

HOUSE BILL 241

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO GAMING; AMENDING DEFINITIONS IN THE GAMING CONTROL
ACT TO INCLUDE "ALLOWABLE GAMING EXPENSES" AND "BALANCE OF NET
TAKE".

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

SECTION 1. Section 60-2E-3 NMSA 1978 (being Laws 1997,
Chapter 190, Section 5, as amended) is amended to read:

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

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

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under

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1 common control with a company licensee; and

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

5 C. "allowable gaming expenses" means the following
6 bona fide expenses in reasonable and customary amounts:

7 (1) purchase prices of non-cash prizes;

8 (2) security and surveillance expenses;

9 (3) independent accountant fees;

10 (4) license fees, including renewals and
11 gaming machine license fees;

12 (5) utilities attributed to the licensed
13 premises;

14 (6) installment payments to an independent
15 administrator or lease payments;

16 (7) gaming device repair and maintenance;

17 (8) gaming employees' salaries and employment
18 taxes;

19 (9) gaming supplies;

20 (10) approved management fees; and

21 (11) licensed premises repair and maintenance;

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

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

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

10 G. "balance of net take" means the amount of net
11 take remaining after a gaming operation licensee pays the
12 gaming tax and other applicable taxes, income and allowable
13 gaming expenses;

14 ~~[F.]~~ H. "board" means the gaming control board;

15 ~~[G.]~~ I. "certification" means a notice of approval
16 by the board of a person required to be certified by the board;

17 ~~[H.]~~ J. "cheat" or "cheating" means to alter the
18 element of chance, the method of selection or other criteria in
19 a manner that determines:

- 20 (1) the result of the game;
21 (2) the amount or frequency of payment in a
22 game, including taking advantage of a malfunctioning machine;
23 (3) the value of a wagering instrument; or
24 (4) the value of a wagering credit;

25 ~~[I.]~~ K. "company" means a corporation, partnership,

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1 limited partnership, trust, association, joint stock company,
2 joint venture, limited liability company or other form of
3 business organization that is not a natural person; "company"
4 does not mean a nonprofit organization;

5 ~~[J.]~~ L. "distributor" means a person who supplies
6 gaming devices to a gaming operator but does not manufacture
7 gaming devices;

8 ~~[K.]~~ M. "equity security" means an interest in a
9 company that is evidenced by:

10 (1) voting stock or similar security;

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

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

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

19 ~~[L.]~~ N. "executive director" means the chief
20 administrative officer appointed by the board pursuant to
21 Section 60-2E-7 NMSA 1978;

22 ~~[M.]~~ O. "finding of suitability" means a
23 certification of approval issued by the board permitting a
24 person to be involved directly or indirectly with a licensee,
25 relating only to the specified involvement for which it is

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1 made;

2 ~~[N.]~~ P. "foreign institutional investor" means:

3 (1) a government-related pension plan of a
4 foreign government; or

5 (2) a person that meets the requirement of a
6 qualified institutional buyer as defined by the governing
7 financial regulatory agency of the foreign country in which the
8 company's primary operations are located and is registered or
9 licensed in that country as a bank, an insurance company, an
10 investment company, an investment advisor, a collective trust
11 fund, an employee benefit plan or pension fund sponsored by a
12 publicly traded corporation registered with the board or a
13 group composed entirely of entities specified in this
14 subsection;

15 ~~[O.]~~ Q. "game" means an activity in which, upon
16 payment of consideration, a player receives a prize or other
17 thing of value, the award of which is determined by chance even
18 though accompanied by some skill; "game" does not include an
19 activity played in a private residence in which no person makes
20 money for operating the activity except through winnings as a
21 player;

22 ~~[P.]~~ R. "gaming" means offering a game for play;

23 ~~[Q.]~~ S. "gaming activity" means an endeavor
24 associated with the manufacture or distribution of gaming
25 devices or the conduct of gaming;

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1 [R-] T. "gaming device" means associated equipment
2 or a gaming machine and includes a system for processing
3 information that can alter the normal criteria of random
4 selection that affects the operation of a game or determines
5 the outcome of a game;

6 [S-] U. "gaming employee" means a person connected
7 directly with a gaming activity; "gaming employee" does not
8 include:

9 (1) bartenders, cocktail servers or other
10 persons engaged solely in preparing or serving food or
11 beverages;

12 (2) secretarial or janitorial personnel;

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

14 (4) other nongaming personnel;

15 [F-] V. "gaming establishment" means the premises
16 on or in which gaming is conducted;

17 [U-] W. "gaming machine" means a mechanical,
18 electromechanical or electronic contrivance or machine that,
19 upon insertion of a coin, token or similar object, or upon
20 payment of any consideration, is available to play or operate a
21 game, whether the payoff is made automatically from the machine
22 or in any other manner;

23 [V-] X. "gaming operator" means a person who
24 conducts gaming;

25 [W-] Y. "holding company" means a company that

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

6 [~~X.~~] Z. "immediate family" means natural persons
7 who are related to a specified natural person by affinity or
8 consanguinity in the first through the third degree;

9 [~~Y.~~] AA. "independent administrator" means a person
10 who administers an annuity, who is not associated in any manner
11 with the gaming operator licensee for which the annuity was
12 purchased and is in no way associated with the person who will
13 be receiving the annuity;

14 [~~Z.~~] BB. "institutional investor" means:

15 (1) a foreign institutional investor;

16 (2) a state or federal government pension
17 plan; or

18 (3) a person that meets the requirements of a
19 qualified institutional buyer as defined in Rule 144A of the
20 federal Securities Act of 1933, and is:

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

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

25 (c) an investment company registered

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1 under Section 8 of the federal Investment Company Act of 1940;

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

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

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

12 (g) a group comprised entirely of
13 persons specified in Subparagraphs (a) through (f) of this
14 paragraph;

15 ~~[AA-]~~ CC. "intermediary company" means a company
16 that:

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

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

21 ~~[BB-]~~ DD. "key executive" means an executive of a
22 licensee or other person having the power to exercise
23 significant influence over decisions concerning any part of the
24 licensed operations of the licensee or whose compensation
25 exceeds an amount established by the board in a rule;

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1 ~~[GG-]~~ EE. "license" means an authorization required
2 by the board for engaging in gaming activities;

3 ~~[DD-]~~ FF. "licensee" means a person to whom a valid
4 license has been issued;

5 ~~[EE-]~~ GG. "manufacturer" means a person who
6 manufactures, fabricates, assembles, produces, programs or
7 makes modifications to any gaming device for use or play in New
8 Mexico or for sale, lease or distribution outside New Mexico
9 from any location within New Mexico;

10 ~~[FF-]~~ HH. "net take" means the total of the
11 following, less the total of all cash paid out as losses to
12 winning patrons and those amounts paid to purchase annuities to
13 fund losses paid to winning patrons over several years by
14 independent administrators:

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

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

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

21 ~~[GG-]~~ II. "nonprofit organization" means:

22 (1) a bona fide chartered or incorporated
23 branch, lodge, order or association, in existence in New Mexico
24 prior to January 1, 1997, of a fraternal organization that is
25 described in Section 501(c)(8) or (10) of the federal Internal

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1 Revenue Code of 1986 and that is exempt from federal income
2 taxation pursuant to Section 501(a) of that code; or

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

10 ~~[HH-]~~ JJ. "person" means a legal entity;

11 ~~[HH-]~~ KK. "premises" means land, together with all
12 buildings, improvements and personal property located on the
13 land;

14 ~~[JJ-]~~ LL. "progressive jackpot" means a prize that
15 increases over time or as gaming machines that are linked to a
16 progressive system are played and upon conditions established
17 by the board may be paid by an annuity;

18 ~~[KK-]~~ MM. "public post-secondary educational
19 institution" means an institution designated in Article 12,
20 Section 11 of the constitution of New Mexico or an institution
21 designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

22 ~~[LL-]~~ NN. "progressive system" means one or more
23 gaming machines linked to one or more common progressive
24 jackpots;

25 ~~[MM-]~~ OO. "publicly traded corporation" means a

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1 corporation that:

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

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

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

12 [~~NN-~~] PP. "registration" means a board action that
13 authorizes a company to be a holding company with respect to a
14 company that holds or applies for a license or that relates to
15 other persons required to be registered pursuant to the Gaming
16 Control Act;

17 [~~OO-~~] QQ. "subsidiary" means a company, all or a
18 part of whose outstanding equity securities are owned, subject
19 to a power or right of control or held, with power to vote, by
20 a holding company or intermediary company;

21 [~~PP-~~] RR. "technician" means a person approved by
22 the board to repair and service gaming devices or associated
23 equipment but who is prohibited from programming gaming
24 devices; and

25 [~~QQ-~~] SS. "work permit" means a card, certificate

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1 or permit issued by the board, whether denominated as a work
2 permit, registration card or otherwise, authorizing the
3 employment of the holder as a gaming employee."

4 - 12 -

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