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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. "