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HOUSE BILL 346

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

VINCENT GALLEGOS

AN ACT

RELATING TO GAMES OF CHANCE; ENACTING THE VIDEO GAMING ACT;
ESTABLISHING PROCEDURES; PRESCRIBING PENALTIES; IMPOSING TAXES
AND FEES; PERMITTING VERTICAL INTEGRATION OF CERTAIN LICENSEES;
PROVIDING FOR A CERTAIN LOCAL OPTION; MAKING APPROPRIATIONS.

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

Section 1. SHORT TITLE. --Sections 1 through 22 of this act
may be cited as the "Video Gaming Act. "

Section 2. PURPOSE. --The purpose of the Video Gaming Act
is to combat the growth of illegal gaming through the
establishment of a regulated system of video games of chance.

The legislature finds that:

A. the technology now exists to provide a secure
system of regulated gaming;

B. this system will:

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1 (1) offer fair play and return to consumers who
2 use the system;

3 (2) provide needed revenue to the state and its
4 political subdivisions;

5 (3) provide additional entertainment to attract
6 tourists and increase their length of stay; and

7 (4) provide additional jobs for the citizens of
8 New Mexico.

9 Section 3. DEFINITIONS.--As used in the Video Gaming Act:

10 A. "age controlled environment" means a location, or
11 portion of a location, licensed for the on premises consumption
12 of spirituous liquors and the interior of which is not
13 observable by any individual under the age of twenty-one years.
14 No individual under the age of twenty-one years may be employed
15 to work in the age controlled environment;

16 B. "application" means the forms and schedules
17 prescribed by the commission upon which an applicant applies for
18 a license or license renewal and includes, but is not limited
19 to, information, disclosure statements and financial statements
20 submitted;

21 C. "commission" means the video gaming commission;

22 D. "credit" means the basic unit of a win on a video
23 gaming device which entitles the player to one additional free
24 game at the lowest monetary rate at which one game may be
25 purchased on that device;

1 E. "financial source" means any person, partnership,
2 trust or corporation that provides credit for capital or
3 operations where the terms of repayment extend for more than
4 ninety days;

5 F. "gross proceeds" means the total value of money
6 placed in a video gaming device by consumers;

7 G. "holding a substantial interest" means:

8 (1) ownership, operation, management or
9 conducting the business of a proprietorship, directly or
10 indirectly, by an individual or spouse of the individual;

11 (2) sharing or being entitled to share in any
12 profits, actual or potential, of a partnership or trust by an
13 individual or spouse of the individual;

14 (3) being an officer, director, stockholder or
15 spouse of a stockholder in a corporation which is not publicly
16 traded;

17 (4) being the holder, legally or beneficially,
18 of five percent or more of any class of stock or other evidence
19 of ownership of a publicly traded corporation or other public
20 traded entity or being the spouse of such a holder;

21 (5) furnishing five percent or more of the
22 capital of any entity.

23 A person holding a substantial interest in any entity shall
24 be deemed to hold a substantial interest in every entity in
25 which the first entity holds a substantial interest;

1 H. "location agreement" means a written agreement
2 between an operator and the person or entity owning or
3 controlling a licensed premises for the placement of video
4 gaming devices within the location for use by the public. If
5 the person or entity owns the devices, the person or entity's
6 sworn statement to that effect shall be deemed a location
7 agreement;

8 I. "manufacturer" means a person or entity which
9 assembles, from subparts or raw materials, a complete video
10 gaming device;

11 J. "manufacturer's license" means a license issued
12 by the superintendent which authorizes the manufacture and
13 transfer or sale of video gaming devices to an operator;

14 K. "net proceeds" means the gross proceeds minus all
15 prizes paid out to players of a video gaming device;

16 L. "operator" means any person or entity who owns,
17 services or maintains video gaming devices, but does not include
18 any person owning or controlling, or holding a substantial
19 interest in an entity which owns or controls, a licensed
20 premises for which there is a location agreement;

21 M. "operator's license" means a license issued by
22 the superintendent which authorizes a person to engage in the
23 business of an operator;

24 N. "owner-operator" means any person or entity who
25 owns, services or maintains video gaming devices, owns or leases

1 one premises and is the holder of the premises license where the
2 video gaming devices are located;

3 N. "parimutuel horseracing facility" means a
4 premises licensed to hold public horseraces or horse meetings
5 for profit or gain;

6 O. "play" means to activate a video gaming device
7 and to manipulate or work it for the purpose of winning as
8 indicated by the pay-out schedule or accumulating credits to be
9 replayed or to be cashed out of the machine in the form of a
10 printed ticket to be exchanged for cash;

11 P. "premises license" means a license issued by the
12 superintendent to a person or entity owning or controlling a
13 location and authorizing the placement of video gaming devices
14 at that location for play by the public;

15 Q. "qualified sleeping unit" means a personal
16 sleeping room rented commercially to guests or transients whose
17 average stay is less than thirty days;

18 R. "resort" means a location within a resort area
19 having at least one hundred qualified sleeping units, a premises
20 licensed for the consumption of spirituous liquors and a
21 restaurant;

22 S. "resort area" means a geographical region
23 designated as a resort area by the commission and which is in a
24 local option district in which the local option provisions of
25 the Video Gaming Act have been adopted by the voters;

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1 T. "spirituous liquors" means alcoholic beverages
2 except fermented beverages such as wine, beer and ale;

3 U. "superintendent" means the superintendent of
4 regulation and licensing; and

5 V. "video gaming device" means an electronic machine
6 which utilizes a cathode ray tube or video display screen and
7 microprocessors and which is available for consumer play upon
8 payment of specified consideration, with winners immediately
9 determined by the application of the element of chance, whether
10 or not accompanied by an element of skill, and with a reward of
11 possible games or credits displayed on the device to the
12 winners.

13 Section 4. COMMISSION ESTABLISHED--MEMBERSHIP--
14 REQUIREMENTS.--

15 A. There is created the "video gaming commission"
16 which shall consist of five members appointed by the governor
17 with the advice and consent of the senate. Appointees not
18 confirmed by the senate shall continue to serve until the senate
19 has failed to confirm. Prior to appointing an individual, the
20 governor shall request the superintendent to conduct an inquiry
21 into the individual's background, with particular regard to
22 financial stability, integrity, responsibility and reputation
23 for good character.

24 B. Commission members serve three-year terms,
25 staggered by lot. One of the initial appointees shall serve

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1 until December 31, 1997, two shall serve until December 31,
2 1998, and the remaining two until December 31, 1999. Commission
3 member shall be eligible for reappointment only once. The chair
4 of the commission shall be appointed by the governor and shall
5 serve as chair at the pleasure of the governor. The vice-chair
6 of the commission, who shall have the full power of the chair in
7 the absence of the chair, shall be elected by the commission for
8 a term of one year. Appointments to fill vacancies shall be for
9 the unexpired term of the member replaced. No person shall be
10 appointed or continue to serve if the person has ever been
11 convicted of or pled guilty or nolo contendere to an offense
12 punishable by imprisonment for more than one year.

13 C. Each commission member may engage in any other
14 business, occupation or gainful employment that is not in
15 conflict with the duties of the commission. One member of the
16 commission shall represent those who manufacture, sell or
17 operate video gaming devices. Notwithstanding the provisions of
18 Subsection A of Section 5 of the Video Gaming Act, the member so
19 representing may hold an interest and accept anything of value
20 related to bona fide employment or bona fide business ownership.
21 The commission shall meet at least once each month and at the
22 call of the chair. The commission shall also meet upon the call
23 of two or more members after they have given seventy-two hour
24 written notice to each member.

25 D. The chair of the commission shall receive seven

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1 thousand dollars (\$7,000) per year and the other members six
2 thousand dollars (\$6,000). All commission members shall be
3 reimbursed in accordance with the provisions of the Per Diem and
4 Mileage Act.

5 E. A majority of the commission shall constitute a
6 quorum for purposes of conducting business, but no action or
7 decision of the superintendent shall be reversed or modified by
8 the commission unless at least three members vote to do so.

9 F. Initial appointments to the commission shall be
10 made within thirty days of the effective date of the Video
11 Gaming Act.

12 G. The commission shall:

13 (1) hear and decide all appeals from decisions
14 of the superintendent relative to the granting, suspension,
15 revocation, condition or renewal of all licenses;

16 (2) impose all fines under the Video Gaming
17 Act;

18 (3) approve or disapprove rules promulgated by
19 the superintendent, provided that the commission shall not
20 modify any rule and any rule not disapproved within sixty days
21 of submission to the commission shall be deemed approved;

22 (4) make an annual report to the governor and
23 the legislature on the operation of the Video Gaming Act,
24 including any recommendations for changes.

25 H. The commission shall approve, by rule, any games

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1 to be used in a video gaming device. The commission shall
2 approve all games which meet the definition of video gaming
3 which the commission finds meet the commission's security
4 requirements and will further the purposes of the Video Gaming
5 Act. The commission may approve games which do not provide
6 immediate notice of outcome, but any games so approved shall be
7 played only on video gaming devices, shall meet the commission's
8 security requirements and shall be subject to the same central
9 site computer monitoring system as all other games. The
10 commission shall designate resort areas by rule.

11 Section 5. PROHIBITED ACTS--PENALTY.--

12 A. No member of the commission or employee of the
13 state, or any of its political subdivisions, agencies or
14 instrumentalities, shall, directly or indirectly, :

15 (1) hold a substantial interest in the
16 manufacture, sale, distribution or operation of video gaming
17 devices, equipment, services, tickets, machines or any business
18 or entity which enters into a location agreement;

19 (2) have any interest whatsoever in the
20 purchases or sales made by persons licensed under the Video
21 Gaming Act or purchase, lease, or sell video gaming equipment,
22 services, tickets, machines or other materials;

23 (3) solicit or accept any gift, gratuity,
24 emolument or employment, of more than de minimis value, from any
25 person licensed under the Video Gaming Act, or from any officer,

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1 agent or employee of such a person; or

2 (4) solicit from, request from or recommend to
3 any person licensed under that act or any officer, agent or
4 employee of such a person, the appointment of any person to any
5 place or position.

6 B. No person or entity licensed under the Video
7 Gaming Act or any officer, agent or employee of such a person or
8 entity shall offer to any member or employee of the commission
9 or employee of the superintendent any gift, gratuity, emolument
10 or employment, of more than de minimis value.

11 C. Any person violating the provisions of this
12 section is guilty of a fourth degree felony and shall be
13 sentenced in accordance with the provisions of Section 31-18-15
14 NMSA 1978.

15 Section 6. SUPERINTENDENT--DUTIES.--The superintendent
16 shall:

17 A. promulgate rules, in accordance with the State
18 Rules Act and subject to the approval of the commission,
19 relating to:

20 (1) authorized premises for video gaming
21 devices;

22 (2) investigations of prospective or current
23 licensees;

24 (3) mandating that electronic fund transfers to
25 the state of all money due from persons licensed under the Video

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1 Gaming Act and the necessary implementation requirements; and
2 (4) other matters appropriate to carrying out
3 the provisions of the Video Gaming Act;

4 B. provide staff and other support for the
5 commission;

6 C. enter into such contracts other legal agreements
7 as are necessary to carry out the decisions of the commission;

8 D. purchase or lease, in accordance with the
9 Procurement Code, a central site computer monitoring system for
10 video gaming devices and such other monitoring equipment as the
11 commission finds appropriate;

12 E. issue all licenses and other documents necessary
13 to carry out the purposes of the Video Gaming Act. No person
14 shall hold more than one level of license, nor shall a person
15 holding a substantial interest in a license of one class hold a
16 license of another level, provided, however, that the holder of
17 a premises license may hold an operator's license may be an
18 owner-operator of that premises license. A person holding a
19 substantial interest, prior to January 1, 1995, in a person or
20 entity eligible for a level one license may apply for and hold a
21 level three license in addition to the level one license so long
22 as the ownership of the person or entity does not change. The
23 levels of license are as follows:

- 24 (1) level one-- manufacturer;
25 (2) level two-- operator; and

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(3) level three--premises;

F. annually issue a separate license for each qualified video gaming device in operation in the state. The license shall not be removable from the device and shall be in the form of a numbered sticker which shall be attached to the device and indicate that the device has been inspected, although not necessarily in that year, and that all taxes and fees have been paid;

G. investigate and then approve or reject a video gaming device representative of each type or model proposed to be used in video gaming, and license each video gaming device prior to its installation or operation in any regulated system of video gaming;

H. investigate and then license each premises upon which the video gaming devices are to be played;

I. conduct spot inspections of video gaming devices on the premises where they are being played;

J. conduct hearings upon complaints charging violations of the Video Gaming Act or the superintendent's rules and, subject to an appeal to the commission, suspend, revoke or place conditions on the use of any license issued under that act;

K. conduct any other hearings provided for in the rules of the superintendent;

L. supervise, audit and investigate the operation of

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1 all games and devices played under the Video Gaming Act;

2 M investigate for possible approval all persons or
3 other entities seeking licenses and all of their financial
4 sources.

5 Section 7. ADVISORY COMMITTEE-- CREATION-- DUTIES. --The
6 superintendent shall appoint an advisory committee of seven
7 members who shall serve at the pleasure of the superintendent.
8 They shall receive no per diem or mileage reimbursement or any
9 other compensation or reimbursement for their expenses. No
10 employee of the state, its political subdivisions, agencies or
11 instrumentalities, shall serve on the committee. There shall be
12 at least one member representing each of the following areas or
13 industries:

- 14 A. the public at large;
- 15 B. the hotel and motel industry;
- 16 C. persons holding level two licenses, or, prior to
17 the issuance of such licenses, persons proposing to hold such
18 licenses;
- 19 D. the retail liquor industry;
- 20 E. the horse racing industry;
- 21 F. the restaurant industry; and
- 22 G. the fraternal orders.

23 The committee shall advise the superintendent and the
24 commission on the operation of the Video Gaming Act, any rules
25 proposed to be promulgated pursuant to that act, the practical

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1 effect of any actions proposed to be taken under that act, any
2 amendments to that act that might be necessary and any other
3 matter the committee deems appropriate.

4 Section 8. LICENSES--APPLICATION--FEES.--

5 A. An applicant for a manufacturer's, operator's or
6 premises license or any renewal of a license shall file an
7 application with the superintendent in a form, and including all
8 information, required by rule of the superintendent or the Video
9 Gaming Act. The application shall include a sworn statement by
10 the principal licensee, or an individual authorized to act on
11 behalf of the principal licensee, that the applicant shall
12 comply with the Video Gaming Act and all rules promulgated
13 pursuant to that act.

14 B. The following fees shall be transmitted in
15 connection with the application for a license or renewal:

- 16 (1) manufacturer's license--ten thousand
17 dollars (\$10,000);
- 18 (2) operator's license--three thousand dollars
19 (\$3,000);
- 20 (3) premises license held by a parimutuel
21 horseracing facility or resort--ten thousand dollars (\$10,000);
22 and
- 23 (4) all other premises license--five hundred
24 dollars (\$500).

25 C. A fee of five hundred dollars (\$500) per device

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1 shall be transmitted with the application for a video gaming
2 device license but shall not be transmitted with the application
3 for any renewal. This fee shall be in lieu of all other taxes
4 and fees, including the gross receipts tax, attributable to the
5 device or computed based upon the proceeds from the device
6 except for the percentage net proceeds tax.

7 Section 9. APPLICATIONS--REQUIREMENTS--APPROVAL. --

8 A. Any person or entity whom the superintendent
9 determines is qualified to be licensed, having due consideration
10 for the proper protection of the health, safety, morals, good
11 order and general welfare of the residents of the state, may be
12 issued a license. The burden of proving all qualifications of a
13 licensee shall be upon the applicant.

14 B. No license shall be issued unless the
15 superintendent is satisfied that the applicant:

16 (1) is of good character, honesty and
17 integrity;

18 (2) does not have prior activities, including
19 any criminal record, reputation, habits or associations that
20 pose a threat to the public interest of the state or the
21 effective regulation and control of video gaming within the
22 state or create or enhance the dangers of unsuitable, unfair or
23 illegal practices, methods or activities in the operation of the
24 video gaming or in the business or financial arrangement
25 incident to operating of video gaming;

1 (3) have adequate business integrity, honesty
2 and competence;

3 (4) have proposed financing which is:

4 (a) adequate for the nature of the
5 proposed operation; and

6 (b) from financial sources posing no risk
7 to the integrity of the regulated system of video gaming;

8 (5) have demonstrated sufficient technological
9 capability to meet the superintendent's rules; and

10 (6) are in all other respects qualified to be
11 licensed consistent with the desired policy of the state.

12 C. Before any license is issued, every person
13 holding a substantial interest in the applicant shall be proven
14 by the applicant:

15 (1) to be of good character, honesty and
16 integrity; and

17 (2) to have no prior activities, including any
18 criminal record, reputation, habits or associations that pose a
19 threat to the public interest of the state or the effective
20 regulation and control of video gaming within the state or
21 create or enhance the dangers of unsuitable, unfair or illegal
22 practices, methods or activities in the operation of the video
23 gaming or in the business or financial arrangement incident to
24 the operation of video gaming.

25 D. An application for a license shall constitute a

1 request for the determination of the applicant's general
2 character, integrity and ability to participate in, engage in,
3 or be associated with a regulated system of video games of
4 chance. An applicant shall provide any release or authorization
5 determined by the superintendent to be appropriate for the
6 consideration of an application. Any written or oral statement
7 made in the course of an official proceeding, including any
8 investigation, shall be absolutely privileged and shall not
9 impose any civil liability.

10 E. Until July 1, 1997, no operator's license shall
11 be issued to any person who has not been, at the time of
12 issuance, a bona fide resident of the state for two years nor
13 shall an operator's license be issued to any entity in which a
14 person ineligible to hold an operator's license pursuant to this
15 subsection holds a substantial interest. An owner-operator may
16 be issued an operator's license and a premises license.

17 Section 10. LICENSES--TRANSFER--DISPLAY.--No license
18 issued pursuant to the Video Gaming Act shall be assignable or
19 transferable from person to person or device to device. Any
20 license so issued shall be conspicuously displayed at the
21 licensee's principal place of business in an area visible to the
22 public.

23 Section 11. LICENSES--INVESTIGATIONS.--

24 A. Any applicant for or holder of a license issued
25 under the Video Gaming Act shall produce records or evidence and

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1 give all information requested by the superintendent or the
2 commission. No applicant or holder shall interfere or attempt
3 to interfere with any investigation by the superintendent or
4 commission.

5 B. Every manufacturer's licensee shall immediately
6 make available for inspection by any agent of the state all
7 papers, books and records produced by any video gaming equipment
8 business and all portions of the establishment where equipment
9 is manufactured, sold or distributed. Any agent of the state
10 shall be given immediate access to any portion of the
11 establishment of any licensed manufacturer for the purpose of
12 inspecting or examining any records or documents required to be
13 kept by the licensee under the Video Gaming Act or any
14 superintendent's rule or examining any equipment related to the
15 conduct of any Video Gaming Activity.

16 C. Every operator and every person owning or
17 controlling a premises shall immediately make available for
18 inspection by any agent of the state all papers, books and
19 records produced by any Video Gaming Activity or business and
20 make available all portions of the establishment where
21 electronic instant video gaming-related equipment or devices may
22 be located in order to permit the agent to determine that all
23 devices comply with minimum requirements and do not vary in any
24 significant manner from the representative device of the same
25 type approved by the superintendent.

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1 D. The state may, after written or oral notice,
2 remove a video gaming device or any portion of the device from
3 the establishment where it is being operated for the purpose of
4 examination and inspection.

5 Section 12. SUSPENSION--REVOCATION--SEIZURE. --

6 A. The superintendent may revoke a manufacturer's,
7 operator's or premises license upon a finding that the licensee
8 or any person holding a substantial interest in the licensee
9 has:

10 (1) provided false or misleading information to
11 the superintendent or commission;

12 (2) been convicted of any felony or gambling-
13 related offense;

14 (3) endangered the security of a video gaming
15 device;

16 (4) become a person whose character is no
17 longer consistent with the protection of the public interest and
18 trust in video gaming; or

19 (5) become delinquent in remitting money owed
20 to any person or to the state.

21 B. The superintendent may suspend or revoke a
22 manufacturer's, operator's or premises license upon a finding
23 that the licensee or any person holding a substantial interest
24 in the licensee has violated the Video Gaming Act or
25 superintendent's rule. If the superintendent suspends or

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1 revokes or refuses to grant a license or seizes the video gaming
2 devices of a licensee, any interested party may, upon written
3 notice to the commission, in accordance with the rules of the
4 superintendent, request a hearing. The chair of the commission
5 may stay the revocation of suspension of a license pending the
6 outcome of the hearing.

7 C. Any person aggrieved by a decision of the
8 superintendent may appeal the decision to the commission.

9 D. The superintendent may seize or seal any or all
10 video gaming devices changed or modified in any manner not
11 approved by the superintendent.

12 Section 13. DEVICE MANUFACTURE--RESPONSIBILITY.--

13 A. The responsibility for final assembly and initial
14 operation of a video gaming device, in the manner approved by
15 the superintendent, shall be with the manufacturer. Changes in
16 the manner of final assembly or initial operation of a device
17 after a representative device has been submitted to the
18 superintendent for inspection and approval shall void the
19 approval unless prior to the change the manufacturer obtains
20 approval from the superintendent in accordance with the
21 provisions of this section. A voided approval shall be deemed
22 to revoke all licenses of the affected devices.

23 B. Any request for changes to be made in a video
24 gaming device shall be submitted in writing to the
25 superintendent for prior approval. When appropriate, the

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1 request for a change shall be accompanied by a print, schematic,
2 block diagram or machine analysis which contains details of the
3 proposed change. Further, a reason for the change shall be set
4 forth. In emergency cases, when a change is found by the
5 superintendent to be necessary to prevent cheating or
6 malfunction, a verbal request may be approved. The verbal
7 approval shall be followed within fifteen days by a written
8 request noting the verbal approval and containing the additional
9 material required by this subsection.

10 Section 14. VIDEO GAMING DEVICE LIMITATIONS. --

11 A. No video gaming device shall allow more than two
12 dollars (\$2.00) to be played on a single game or award, in any
13 one game, games or credits worth in excess of eight hundred
14 dollars (\$800); provided that, after December 31, 1997, the
15 commission may set a limit different from eight hundred dollars
16 (\$800) by regulation.

17 B. No video gaming device shall directly dispense
18 coins or currency.

19 C. No person shall allow access to a video gaming
20 device by a person under the age of twenty-one years, nor shall
21 any person employ a person under the age of twenty-one years if
22 any portion of the job duties are to be performed in any area
23 licensed for the location of video gaming devices.

24 D. No video gaming device shall be available for
25 play by the public unless it is included in a valid location

1 agreement, it is located on premises licensed for the
2 consumption of spirituous liquors, at least thirty-five percent
3 of the receipts attributable to spirituous liquors, wine and
4 fermented beverages are from sales for on premises consumption
5 and:

6 (1) located on the premises owned, leased or
7 maintained by a person holding an operator's license, but not
8 for play by the public; or

9 (2) the premises are owned, leased or
10 maintained by the person or entity controlling the location at
11 which the device is located; provided that, a financial
12 institution may own or hold a substantial interest in a device
13 for the period necessary for it to satisfy any valid security
14 interest, not to exceed six months.

15 Section 15. VIDEO GAMING DEVICE REQUIREMENTS. --

16 A. An video gaming device may deliver or entitle the
17 person playing the device to receive a printed ticket,
18 exchangeable for cash, which specifies the time, date, amount of
19 winnings and the location of the device. A video gaming device
20 shall record all use of the device and all amounts deposited in
21 it and report the use and amounts deposited to a central site
22 computer monitor. A video gaming device shall, at a minimum:

23 (1) pay out a mathematically demonstrable
24 percentage of all amounts played, which shall be not less than
25 eighty percent and not more than ninety-five percent. Video

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1 games which may be affected by skill shall be evaluated against
2 this criterion using a method of play which will provide the
3 greatest return to the player over a period of continuous play;

4 (2) use a random selection process to determine
5 the outcome of each play of a game which meets ninety-five
6 percent confidence limits using a standard chi squared test for
7 randomness and which is impervious to outside influences;

8 (3) display an accurate representation of the
9 game outcome, and shall not alter any function of the device
10 based on internal computation of payout percentage;

11 (4) have the capacity to display outcome
12 intermediate play steps, credits available, credits played,
13 credits paid and credits cashed out for the most recent game
14 played and one game prior;

15 (5) be equipped with electronic meters and
16 electromechanical meters capable of displaying monetary
17 transactions and be capable of printing a record of those
18 transactions. The device memory shall be in units equal to the
19 denomination of the device, be at least six digits in length and
20 retain, at least, the following transaction records for a period
21 of at least one hundred eighty days:

22 (a) electronic meters: money inserted,
23 credits wagered, credits won, credits paid out, times logic area
24 accessed, times ticket or other pay-out device accessed, credits
25 or money won, number of credits representing money inserted by a

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1 player and credit for games won but not collected; and

2 (b) electromechanical meters: money
3 inserted, total credits of ticket vouchers printed, credits
4 played and credits won;

5 (6) be designed so that replacement of parts of
6 modules required for normal maintenance does not necessitate
7 replacement of the meters.

8 B. Every video gaming device shall:

9 (1) clearly represent its rules of play to the
10 playing public; and

11 (2) operate and play in accordance with the
12 representation made to the superintendent and the public.

13 C. Pay off schedules applicable to each video gaming
14 device shall be displayed on the device or in a conspicuous
15 place immediately adjacent thereto or be accessible from the
16 device. Pay off schedules shall accurately state the range of
17 actual pay offs or awards and shall not be worded in such manner
18 as to mislead or deceive the public. The posting of any
19 misleading or deceptive material on any pay off schedule or
20 failure to make payment in accordance with a posted pay off
21 schedules shall constitute a violation of the Video Gaming Act.

22 D. The superintendent may inspect any video gaming
23 device which is offered for sale or use in this state by a
24 manufacturer.

25 Section 16. LOCATION AGREEMENTS-- FILING. --All location

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1 agreements shall be filed with the superintendent of the
2 division before becoming effective, and no location agreement
3 shall be effective without being filed with the superintendent.
4 Any location agreement for a location which is not a resort or a
5 parimutuel horseracing facility and which includes a video
6 gaming device which is owned by a person or entity which does
7 not hold an operator's license shall include a maintenance
8 agreement for that machine with a person or entity holding an
9 operator's license. A person holding both a premises and an
10 operator's license shall hold only one premises license. This
11 section shall not affect rights and obligations between private
12 parties.

13 Section 17. LOCATION AGREEMENTS--PROCEEDS
14 DISTRIBUTION.--No location agreement shall require an operator
15 to remit to another party more than fifty percent of the net
16 proceeds, after deduction of any taxes due.

17 Section 18. VIDEO GAMING DEVICES--LIMITATIONS.--Video
18 gaming devices shall not be made available for play except in
19 accordance with this section. Devices shall be placed only in
20 locations which are age controlled. Devices can only be placed
21 in the following places in the following numbers:

22 A. premises licensed for the on-premises consumption
23 of spirituous liquors-- five devices;

24 C. premises that are resorts-- fifty devices;

25 D. premises that are licensed as clubs under the

Underscored material = new
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1 Liquor Control Act as of January 1, 1995--fifteen devices;

2 E. premises that are parimutuel horseracing
3 facilities--one hundred devices, if fifty percent of the money
4 retained by the licensee is used exclusively for purses,
5 provided that the money shall not be substituted for money
6 otherwise dedicated to purses or awards, five devices,
7 otherwise. Notwithstanding the otherwise applicable number of
8 devices permissible, no resort area shall have more than one
9 hundred and fifty devices located within it; provided that, for
10 purposes of calculating this limitation, premises that are
11 licensed for consumption of spirituous liquors shall be deemed
12 to have five devices.

13 Section 19. PERCENTAGE NET PROCEEDS TAX.--For the
14 privilege of locating video gaming devices for play by the
15 public, there is imposed on every operator a "percentage net
16 proceeds tax." The tax shall be equal to twenty percent of the
17 net proceeds attributable to devices owned or maintained by the
18 operator. The taxable event shall be the playing of the device
19 by the public. The tax shall be due on the fifth of the month
20 following the taxable event. The taxation and revenue
21 department is charged with administration of the tax. The rate
22 of the percentage net proceeds tax shall not be increased in any
23 year in which the gross receipts tax is not increased and in
24 such a year may be increased only by a proportion which bears
25 the same ratio to the prior net proceeds tax as the increase in

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1 the gross receipts tax bears to prior gross receipts tax.

2 Section 20. ELECTIONS FOR LOCAL OPTION. -- Any municipality
3 containing over five thousand population according to the latest
4 United States census, whether the county in which that
5 municipality is situated has adopted the local option provisions
6 of the Video Gaming Act or not, or any county in the state may
7 adopt local option in the county or municipality upon the
8 following terms and conditions:

9 A. at any time after the effective date of the Video
10 Gaming Act, the registered qualified electors of any proposed
11 local option district may petition the governing body by filing
12 one or more petitions in the appropriate office to hold an
13 election for the purpose of determining whether the county or
14 municipality shall adopt the local option provisions of the
15 Video Gaming Act. If the aggregate of the signatures of such
16 elector on all the petitions equals or exceeds five percent of
17 the number of registered voters of the district, the governing
18 body shall call an election within seventy-five days of the
19 verification of the petition. The date of the filing of the
20 petition shall be the date of the filing of the last petition
21 which brings the number of signatures up to the required five
22 percent; provided, however, that the governing body shall refuse
23 to recognize the petition if more than three months have elapsed
24 between the date of the first signature and the filing of the
25 last petition necessary to bring the number of signatures on the

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1 petition up to five percent;

2 B. the election shall be called, conducted, counted
3 and canvassed substantially in the manner provided by law for
4 general elections within the county or special municipal
5 elections within the municipality, except as otherwise provided
6 in this section;

7 C. the votes at the election shall be counted,
8 returned and canvassed as provided for in the case of general
9 elections within the county or special municipal elections
10 within the municipality;

11 D. except as otherwise provided in this section,
12 contests, recounts and rechecks shall be permitted as provided
13 for in the case of candidates for county office in general
14 elections or as provided for in the case of special municipal
15 elections within the municipality. Applications for contests,
16 recounts or rechecks may be filed by any person who voted in the
17 election, and service shall be made upon the county clerk or
18 municipal clerk as the case may be;

19 E. if a majority of all the votes cast at the
20 election are cast in favor of allowing the location of video
21 gaming devices at resorts in the county or municipality, the
22 chairman of the governing body shall declare by order entered
23 upon the records of the county or municipality that the county
24 or municipality has adopted the local option provisions of the
25 Video Gaming Act and shall notify the commission of such

Underscored material = new
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1 results;

2 F. no election held pursuant to this section shall
3 be held within forty-two days of any primary, general, municipal
4 or school district election. If, within sixty days from the
5 verification of any petition as provided in Subsection A of this
6 section, a primary, general, municipal or school election is
7 held, the governing body may call an election for a day not less
8 than sixty days after the primary, general, municipal or school
9 election;

10 G. if an election is held under the provisions of
11 the Video Gaming Act in any county which contains within its
12 limits any municipality of more than five thousand persons
13 according to the last United States census, it is not necessary
14 for the registered qualified electors in the municipality to
15 file a separate petition asking for a separate or different vote
16 on the question of adopting the local option provisions of the
17 Video Gaming Act by the municipality. The election in the county
18 shall be conducted so as to separate the votes in the
19 municipality from those in the remaining parts of the county. If
20 a majority of the voters in the county, including the voters in
21 the municipality, vote against the location of video gaming
22 devices at resorts in the county, the county shall not adopt the
23 local option provisions of the Video Gaming Act; but if a
24 majority of the votes in the municipality are in favor of
25 locating video gaming devices at resorts, the municipality shall

Underscored material = new
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1 have adopted the local option provisions of the Video Gaming
2 Act. Nothing contained in this subsection shall prevent any
3 municipality from having a separate election under the terms of
4 this section.

5 Section 21. RESUBMISSION OF LOCAL OPTION QUESTION. -- In any
6 local option district in which the local option provisions of
7 the Video Gaming Act have been rejected by the voters, it shall
8 be permissible after the expiration of two years from the date
9 of the election at which the local option provisions of the
10 Video Gaming Act were rejected, to have another local option
11 election in the district.

12 Section 22. FUND CREATED. -- There is created in the state
13 treasury the "video gaming fund." All money in the fund, and
14 all interest attributable to it are appropriated to the
15 superintendent for the purpose of carrying out the provisions of
16 the Video Gaming Act. All fees paid for licenses under the
17 Video Gaming Act shall be credited to the fund.

18 Section 23. APPROPRIATION. -- There is appropriated from the
19 general fund to the video gaming fund the sum of one million
20 five hundred thousand dollars (\$1,500,000) for the purpose of
21 carrying out the provisions of this act. This appropriation
22 shall not revert at the end of any fiscal year.

23 Section 24. SEVERABILITY. -- If any part or application of
24 this act is held invalid, the remainder or its application to
25 other situations or persons shall not be affected.

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Section 25. EFFECTIVE DATE. --The effective date of the provisions of the Video Gaming Act is July 1, 1996.

**State of New Mexico
House of Representatives**

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 29, 1996

Mr. Speaker:

Your RULES AND ORDER OF BUSINESS COMMITTEE, to
whom has been referred

HOUSE BILL 346

has had it under consideration and finds same to be
GERMANE in accordance with constitutional provisions.

Respectfully submitted,

Barbara A. Perea Casey,

Chairperson

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

1

2

Date _____

3

4 The roll call vote was 9 For 0 Against

5 Yes: 9

6 Excused: Lujan, Nicely, Olguin, Pederson, Wallach,

7 S. Williams

8 Absent: None

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 11, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 346

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
FOR HOUSE BILL 346

DO PASS, and thence referred to the APPROPRIATIONS AND
FINANCE COMMITTEE.

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 3 Against

Yes: 7

No: Alwin, Hobbs, Macko

Excused: None

Absent: Gubbels, Varela

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HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 346

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
1996

AN ACT

RELATING TO GAMES OF CHANCE; ENACTING THE VIDEO GAMING ACT;
ESTABLISHING PROCEDURES; PRESCRIBING PENALTIES; IMPOSING TAXES
AND FEES; PERMITTING VERTICAL INTEGRATION OF CERTAIN LICENSEES;
PROVIDING FOR A CERTAIN LOCAL OPTION; MAKING APPROPRIATIONS.

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

Section 1. SHORT TITLE. -- Sections 1 through 22 of this act
may be cited as the "Video Gaming Act. "

Section 2. PURPOSE. -- The purpose of the Video Gaming Act
is to combat the growth of illegal gaming through the
establishment of a regulated system of video games of chance.

The legislature finds that:

A. the technology now exists to provide a secure
system of regulated gaming;

B. this system will:

(1) offer fair play and return to consumers who

use the system;

(2) provide needed revenue to the state and its political subdivisions;

(3) provide additional entertainment to attract tourists and increase their length of stay; and

(4) provide additional jobs for the citizens of New Mexico.

Section 3. DEFINITIONS.--As used in the Video Gaming Act:

A. "age controlled environment" means a location, or portion of a location, licensed for the on premises consumption of spirituous liquors and the interior of which is not observable by any individual under the age of twenty-one years. No individual under the age of twenty-one years may be employed to work in the age controlled environment;

B. "application" means the forms and schedules prescribed by the commission upon which an applicant applies for a license or license renewal and includes, but is not limited to, information, disclosure statements and financial statements submitted;

C. "commission" means the video gaming commission;

D. "credit" means the basic unit of a win on a video gaming device which entitles the player to one additional free game at the lowest monetary rate at which one game may be purchased on that device;

E. "financial source" means any person, partnership, trust or corporation that provides credit for capital or operations where the terms of repayment extend for more than ninety days;

1 F. "fraternal order" or "veterans' club" means an
2 organization described in Section 501(c)(8), (10), (19) or (23) of
3 the federal Internal Revenue Code of 1986 and exempt from federal
4 income taxation pursuant to Section 501(a) of that code;

5 G. "gross proceeds" means the total value of money
6 placed in a video gaming device by consumers;

7 H. "holding a substantial interest" means:

8 (1) ownership, operation, management or
9 conducting the business of a proprietorship, directly or
10 indirectly, by an individual or spouse of the individual;

11 (2) sharing or being entitled to share in any
12 profits, actual or potential, of a partnership or trust by an
13 individual or spouse of the individual;

14 (3) being an officer, director, stockholder or
15 spouse of a stockholder in a corporation which is not publicly
16 traded;

17 (4) being the holder, legally or beneficially, of
18 five percent or more of any class of stock or other evidence of
19 ownership of a publicly traded corporation or other public traded
20 entity or being the spouse of such a holder;

21 (5) furnishing five percent or more of the
22 capital of any entity.

23 A person holding a substantial interest in any entity shall
24 be deemed to hold a substantial interest in every entity in which
25 the first entity holds a substantial interest;

1 I. "location agreement" means a written agreement
2 between an operator and the person or entity owning or controlling
3 a licensed premises for the placement of video gaming devices
4 within the location for use by the public. If the person or entity
5 owns the devices, the person or entity's sworn statement to that
6 effect shall be deemed a location agreement;

7 J. "manufacturer" means a person or entity which
8 assembles, from subparts or raw materials, a complete video gaming
9 device;

10 K. "manufacturer's license" means a license issued by
11 the superintendent which authorizes the manufacture and transfer or
12 sale of video gaming devices to an operator;

13 L. "net proceeds" means the gross proceeds minus all
14 prizes paid out to players of a video gaming device;

15 M. "operator" means any person or entity who owns,
16 services or maintains video gaming devices, but does not include
17 any person owning or controlling, or holding a substantial interest
18 in an entity which owns or controls, a licensed premises for which
19 there is a location agreement;

20 N. "operator's license" means a license issued by the
21 superintendent which authorizes a person to engage in the business
22 of an operator;

23 O. "owner-operator" means any person or entity who
24 owns, services or maintains video gaming devices, owns or leases
25 one premises and is the holder of the premises license where the

1 video gaming devices are located;

2 P. "parimutuel horseracing facility" means a premises
3 licensed to hold public horseraces or horse meetings for profit or
4 gain;

5 Q. "play" means to activate a video gaming device and
6 to manipulate or work it for the purpose of winning as indicated by
7 the pay-out schedule or accumulating credits to be replayed or to
8 be cashed out of the machine in the form of a printed ticket to be
9 exchanged for cash;

10 R. "premises license" means a license issued by the
11 superintendent to a person or entity owning or controlling a
12 location and authorizing the placement of video gaming devices at
13 that location for play by the public;

14 S. "spirituous liquors" means alcoholic beverages except
15 fermented beverages such as wine, beer and ale;

16 T. "superintendent" means the superintendent of
17 regulation and licensing; and

18 U. "video gaming device" means an electronic machine
19 which utilizes a cathode ray tube or video display screen and
20 microprocessors and which is available for consumer play upon
21 payment of specified consideration, with winners immediately
22 determined by the application of the element of chance, whether or
23 not accompanied by an element of skill, and with a reward of
24 possible games or credits displayed on the device to the winners.

25 Section 4. COMMISSION ESTABLISHED-- MEMBERSHIP--

1 REQUIREMENTS. --

2 A. There is created the "video gaming commission" which
3 shall consist of five members appointed by the governor with the
4 advice and consent of the senate. Appointees not confirmed by the
5 senate shall continue to serve until the senate has failed to
6 confirm. Prior to appointing an individual, the governor shall
7 request the superintendent to conduct an inquiry into the
8 individual's background, with particular regard to financial
9 stability, integrity, responsibility and reputation for good
10 character.

11 B. Commission members serve three-year terms, staggered
12 by lot. One of the initial appointees shall serve until December
13 31, 1997, two shall serve until December 31, 1998, and the
14 remaining two until December 31, 1999. Commission member shall be
15 eligible for reappointment only once. The chair of the commission
16 shall be appointed by the governor and shall serve as chair at the
17 pleasure of the governor. The vice-chair of the commission, who
18 shall have the full power of the chair in the absence of the chair,
19 shall be elected by the commission for a term of one year.
20 Appointments to fill vacancies shall be for the unexpired term of
21 the member replaced. No person shall be appointed or continue to
22 serve if the person has ever been convicted of or pled guilty or
23 nolo contendere to an offense punishable by imprisonment for more
24 than one year.

25 C. Each commission member may engage in any other

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1 business, occupation or gainful employment that is not in conflict
2 with the duties of the commission. One member of the commission
3 shall represent those who manufacture, sell or operate video gaming
4 devices. Notwithstanding the provisions of Subsection A of Section
5 of the Video Gaming Act, the member so representing may hold an
6 interest and accept anything of value related to bona fide
7 employment or bona fide business ownership. The commission shall
8 meet at least once each month and at the call of the chair. The
9 commission shall also meet upon the call of two or more members
10 after they have given seventy-two hour written notice to each
11 member.

12 D. The chair of the commission shall receive seven
13 thousand dollars (\$7,000) per year and the other members six
14 thousand dollars (\$6,000). All commission members shall be
15 reimbursed in accordance with the provisions of the Per Diem and
16 Mileage Act.

17 E. A majority of the commission shall constitute a
18 quorum for purposes of conducting business, but no action or
19 decision of the superintendent shall be reversed or modified by the
20 commission unless at least three members vote to do so.

21 F. Initial appointments to the commission shall be made
22 within thirty days of the effective date of the Video Gaming Act.

23 G. The commission shall:

24 (1) hear and decide all appeals from decisions of
25 the superintendent relative to the granting, suspension,

1 revocation, condition or renewal of all licenses;

2 (2) impose all fines under the Video Gaming Act;

3 (3) approve or disapprove rules promulgated by
4 the superintendent, provided that the commission shall not modify
5 any rule and any rule not disapproved within sixty days of
6 submission to the commission shall be deemed approved;

7 (4) make an annual report to the governor and the
8 legislature on the operation of the Video Gaming Act, including any
9 recommendations for changes.

10 H. The commission shall approve, by rule, any games to
11 be used in a video gaming device. The commission shall approve all
12 games which meet the definition of video gaming which the
13 commission finds meet the commission's security requirements and
14 will further the purposes of the Video Gaming Act. The commission
15 may approve games which do not provide immediate notice of outcome,
16 but any games so approved shall be played only on video gaming
17 devices, shall meet the commission's security requirements and
18 shall be subject to the same central site computer monitoring
19 system as all other games. The commission shall designate resort
20 areas by rule.

21 Section 5. PROHIBITED ACTS--PENALTY. --

22 A. No member of the commission or employee of the
23 state, or any of its political subdivisions, agencies or
24 instrumentalities, shall, directly or indirectly,:

25 (1) hold a substantial interest in the

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1 manufacture, sale, distribution or operation of video gaming
2 devices, equipment, services, tickets, machines or any business or
3 entity which enters into a location agreement;

4 (2) have any interest whatsoever in the purchases
5 or sales made by persons licensed under the Video Gaming Act or
6 purchase, lease, or sell video gaming equipment, services, tickets,
7 machines or other materials;

8 (3) solicit or accept any gift, gratuity,
9 emolument or employment, of more than de minimis value, from any
10 person licensed under the Video Gaming Act, or from any officer,
11 agent or employee of such a person; or

12 (4) solicit from, request from or recommend to
13 any person licensed under that act or any officer, agent or
14 employee of such a person, the appointment of any person to any
15 place or position.

16 B. No person or entity licensed under the Video Gaming
17 Act or any officer, agent or employee of such a person or entity
18 shall offer to any member or employee of the commission or employee
19 of the superintendent any gift, gratuity, emolument or employment,
20 of more than de minimis value.

21 C. Any person violating the provisions of this section
22 is guilty of a fourth degree felony and shall be sentenced in
23 accordance with the provisions of Section 31-18-15 NMSA 1978.

24 Section 6. SUPERINTENDENT-- DUTIES. --The superintendent
25 shall:

1 A. promulgate rules, in accordance with the State Rules
2 Act and subject to the approval of the commission, relating to:

3 (1) authorized premises for video gaming devices;

4 (2) investigations of prospective or current
5 licensees;

6 (3) mandating that electronic fund transfers to
7 the state of all money due from persons licensed under the Video
8 Gaming Act and the necessary implementation requirements; and

9 (4) other matters appropriate to carrying out the
10 provisions of the Video Gaming Act;

11 B. provide staff and other support for the commission;

12 C. enter into such contracts other legal agreements as
13 are necessary to carry out the decisions of the commission;

14 D. purchase or lease, in accordance with the
15 Procurement Code, a central site computer monitoring system for
16 video gaming devices and such other monitoring equipment as the
17 commission finds appropriate;

18 E. issue all licenses and other documents necessary to
19 carry out the purposes of the Video Gaming Act. No person shall
20 hold more than one level of license, nor shall a person holding a
21 substantial interest in a license of one class hold a license of
22 another level, provided, however, that the holder of a premises
23 license may hold an operator's license may be an owner-operator of
24 that premises license. A person holding a substantial interest,
25 prior to January 1, 1995, in a person or entity eligible for a

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1 level one license may apply for and hold a level three license in
2 addition to the level one license so long as the ownership of the
3 person or entity does not change. The levels of license are as
4 follows:

- 5 (1) level one--manufacturer;
- 6 (2) level two--operator; and
- 7 (3) level three--premises;

8 F. annually issue a separate license for each qualified
9 video gaming device in operation in the state. The license shall
10 not be removable from the device and shall be in the form of a
11 numbered sticker which shall be attached to the device and indicate
12 that the device has been inspected, although not necessarily in
13 that year, and that all taxes and fees have been paid;

14 G. investigate and then approve or reject a video
15 gaming device representative of each type or model proposed to be
16 used in video gaming, and license each video gaming device prior to
17 its installation or operation in any regulated system of video
18 gaming;

19 H. investigate and then license each premises upon
20 which the video gaming devices are to be played;

21 I. conduct spot inspections of video gaming devices on
22 the premises where they are being played;

23 J. conduct hearings upon complaints charging violations
24 of the Video Gaming Act or the superintendent's rules and, subject
25 to an appeal to the commission, suspend, revoke or place conditions

1 on the use of any license issued under that act;

2 K. conduct any other hearings provided for in the rules
3 of the superintendent;

4 L. supervise, audit and investigate the operation of
5 all games and devices played under the Video Gaming Act;

6 M investigate for possible approval all persons or
7 other entities seeking licenses and all of their financial sources.

8 Section 7. ADVISORY COMMITTEE-- CREATION-- DUTIES. --The
9 superintendent shall appoint an advisory committee of seven members
10 who shall serve at the pleasure of the superintendent. They shall
11 receive no per diem or mileage reimbursement or any other
12 compensation or reimbursement for their expenses. No employee of
13 the state, its political subdivisions, agencies or
14 instrumentalities, shall serve on the committee. There shall be at
15 least one member representing each of the following areas or
16 industries:

17 A. the public at large;

18 B. persons holding level two licenses, or, prior to the
19 issuance of such licenses, persons proposing to hold such licenses;

20 C. the horse racing industry; and

21 D. the fraternal orders or veterans' clubs.

22 The committee shall advise the superintendent and the
23 commission on the operation of the Video Gaming Act, any rules
24 proposed to be promulgated pursuant to that act, the practical
25 effect of any actions proposed to be taken under that act, any

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1 amendments to that act that might be necessary and any other matter
2 the committee deems appropriate.

3 Section 8. LICENSES--APPLICATION--FEES.--

4 A. An applicant for a manufacturer's, operator's or
5 premises license or any renewal of a license shall file an
6 application with the superintendent in a form, and including all
7 information, required by rule of the superintendent or the Video
8 Gaming Act. The application shall include a sworn statement by the
9 principal licensee, or an individual authorized to act on behalf of
10 the principal licensee, that the applicant shall comply with the
11 Video Gaming Act and all rules promulgated pursuant to that act.

12 B. The following fees shall be transmitted in
13 connection with the application for a license or renewal:

14 (1) manufacturer's license--ten thousand dollars
15 (\$10,000);

16 (2) operator's license--three thousand dollars
17 (\$3,000);

18 (3) premises license held by a parimutuel
19 horseracing facility--ten thousand dollars (\$10,000); and

20 (4) premises license held by a fraternal order or
21 veterans' club--five hundred dollars (\$500).

22 C. A fee of five hundred dollars (\$500) per device
23 shall be transmitted with the application for a video gaming device
24 license but shall not be transmitted with the application for any
25 renewal. This fee shall be in lieu of all other taxes and fees,

1 including the gross receipts tax, attributable to the device or
2 computed based upon the proceeds from the device except for the
3 percentage net proceeds tax.

4 Section 9. APPLICATIONS--REQUIREMENTS--APPROVAL.--

5 A. Any person or entity whom the superintendent
6 determines is qualified to be licensed, having due consideration
7 for the proper protection of the health, safety, morals, good order
8 and general welfare of the residents of the state, may be issued a
9 license. The burden of proving all qualifications of a licensee
10 shall be upon the applicant.

11 B. No license shall be issued unless the superintendent
12 is satisfied that the applicant:

13 (1) is of good character, honesty and integrity;

14 (2) does not have prior activities, including any
15 criminal record, reputation, habits or associations that pose a
16 threat to the public interest of the state or the effective
17 regulation and control of video gaming within the state or create
18 or enhance the dangers of unsuitable, unfair or illegal practices,
19 methods or activities in the operation of the video gaming or in
20 the business or financial arrangement incident to operating of
21 video gaming;

22 (3) have adequate business integrity, honesty and
23 competence;

24 (4) have proposed financing which is:

25 (a) adequate for the nature of the proposed

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1 operation; and

2 (b) from financial sources posing no risk to
3 the integrity of the regulated system of video gaming;

4 (5) have demonstrated sufficient technological
5 capability to meet the superintendent's rules; and

6 (6) are in all other respects qualified to be
7 licensed consistent with the desired policy of the state.

8 C. Before any license is issued, every person holding a
9 substantial interest in the applicant shall be proven by the
10 applicant:

11 (1) to be of good character, honesty and
12 integrity; and

13 (2) to have no prior activities, including any
14 criminal record, reputation, habits or associations that pose a
15 threat to the public interest of the state or the effective
16 regulation and control of video gaming within the state or create
17 or enhance the dangers of unsuitable, unfair or illegal practices,
18 methods or activities in the operation of the video gaming or in
19 the business or financial arrangement incident to the operation of
20 video gaming.

21 D. An application for a license shall constitute a
22 request for the determination of the applicant's general character,
23 integrity and ability to participate in, engage in, or be
24 associated with a regulated system of video games of chance. An
25 applicant shall provide any release or authorization determined by

1 the superintendent to be appropriate for the consideration of an
2 application. Any written or oral statement made in the course of
3 an official proceeding, including any investigation, shall be
4 absolutely privileged and shall not impose any civil liability.

5 E. Until July 1, 1997, no operator's license shall be
6 issued to any person who has not been, at the time of issuance, a
7 bona fide resident of the state for two years nor shall an
8 operator's license be issued to any entity in which a person
9 ineligible to hold an operator's license pursuant to this
10 subsection holds a substantial interest. An owner-operator may be
11 issued an operator's license and a premises license.

12 Section 10. LICENSES--TRANSFER--DISPLAY.--No license issued
13 pursuant to the Video Gaming Act shall be assignable or
14 transferable from person to person or device to device. Any
15 license so issued shall be conspicuously displayed at the
16 licensee's principal place of business in an area visible to the
17 public.

18 Section 11. LICENSES--INVESTIGATIONS.--

19 A. Any applicant for or holder of a license issued
20 under the Video Gaming Act shall produce records or evidence and
21 give all information requested by the superintendent or the
22 commission. No applicant or holder shall interfere or attempt to
23 interfere with any investigation by the superintendent or
24 commission.

25 B. Every manufacturer's licensee shall immediately make

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1 available for inspection by any agent of the state all papers,
2 books and records produced by any video gaming equipment business
3 and all portions of the establishment where equipment is
4 manufactured, sold or distributed. Any agent of the state shall be
5 given immediate access to any portion of the establishment of any
6 licensed manufacturer for the purpose of inspecting or examining
7 any records or documents required to be kept by the licensee under
8 the Video Gaming Act or any superintendent's rule or examining any
9 equipment related to the conduct of any Video Gaming Activity.

10 C. Every operator and every person owning or
11 controlling a premises shall immediately make available for
12 inspection by any agent of the state all papers, books and records
13 produced by any Video Gaming Activity or business and make
14 available all portions of the establishment where electronic
15 instant video gaming-related equipment or devices may be located in
16 order to permit the agent to determine that all devices comply with
17 minimum requirements and do not vary in any significant manner from
18 the representative device of the same type approved by the
19 superintendent.

20 D. The state may, after written or oral notice, remove
21 a video gaming device or any portion of the device from the
22 establishment where it is being operated for the purpose of
23 examination and inspection.

24 Section 12. SUSPENSION--REVOCATION--SEIZURE. --

25 A. The superintendent may revoke a manufacturer's,

1 operator's or premises license upon a finding that the licensee or
2 any person holding a substantial interest in the licensee has:

3 (1) provided false or misleading information to
4 the superintendent or commission;

5 (2) been convicted of any felony or gambling-
6 related offense;

7 (3) endangered the security of a video gaming
8 device;

9 (4) become a person whose character is no longer
10 consistent with the protection of the public interest and trust in
11 video gaming; or

12 (5) become delinquent in remitting money owed to
13 any person or to the state.

14 B. The superintendent may suspend or revoke a
15 manufacturer's, operator's or premises license upon a finding that
16 the licensee or any person holding a substantial interest in the
17 licensee has violated the Video Gaming Act or superintendent's
18 rule. If the superintendent suspends or revokes or refuses to
19 grant a license or seizes the video gaming devices of a licensee,
20 any interested party may, upon written notice to the commission, in
21 accordance with the rules of the superintendent, request a hearing.
22 The chair of the commission may stay the revocation of suspension
23 of a license pending the outcome of the hearing.

24 C. Any person aggrieved by a decision of the
25 superintendent may appeal the decision to the commission.

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1 D. The superintendent may seize or seal any or all
2 video gaming devices changed or modified in any manner not approved
3 by the superintendent.

4 Section 13. DEVICE MANUFACTURE-- RESPONSIBILITY. --

5 A. The responsibility for final assembly and initial
6 operation of a video gaming device, in the manner approved by the
7 superintendent, shall be with the manufacturer. Changes in the
8 manner of final assembly or initial operation of a device after a
9 representative device has been submitted to the superintendent for
10 inspection and approval shall void the approval unless prior to the
11 change the manufacturer obtains approval from the superintendent in
12 accordance with the provisions of this section. A voided approval
13 shall be deemed to revoke all licenses of the affected devices.

14 B. Any request for changes to be made in a video gaming
15 device shall be submitted in writing to the superintendent for
16 prior approval. When appropriate, the request for a change shall
17 be accompanied by a print, schematic, block diagram or machine
18 analysis which contains details of the proposed change. Further, a
19 reason for the change shall be set forth. In emergency cases, when
20 a change is found by the superintendent to be necessary to prevent
21 cheating or malfunction, a verbal request may be approved. The
22 verbal approval shall be followed within fifteen days by a written
23 request noting the verbal approval and containing the additional
24 material required by this subsection.

25 Section 14. VIDEO GAMING DEVICE LIMITATIONS. --

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1 A. No video gaming device shall allow more than two
2 dollars (\$2.00) to be played on a single game or award, in any one
3 game, games or credits worth in excess of eight hundred dollars
4 (\$800); provided that, after December 31, 1997, the commission may
5 set a limit different from eight hundred dollars (\$800) by
6 regulation.

7 B. No video gaming device shall directly dispense coins
8 or currency.

9 C. No person shall allow access to a video gaming
10 device by a person under the age of twenty-one years, nor shall any
11 person employ a person under the age of twenty-one years if any
12 portion of the job duties are to be performed in any area licensed
13 for the location of video gaming devices.

14 D. No video gaming device shall be available for play
15 by the public unless it is included in a valid location agreement,
16 it is located on premises licensed for the consumption of
17 spirituous liquors, at least fifty-one percent of the receipts
18 attributable to spirituous liquors, wine and fermented beverages
19 are from sales for on premises consumption and:

20 (1) located on the premises owned, leased or
21 maintained by a person holding an operator's license, but not for
22 play by the public; or

23 (2) the premises are owned, leased or maintained
24 by the person or entity controlling the location at which the
25 device is located; provided that, a financial institution may own

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1 or hold a substantial interest in a device for the period necessary
2 for it to satisfy any valid security interest, not to exceed six
3 months.

4 Section 15. VIDEO GAMING DEVICE REQUIREMENTS. --

5 A. A video gaming device may deliver or entitle the
6 person playing the device to receive a printed ticket, exchangeable
7 for cash, which specifies the time, date, amount of winnings and
8 the location of the device. A video gaming device shall record all
9 use of the device and all amounts deposited in it and report the
10 use and amounts deposited to a central site computer monitor. A
11 video gaming device shall, at a minimum:

12 (1) pay out a mathematically demonstrable
13 percentage of all amounts played, which shall be not less than
14 eighty percent and not more than ninety-five percent. Video games
15 which may be affected by skill shall be evaluated against this
16 criterion using a method of play which will provide the greatest
17 return to the player over a period of continuous play;

18 (2) use a random selection process to determine
19 the outcome of each play of a game which meets ninety-five percent
20 confidence limits using a standard chi squared test for randomness
21 and which is impervious to outside influences;

22 (3) display an accurate representation of the
23 game outcome, and shall not alter any function of the device based
24 on internal computation of payout percentage;

25 (4) have the capacity to display outcome

1 intermediate play steps, credits available, credits played, credits
2 paid and credits cashed out for the most recent game played and one
3 game prior;

4 (5) be equipped with electronic meters and
5 electromechanical meters capable of displaying monetary
6 transactions and be capable of printing a record of those
7 transactions. The device memory shall be in units equal to the
8 denomination of the device, be at least six digits in length and
9 retain, at least, the following transaction records for a period of
10 at least one hundred eighty days:

11 (a) electronic meters: money inserted,
12 credits wagered, credits won, credits paid out, times logic area
13 accessed, times ticket or other pay-out device accessed, credits or
14 money won, number of credits representing money inserted by a
15 player and credit for games won but not collected; and

16 (b) electromechanical meters: money
17 inserted, total credits of ticket vouchers printed, credits played
18 and credits won;

19 (6) be designed so that replacement of parts of
20 modules required for normal maintenance does not necessitate
21 replacement of the meters.

22 B. Every video gaming device shall:

23 (1) clearly represent its rules of play to the
24 playing public; and

25 (2) operate and play in accordance with the

1 representation made to the superintendent and the public.

2 C. Pay off schedules applicable to each video gaming
3 device shall be displayed on the device or in a conspicuous place
4 immediately adjacent thereto or be accessible from the device. Pay
5 off schedules shall accurately state the range of actual pay offs
6 or awards and shall not be worded in such manner as to mislead or
7 deceive the public. The posting of any misleading or deceptive
8 material on any pay off schedule or failure to make payment in
9 accordance with a posted pay off schedules shall constitute a
10 violation of the Video Gaming Act.

11 D. The superintendent may inspect any video gaming
12 device which is offered for sale or use in this state by a
13 manufacturer.

14 Section 16. LOCATION AGREEMENTS--FILING.--All location
15 agreements shall be filed with the superintendent of the division
16 before becoming effective, and no location agreement shall be
17 effective without being filed with the superintendent. Any
18 location agreement for a location which is not a parimutuel
19 horseracing facility and which includes a video gaming device which
20 is owned by a person or entity which does not hold an operator's
21 license shall include a maintenance agreement for that machine with
22 a person or entity holding an operator's license. A person holding
23 both a premises and an operator's license shall hold only one
24 premises license. This section shall not affect rights and
25 obligations between private parties.

Section 17. LOCATION AGREEMENTS--PROCEEDS

DISTRIBUTION.--No location agreement shall require an operator to remit to another party more than fifty percent of the net proceeds, after deduction of any taxes due.

Section 18. VIDEO GAMING DEVICES--LIMITATIONS.--Video gaming devices shall not be made available for play except in accordance with this section. Devices shall be placed only in locations which are age controlled. Devices can only be placed in the following places in the following numbers:

A. premises that are licensed as clubs under the Liquor Control Act as of January 1, 1995--fifteen devices; or

B. premises that are parimutuel horseracing facilities--one hundred devices, provided that fifty percent of the money retained by the licensee is used exclusively for purses and provided that the money shall not be substituted for money otherwise dedicated to purses or awards, five devices, otherwise.

Section 19. PERCENTAGE NET PROCEEDS TAX.--For the privilege of locating video gaming devices for play by the public, there is imposed on every operator a "percentage net proceeds tax." The tax shall be equal to twenty percent of the net proceeds attributable to devices owned or maintained by the operator. The taxable event shall be the playing of the device by the public. The tax shall be due on the fifth of the month following the taxable event. The taxation and revenue department is charged with administration of the tax. The rate of the percentage net proceeds

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1 tax shall not be increased in any year in which the gross receipts
2 tax is not increased and in such a year may be increased only by a
3 proportion which bears the same ratio to the prior net proceeds tax
4 as the increase in the gross receipts tax bears to prior gross
5 receipts tax.

6 Section 20. ELECTIONS FOR LOCAL OPTION. -- Any municipality
7 containing over five thousand population according to the latest
8 United States census, whether the county in which that municipality
9 is situated has adopted the local option provisions of the Video
10 Gaming Act or not, or any county in the state may adopt local
11 option in the county or municipality upon the following terms and
12 conditions:

13 A. at any time after the effective date of the Video
14 Gaming Act, the registered qualified electors of any proposed local
15 option district may petition the governing body by filing one or
16 more petitions in the appropriate office to hold an election for
17 the purpose of determining whether the county or municipality shall
18 adopt the local option provisions of the Video Gaming Act. If the
19 aggregate of the signatures of such elector on all the petitions
20 equals or exceeds five percent of the number of registered voters
21 of the district, the governing body shall call an election within
22 seventy-five days of the verification of the petition. The date of
23 the filing of the petition shall be the date of the filing of the
24 last petition which brings the number of signatures to the required
25 five percent; provided, however, that the governing body shall

1 refuse to recognize the petition if more than three months have
2 elapsed between the date of the first signature and the filing of
3 the last petition necessary to bring the number of signatures on
4 the petition to five percent;

5 B. the election shall be called, conducted, counted and
6 canvassed substantially in the manner provided by law for general
7 elections within the county or special municipal elections within
8 the municipality, except as otherwise provided in this section;

9 C. the votes at the election shall be counted, returned
10 and canvassed as provided for in the case of general elections
11 within the county or special municipal elections within the
12 municipality;

13 D. except as otherwise provided in this section,
14 contests, recounts and rechecks shall be permitted as provided for
15 in the case of candidates for county office in general elections or
16 as provided for in the case of special municipal elections within
17 the municipality. Applications for contests, recounts or rechecks
18 may be filed by any person who voted in the election, and service
19 shall be made upon the county clerk or municipal clerk as the case
20 may be;

21 E. if a majority of all the votes cast at the election
22 are cast in favor of allowing the location of video gaming devices
23 at parimutuel horse racing facilities, fraternal order or veterans'
24 clubs in the county or municipality, the chairman of the governing
25 body shall declare by order entered upon the records of the county

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1 or municipality that the county or municipality has adopted the
2 local option provisions of the Video Gaming Act and shall notify
3 the commission of such results;

4 F. no election held pursuant to this section shall be
5 held within forty-two days of any primary, general, municipal or
6 school district election. If, within sixty days from the
7 verification of any petition as provided in Subsection A of this
8 section, a primary, general, municipal or school election is held,
9 the governing body may call an election for a day not less than
10 sixty days after the general, municipal or school election;

11 G. if an election is held under the provisions of the
12 Video Gaming Act in any county which contains within its limits any
13 municipality of more than five thousand persons according to the
14 last United States census, it is not necessary for the registered
15 qualified electors in the municipality to file a separate petition
16 asking for a separate or different vote on the question of adopting
17 the local option provisions of the Video Gaming Act by the
18 municipality. The election in the county shall be conducted so as
19 to separate the votes in the municipality from those in the
20 remaining parts of the county. If a majority of the voters in the
21 county, including the voters in the municipality, vote against the
22 location of video gaming devices at pari-mutuel horse racing
23 facilities, fraternal order clubs or veterans' clubs in the county,
24 the county shall not adopt the local option provisions of the Video
25 Gaming Act; but if a majority of the votes in the municipality are

1 in favor of locating video gaming devices at resorts, the
2 municipality shall have adopted the local option provisions of the
3 Video Gaming Act. Nothing contained in this subsection shall
4 prevent any municipality from having a separate election under the
5 terms of this section.

6 Section 21. RESUBMISSION OF LOCAL OPTION QUESTION.--In any
7 local option district in which the local option provisions of the
8 Video Gaming Act have been rejected by the voters, it shall be
9 permissible after the expiration of two years from the date of the
10 election at which the local option provisions of the Video Gaming
11 Act were rejected, to have another local option election in the
12 district.

13 Section 22. FUND CREATED.--There is created in the state
14 treasury the "video gaming fund." All money in the fund, and all
15 interest attributable to it are appropriated to the superintendent
16 for the purpose of carrying out the provisions of the Video Gaming
17 Act. All fees paid for licenses under the Video Gaming Act shall
18 be credited to the fund.

19 Section 23. APPROPRIATION.--There is appropriated from the
20 general fund to the video gaming fund the sum of one million five
21 hundred thousand dollars (\$1,500,000) for the purpose of carrying
22 out the provisions of this act. This appropriation shall not
23 revert at the end of any fiscal year.

24 Section 24. SEVERABILITY.--If any part or application of
25 this act is held invalid, the remainder or its application to other

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1 situations or persons shall not be affected.

2 Section 25. EFFECTIVE DATE. --The effective date of the
3 provisions of the Video Gaming Act is July 1, 1996.

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