a)(17) of the federal Investment Company Act of
9 1940;

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

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

14 (5) collective trust funds as defined in
15 Section 3(c)(11) of the federal Investment Company Act of
16 1940;

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

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

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

25 (1) is a holding company with respect to a

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1 company that is an applicant or licensee; and

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

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

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

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

13 DD. "manufacturer" means a person who
14 manufactures, fabricates, assembles, produces, programs or
15 makes modifications to any gaming device for use or play in
16 New Mexico or for sale, lease or distribution outside New
17 Mexico from any location within New Mexico; "manufacturer"
18 does not include a person who only manufactures components of
19 gaming devices that, as completed, sold and made a part of
20 gaming devices, do not affect a gaming device's:

21 (1) game outcome;

22 (2) security;

23 (3) recording or reporting function; or

24 (4) communication with a central monitoring
25 system;

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1 EE. "net take" means the total of the following,
2 less the total of all cash paid out as losses to winning
3 patrons and those amounts paid to purchase annuities to fund
4 losses paid to winning patrons over several years by
5 independent administrators:

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

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

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

12 FF. "nonprofit organization" means:

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

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

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1 GG. "person" means a legal entity;

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

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

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

14 [~~JJ.~~] KK. "progressive system" means one or more
15 gaming machines linked to one or more common progressive
16 jackpots;

17 [~~KK.~~] LL. "publicly traded corporation" means a
18 corporation that:

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

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

24 (3) has one or more classes of securities
25 registered or is an issuer pursuant to applicable foreign laws

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1 that, the board finds, provide protection for institutional
2 investors that is comparable to or greater than the stricter
3 of the securities laws of the United States or New Mexico;

4 [~~LL-~~] MM "registration" means a board action that
5 authorizes a company to be a holding company with respect to a
6 company that holds or applies for a license or that relates to
7 other persons required to be registered pursuant to the Gaming
8 Control Act;

9 [~~MM-~~] NN. "subsidiary" means a company, all or a
10 part of whose outstanding equity securities are owned, subject
11 to a power or right of control or held, with power to vote, by
12 a holding company or intermediary company; and

13 [~~NN-~~] OO. "work permit" means a card, certificate
14 or permit issued by the board, whether denominated as a work
15 permit, registration card or otherwise, authorizing the
16 employment of the holder as a gaming employee. "

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

19 "60-2E-7. BOARD'S POWERS AND DUTIES. --

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

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1 accountability. The board is an adjunct agency.

2 B. The board shall:

3 (1) employ the executive director;

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

7 (3) develop, adopt and promulgate all
8 regulations necessary to implement and administer the
9 provisions of the Gaming Control Act;

10 (4) conduct itself, or employ a hearing
11 officer to conduct, all hearings required by the provisions of
12 the Gaming Control Act and other hearings it deems appropriate
13 to fulfill its responsibilities;

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

15 (6) prepare and submit an annual report in
16 December of each year to the governor and the legislature,
17 covering activities of the board in the most recently
18 completed fiscal year, a summary of gaming activities in the
19 state and any recommended changes in or additions to the laws
20 relating to gaming in the state.

21 C. The board may:

22 (1) impose civil fines not to exceed twenty-
23 five thousand dollars (\$25,000) for the first violation and
24 fifty thousand dollars (\$50,000) for subsequent violations of
25 any prohibitory provision of the Gaming Control Act or any

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1 prohibitory provision of a regulation adopted pursuant to that
2 act;

3 (2) conduct investigations;

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

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

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

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

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

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

23 (9) inspect, examine, photocopy and audit all
24 documents and records of an applicant or licensee relevant to
25 his gaming activities in the presence of the applicant or

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1 licensee or his agent;

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

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

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

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

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

25 D. The board shall monitor all activity authorized

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1 in an Indian gaming compact between the state and an Indian
2 nation, tribe or pueblo. The board shall appoint the state
3 gaming representative for the purposes of the compact."

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

6 "60-2E-8. BOARD REGULATIONS--DISCRETIONARY REGULATIONS--
7 PROCEDURE--REQUIRED PROVISIONS.--

8 A. The board may adopt any regulation:

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

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

13 B. No regulation shall be adopted, amended or
14 repealed without a public hearing on the proposed action
15 before the board or a hearing officer designated by it. [~~The~~
16 ~~public hearing shall be held in Santa Fe.~~] Notice of the
17 subject matter of the regulation, the action proposed to be
18 taken, the time and place of the hearing, the manner in which
19 interested persons may present their views and the method by
20 which copies of the proposed regulation, amendment or repeal
21 may be obtained shall be published once at least thirty days
22 prior to the hearing date in a newspaper of general
23 circulation and mailed at least thirty days prior to the
24 hearing date to all persons who have made a written request
25 for advance notice of hearing. All regulations and actions

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1 taken on regulations shall be filed in accordance with the
2 State Rules Act.

3 C. The board shall adopt regulations:

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

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

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

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

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

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

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

25 (8) governing the manufacture, sale,

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1 distribution, repair and servicing of gaming devices;

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

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

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

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

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

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

22 (15) prescribing the procedures to be
23 followed by a gaming operator licensee for the exclusion of
24 persons from gaming establishments;

25 (16) establishing criteria and conditions for

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1 the operation of progressive systems;

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

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

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

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

19 "60-2E-10. EXECUTIVE DIRECTOR-- POWERS-- DUTIES. --

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

22 B. The executive director shall employ all
23 personnel who work for the board. The employees shall be
24 covered employees pursuant to the provisions of the Personnel
25 Act. Among those personnel, he shall employ and designate an

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1 appropriate number of individuals as law enforcement officers
2 subject to proper certification pursuant to the Law
3 Enforcement Training Act.

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

7 D. The executive director:

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

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

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

20 [~~(3)~~] (4) may conduct research and studies
21 that will improve the operations of the board and the
22 provision of services to the citizens of the state;

23 [~~(4)~~] (5) may provide courses of instruction
24 and practical training for employees of the board and other
25 persons involved in the activities regulated by the board with

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1 the objectives of improving operations of the board and
2 achieving compliance with the law and regulations;

3 [~~(5)~~] (6) shall prepare an annual budget for
4 the board and submit it to the board for approval; and

5 [~~(6)~~] (7) shall make recommendations to the
6 board of proposed regulations and any legislative changes
7 needed to provide better administration of the Gaming Control
8 Act and fair and efficient regulation of gaming activities in
9 the state. "

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

12 "60-2E-11. INVESTIGATION OF EXECUTIVE DIRECTOR
13 CANDIDATES AND EMPLOYEES. --

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

21 B. A person who has reached the final selection
22 process for employment by the executive director shall file a
23 disclosure statement pursuant to the requirements of this
24 section if the executive director or the board has directed
25 the person do so. The person shall not be further considered

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1 for employment until a background investigation is completed
2 by the [~~department of public safety~~] board's law enforcement
3 officers and a report is made to the executive director.

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

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

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

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

19 D. In preparing an investigative report, the
20 [~~department of public safety~~] board's law enforcement officers
21 may request and receive criminal history information from the
22 federal bureau of investigation or any other law enforcement
23 agency or organization. The [~~department of public safety~~]
24 board's law enforcement officers shall maintain
25 confidentiality regarding information received from a law

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1 enforcement agency that may be imposed by the agency as a
2 condition for providing the information to the department,
3 except that the board's law enforcement officers may provide
4 criminal history information and reports to licensees or
5 tribal gaming casinos when conducting background checks on
6 behalf of the licensee or tribal gaming casino.

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

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

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

21 (1) knowingly misrepresented or omitted a
22 material fact required in a disclosure statement;

23 (2) been convicted of a felony, a gaming-
24 related offense or a crime involving fraud, theft or moral
25 turpitude within ten years immediately preceding the date of

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1 submitting a disclosure statement required pursuant to this
2 section;

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

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

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

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

14 "60-2E-13. ACTIVITIES REQUIRING LICENSING. --

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

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

25 C. Except as provided in Subsection D of this

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

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

14 ~~[D-]~~ E. Except as provided in Section 60-2E-13.1
15 NMSA 1978, a gaming operator licensee or a person other than a
16 manufacturer licensee or distributor licensee shall not
17 possess an unlicensed or illegal gaming device or possess or
18 control a place where there is an unlicensed or illegal gaming
19 [machine] device. Any unlicensed or illegal gaming [machine]
20 device, except [one] a gaming machine in the possession of a
21 licensee while awaiting transfer to a gaming operator licensee
22 for licensure of the machine, or as provided in Section
23 60-2E-13.1 NMSA 1978, is subject to seizure and forfeiture
24 [and confiscation by any law enforcement agency or peace
25 officer] pursuant to Section 30-19-10 NMSA 1978.

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1 ~~[E-]~~ F. A person shall not service or repair a
2 gaming device or associated equipment unless he is licensed as
3 a manufacturer, is employed by a manufacturer licensee or is a
4 technician certified by a manufacturer licensee and employed
5 by a distributor licensee or a gaming operator licensee.

6 ~~[F-]~~ G. A person shall not engage in any activity
7 for which the board requires a license or permit without
8 obtaining the license or permit.

9 ~~[G-]~~ H. Except as provided in ~~[Subsection B]~~
10 Subsections B and D of this section, a person shall not
11 purchase, lease or acquire possession of a gaming device or
12 associated equipment except from a ~~[licensed]~~ distributor
13 licensee or manufacturer licensee.

14 ~~[H-]~~ I. A distributor licensee may receive a
15 percentage of the amount wagered, the net take or other
16 measure related to the operation of a gaming machine as a
17 payment pursuant to a lease or other arrangement for
18 furnishing a gaming machine, but the board shall adopt a
19 regulation setting the maximum allowable percentage. "

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

22 "60-2E-13.1. [NEW MATERIAL] TEMPORARY POSSESSION OF
23 GAMING DEVICE FOR LIMITED PURPOSE. --

24 A. A public post-secondary educational institution
25 may temporarily possess gaming devices for the limited purpose

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1 of providing instruction on the technical aspects of gaming
2 devices to persons seeking certification as technicians
3 qualified to repair and maintain gaming devices. Any gaming
4 device allowed for such limited use shall be subject to
5 registration, transport, possession and use requirements and
6 restrictions established in board regulations.

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

14 C. A person may possess an unlicensed gaming
15 device used by him for the purposes of testing or
16 demonstration if that person only manufactures components of
17 gaming devices that, as completed, sold and made a part of
18 gaming devices, do not affect a gaming device's:

- 19 (1) game outcome;
20 (2) security;
21 (3) recording or reporting function; or
22 (4) communication with a central monitoring
23 system."

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

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1 "60- 2E- 14. LICENSURE-- APPLICATION. --

2 A. The board shall establish and issue the
3 following categories of licenses:

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

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

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

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

21 E. Applicants shall apply on forms provided by the
22 board and furnish all information requested by the board.
23 Submission of an application constitutes consent to a credit
24 check of the applicant and all persons having a substantial
25 interest in the applicant and any other background

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1 investigations required pursuant to the Gaming Control Act or
2 deemed necessary by the board. The board may obtain from the
3 taxation and revenue department copies of tax returns filed by
4 or on behalf of the applicant or its affiliates and
5 information concerning liens imposed on the applicant or its
6 affiliates by the taxation and revenue department.

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

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

11 H. The application for a license shall include:

12 (1) the name of the applicant;

13 (2) the location of the proposed operation;

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

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

19 (5) such other information and details as the
20 board may require.

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

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

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

6 "60-2E-23. FINDING OF SUITABILITY REQUIRED FOR
7 DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION
8 IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

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

16 B. If any officer, director or key executive of
17 a holding company, intermediary company or publicly traded
18 corporation required to be found suitable pursuant to
19 Subsection A of this section fails to apply for a finding of
20 suitability within thirty days after being requested to do
21 so by the board, or is not found suitable by the board, or
22 if his finding of suitability is revoked after appropriate
23 findings by the board, the holding company, intermediary
24 company or publicly traded corporation shall immediately
25 remove that officer, director or key executive from any

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1 office or position in which the person is engaged in the
2 administration or supervision of, or any other involvement
3 with, the activities of the certified subsidiary until the
4 person is thereafter found to be suitable. If the board
5 suspends the finding of suitability of any officer, director
6 or key executive, the holding company, intermediary company
7 or publicly traded corporation shall immediately and for the
8 duration of the suspension suspend that officer, director or
9 key executive from performance of any duties in which he is
10 actively and directly engaged in the administration or
11 supervision of, or any other involvement with, the
12 activities of the subsidiary licensee. "

13 Section 12. Section 60-2E-30 NMSA 1978 (being Laws
14 1997, Chapter 190, Section 32) is amended to read:

15 "60-2E-30. LICENSING OF DISTRIBUTORS OF GAMING
16 DEVICES. --

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

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

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

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

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

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

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

19 D. In addition to all other fees and charges
20 imposed by the Gaming Control Act, the board may determine,
21 charge and collect from each distributor an inspection fee,
22 which shall not exceed the actual cost of inspection and
23 investigation. "

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

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1 "60-2E-32. REASONS FOR INVESTIGATIONS BY BOARD- -
2 COMPLAINT BY BOARD- - BOARD TO APPOINT HEARING EXAMINER- - REVIEW
3 BY BOARD- - ORDER OF BOARD. - -

4 A. The board shall make appropriate investigations
5 to:

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

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

13 (3) aid in adopting regulations;

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

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

20 B. If after an investigation the board is satisfied
21 that a license, registration, finding of suitability or prior
22 approval by the board of any transaction for which approval was
23 required by the provisions of the Gaming Control Act should be
24 limited, conditioned, suspended or revoked, or that a fine
25 should be levied, the board shall initiate a hearing by filing

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1 a complaint and transmitting a copy of it to the licensee,
2 together with a summary of evidence in its possession bearing
3 on the matter and the transcript of testimony at any
4 investigative hearing conducted by or on behalf of the board.
5 The complaint shall be a written statement of charges that sets
6 forth in ordinary and concise language the acts or omissions
7 with which the respondent is charged. It shall specify the
8 statutes or regulations that the respondent is alleged to have
9 violated but shall not consist merely of charges raised in the
10 language of the statutes or regulations. The summary of the
11 evidence shall be confidential and made available only to the
12 respondent until such time as it is offered into evidence at
13 any public hearing on the matter.

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

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

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

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1 F. The hearing examiner shall prepare a written
2 decision containing his recommendation to the board and shall
3 serve it on all parties. ~~[Any respondent who disagrees with~~
4 ~~the hearing examiner's recommendation may request the board,~~
5 ~~within ten days of service of the recommendation, to review the~~
6 ~~recommendation.~~

7 ~~G. Upon proper request, the board shall review the~~
8 ~~recommendation. The board may remand the case to the hearing~~
9 ~~examiner for the presentation of additional evidence upon a~~
10 ~~showing of good cause why such evidence could not have been~~
11 ~~presented at the previous hearing.~~

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

14 ~~[F.]~~ H. If the board limits, conditions, suspends
15 or revokes any license or imposes a fine or limits, conditions,
16 suspends or revokes any registration, finding of suitability or
17 prior approval, it shall issue a written order specifying its
18 action.

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

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

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1 "60-2E-50. CRIME--MANIPULATION OF GAMING DEVICE WITH
2 INTENT TO CHEAT.--A person who manipulates, with the intent to
3 cheat, any component of a gaming device in a manner contrary to
4 the designed and normal operational purpose of the component,
5 including varying the pull of the handle of a [~~slot~~] gaming
6 machine with knowledge that the manipulation affects the
7 outcome of the game or with knowledge of any event that affects
8 the outcome of the game, is guilty of a fourth degree felony
9 and shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978. "

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

13 "60-2E-59. ADMINISTRATIVE APPEAL OF BOARD ACTION.--

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

23 B. The board shall adopt procedural regulations to
24 govern the procedures to be followed in administrative hearings
25 pursuant to the provisions of this section. At a minimum, the

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1 regulations shall provide:

2 (1) for the hearings to be public;

3 (2) for the appointment of a hearing officer
4 to conduct the hearing and make his recommendation to the board
5 not more than ~~[ten]~~ thirty days after the completion of the
6 hearing;

7 (3) procedures for discovery;

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

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

14 (6) for the hearing to be held in ~~[Santa Fe~~
15 ~~for enforcement hearings and hearings on actions of statewide~~
16 ~~application, and to be held]~~ Albuquerque or, upon written
17 request by an aggrieved person, in the place or area affected
18 ~~[for enforcement hearings and hearings on actions of limited~~
19 ~~local concern].~~

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

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

24 (2) made public when taken;

25 (3) communicated to all persons who have made

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1 a written request for notification of the action taken; and
2 (4) taken not more than thirty days after the
3 submission of the hearing officer's report to the board. "

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

6 "60-2E-60. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS. - -

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

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

19 (1) arbitrary, capricious or an abuse of
20 discretion;

21 (2) not supported by substantial evidence in
22 the whole record; or

23 (3) otherwise not in accordance with law. "

24 Section 17. Section 60-2E-61 NMSA 1978 (being Laws 1997,
25 Chapter 190, Section 63) is amended to read:

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1 "60-2E-61. LIEN ON WINNINGS FOR DEBT COLLECTED BY HUMAN
2 SERVICES DEPARTMENT-- [~~PAYMENT TO DEPARTMENT~~] PROCEDURE. --

3 A. The human services department, acting as the
4 state's child support enforcement agency pursuant to Title IV-D
5 of the federal Social Security Act, shall periodically certify
6 to the board the names and social security numbers of persons
7 owing a debt to or collected by the human services department.

8 B. Prior to the payment of a gaming machine
9 [~~amount~~] payout in excess of [~~six hundred dollars (\$600)~~] one
10 thousand two hundred dollars (\$1,200), the board shall check
11 the name of the winner against the list of names and social
12 security numbers of persons owing a debt to or collected by the
13 human services department.

14 C. If the winner is on the list of persons owing a
15 debt to or collected by the agency, the board shall make a
16 good-faith attempt to notify the human services department, and
17 the department then has a lien against the winnings in the
18 amount of the debt owed to or collected by the agency. The
19 board has no liability to the human services department or to
20 the person on whose behalf the department is collecting the
21 debt if the board fails to match a winner's name to a name on
22 the list or is unable to notify the department of a match. The
23 department shall provide the board with written notice of a
24 support lien promptly within five working days after the board
25 notifies the department of a match.

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1 D. If the amount won is to be paid directly by the
2 board, the amount of the debt owed to or collected by the human
3 services department shall be held by the board for a period of
4 thirty days from the board's confirmation of the amount of the
5 debt to allow the department to institute any necessary
6 garnishment or wage withholding proceedings. If a garnishment
7 or withholding proceeding is not initiated within the thirty-
8 day period, the board shall release the amount won to the
9 winner.

10 E. The human services department, in its
11 discretion, may release or partially release the support lien
12 upon written notice to the board.

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

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

17 "60-2E-62. [NEW MATERIAL] CRIME--UNLAWFUL POSSESSION OF
18 GAMING DEVICE. --

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

21 (1) a distributor licensee or a manufacturer
22 licensee may possess an unlicensed gaming device while awaiting
23 transfer of the gaming device to a gaming operator licensee for
24 licensure; and

25 (2) a person may possess an unlicensed gaming

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1 device for the limited purposes provided for in Section
2 60-2E-13.1 NMSA 1978.

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

6 C. A person violating this section is guilty of a
7 fourth degree felony and shall be sentenced pursuant to Section
8 31-18-15 NMSA 1978. "