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HOUSE BILL 548

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

INTRODUCED BY

MICHAEL OLGUIN

AN ACT

RELATING TO GAMING; ENACTING THE HORSE RACING INDUSTRY
ENHANCEMENT ACT; PERMITTING ELECTRONIC MACHINE GAMING AT
RACETRACKS; PROVIDING FOR OFF-TRACK PARI-MUTUEL WAGERING ON
HORSE RACES; PROVIDING FOR REGULATION AND LICENSING OF THE
PERMITTED ACTIVITIES; CREATING A REGULATORY BOARD; PROVIDING
PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 35 of this act shall be known and may be cited as the
"Horse Racing Industry Enhancement Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the
Horse Racing Industry Enhancement Act is to:

- A. authorize and regulate the use and operation of

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1 electronic gaming machines at racetracks in the state;

2 B. authorize and regulate the implementation and
3 operation of pari-mutuel wagering at facilities other than
4 racetracks, otherwise known as off-track betting;

5 C. take all actions necessary to ensure the
6 integrity, reliability and security of electronic games at
7 racetracks and off-track betting; and

8 D. encourage and enhance the horse racing industry
9 in this state, by increasing purse funds in order to
10 reinvigorate competitive motivation for horse trainers,
11 breeders, owners and racetracks in this state.

12 Section 3. [NEW MATERIAL] PUBLIC POLICY OF STATE
13 CONCERNING GAMING. --The legislature finds and declares it to be
14 the public policy of this state that:

15 A. regulation of electronic games at racetracks and
16 off-track betting is critical to ensure that they are conducted
17 honestly and competitively;

18 B. the public's confidence and trust in the
19 permitted electronic gaming activities at racetracks and off-
20 track betting can be obtained and maintained only through strict
21 regulation of all persons, locations, practices, associations
22 and activities related directly or indirectly to electronic
23 gaming at racetracks and off-track betting conducted in the
24 state; and

25 C. a holder of a license issued pursuant to the

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1 Horse Racing Industry Enhancement Act to conduct permitted
2 gaming activities at racetracks and off-track betting does not
3 acquire any vested interest or right in or under the license and
4 has only a revocable privilege.

5 Section 4. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Horse Racing Industry Enhancement Act:

7 A. "associated equipment" means any proprietary
8 device, machine, component or part used in the manufacture or
9 maintenance of an electronic gaming machine, including, but not
10 limited to, integrated circuit chips, printed wired assembly,
11 printed wire boards, printing mechanisms, video display monitors
12 and metering devices;

13 B. "board" means the gaming board regulating gaming
14 under the Horse Racing Industry Enhancement Act;

15 C. "commission" means the state racing commission as
16 authorized pursuant to the Horse Racing Act;

17 D. "committee" means the gaming oversight committee
18 created pursuant to Section 7 of the Horse Racing Industry
19 Enhancement Act;

20 E. "distributor" means a person who finances and
21 distributes gaming devices to a racetrack in return for
22 consideration, but does not include a manufacturer or its
23 affiliate providing electronic gaming machines directly to a
24 racetrack;

25 F. "electronic game" means any simulated game of

1 chance, which may involve skill of the player or application of
2 the element of chance, or both, that is displayed and played on
3 an electronic gaming machine which has been authorized by the
4 commission;

5 G. "electronic gaming machine" means any electronic
6 or electromechanical or other device, contrivance or machine,
7 including without limitation video lottery machines, and those
8 machines commonly known as slot machines, that, upon the
9 insertion of a coin, currency, token or credit voucher, or upon
10 payment of any consideration, is available to play or operate or
11 simulate the play of electronic games, the play of which may
12 deliver or entitle a winning player to receive cash, premiums,
13 merchandise, credits, tokens or anything of value that reflects
14 credits earned that may be redeemed for any of the above,
15 whether the payoff is made automatically from the machine or in
16 any other manner;

17 H. "licensee" means a person other than a racetrack
18 licensee to whom a valid license has been issued under the Horse
19 Racing Industry Enhancement Act;

20 I. "licensed race meet" means a live or simulcast
21 race meet licensed by the commission for a period of duration
22 specified in the license;

23 J. "major procurement" means any procurement or
24 contract entered into by the board or commission for the
25 purchase or lease of facilities, equipment, goods or services

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1 used by the board or commission primarily for regulation of
2 electronic games in excess of twenty thousand dollars (\$20,000);

3 K. "manufacturer" means any person who assembles or
4 produces electronic gaming machines or associated equipment for
5 sale or use in this state;

6 L. "net machine income" means:

7 (1) the sum of all money wagered by players of
8 electronic games on a single licensed electronic gaming device,
9 not including counterfeit money or tokens; coins of other
10 countries that are received in electronic gaming devices, except
11 to the extent that they are readily convertible into United
12 States currency; cash taken in fraudulent acts perpetrated
13 against a licensee for which the licensee is not reimbursed or
14 cash received as entry fees for contests or tournaments in which
15 the patrons compete for prizes; and

16 (2) less the amount paid out to winning
17 players, including those amounts paid to purchase annuities to
18 fund amounts paid to winning players over several years;

19 M. "off-track betting" means pari-mutuel wagering on
20 horse races at facilities or locations other than racetracks;

21 N. "OTB facility" means a facility or location other
22 than a racetrack which conducts licensed off-track betting as an
23 extension of a live race meet conducted at a licensed New Mexico
24 racetrack and may include a facility or location established and
25 operated on property that is owned or leased and which is not

1 used solely for the operation of an OTB facility;

2 0. "person" means an individual or any legal entity,
3 including a partnership, joint venture, limited liability
4 company or corporation;

5 P. "progressive jackpot" means a prize that
6 increases over time or as electronic gaming machines that are
7 linked to a progressive system are played;

8 Q. "progressive system" means one or more electronic
9 gaming machines linked to one or more common progressive
10 jackpots. A "local area progressive system" shall consist
11 solely of electronic gaming machines located at a single-license
12 racetrack. A "wide area progressive system" may link electronic
13 gaming machines at multiple-license racetracks;

14 R. "racetrack" means a horse racetrack in New Mexico
15 licensed by the commission to conduct pari-mutuel wagering at
16 licensed race meets;

17 S. "racetrack license" means a license issued to a
18 racetrack pursuant to the Horse Racing Industry Enhancement Act
19 to have electronic gaming machines in operation in that
20 racetrack's facilities;

21 T. "racetrack licensee" means a racetrack that has
22 obtained a racetrack license;

23 U. "vendor" means any person who is awarded a major
24 procurement contract; and

25 V. "winning percentage" means the portion of the

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1 gross terminal revenue that is available for the payment of
2 prizes to winning players.

3 Section 5. [NEW MATERIAL] GAMING BOARD CREATED. --

4 A. The "gaming board" is created. The board is
5 administratively attached to the regulation and licensing
6 department and consists of five members who are:

7 (1) the superintendent of regulation and
8 licensing or his designee;

9 (2) the secretary of public safety or his
10 designee;

11 (3) the state treasurer or his designee;

12 (4) an individual appointed by the president
13 pro tempore of the senate; and

14 (5) an individual appointed by the speaker of
15 the house of representatives.

16 All members of the board shall be citizens of the United
17 States.

18 B. The members of the board appointed by the speaker
19 of the house of representatives and the president pro tempore of
20 the senate shall be appointed for terms of two years.

21 C. The board shall elect a chair annually from the
22 board's membership.

23 D. The special investigations division of the
24 department of public safety shall conduct background
25 investigations of all members of the board prior to their taking

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1 office. Such background investigations shall include, but not
2 be limited to, credit checks, police record checks, conviction
3 record checks, national and statewide criminal records
4 clearinghouse checks and fingerprint checks. The results of
5 that investigation shall be furnished to the governor, the
6 president pro tempore of the senate and the speaker of the house
7 of representatives.

8 E. Any individual convicted of any crime not a petty
9 misdemeanor and involving gambling, moral turpitude, fraud or
10 theft, or of a felony shall not be eligible to serve on or be
11 appointed to the board.

12 F. Board members shall report any arrest for or
13 conviction of any crime not a petty misdemeanor and involving
14 gambling, moral turpitude, fraud or theft, or of a felony to the
15 governor within three days of such arrest or conviction.

16 G. No person who has or later acquires an ownership
17 interest in any vendor, licensee or racetrack licensee shall
18 serve on the board.

19 Section 6. [NEW MATERIAL] MEETINGS-- QUORUM - RECORDS. --

20 A. A majority of the qualified membership of the
21 board then in office constitutes a quorum. No action may be
22 taken by the board unless at least three members concur.

23 B. The board may hold regular or special meetings
24 upon reasonable notice.

25 C. Meetings of the board shall be open and public in

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1 accordance with the Open Meetings Act, except that the board may
2 have closed meetings to hear security and investigative
3 information that is otherwise permitted by law to be
4 confidential, to evaluate confidential proprietary information
5 provided as part of a major procurement proposal and those
6 matters specified as confidential in Section 13 of the Horse
7 Racing Industry Enhancement Act.

8 D. All proceedings of the board shall be recorded by
9 audiotape or other equivalent verbatim radio recording device;
10 however, tapes of closed meetings shall not be made available to
11 the public.

12 Section 7. [NEW MATERIAL] GAMING OVERSIGHT COMMITTEE--
13 DUTIES--COMPENSATION. --

14 A. A joint interim legislative oversight committee
15 to be known as the "gaming oversight committee" is created. The
16 committee shall function from the date of its appointment until
17 the first day of December prior to the first session of the
18 forty-fifth legislature.

19 B. The committee shall be composed of ten members.
20 Five members of the house of representatives shall be appointed
21 by the speaker of the house of representatives and five members
22 of the senate shall be appointed by the committees' committee of
23 the senate or, if the senate appointments are made in the
24 interim, by the president pro tempore of the senate after
25 consultation with and agreement of a majority of the members of

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1 the committees' committee. Members shall be appointed so that
2 there is a member from each of the major political parties from
3 each house. No person who has or later acquires an ownership
4 interest in any vendor, licensee or racetrack licensee shall
5 serve on the committee.

6 C. The committee shall oversee the regulation of
7 electronic games, as well as periodically review and evaluate
8 the success with which the board is accomplishing its duties and
9 regulating electronic gaming activity pursuant to the Horse
10 Racing Industry Enhancement Act. The committee may conduct any
11 independent audit or investigation of the regulation of
12 electronic gaming or the board as it deems necessary.

13 D. Members of the committee may receive per diem and
14 mileage in accordance with the provisions of the Per Diem and
15 Mileage Act when the legislature is not in session and shall
16 receive no other compensation, perquisite or allowance.

17 E. The committee shall report its findings and
18 recommendations on electronic gaming and the operation of the
19 board to each regular session of the legislature.

20 Section 8. [NEW MATERIAL] RULES AND REGULATIONS. --

21 A. The board shall have the power to adopt, amend or
22 repeal those rules and regulations, consistent with the policy,
23 objectives and purposes of the Horse Racing Industry Enhancement
24 Act, as it deems necessary or desirable in the public interest
25 in carrying out the policy and provisions of that act, which

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1 shall include but not be limited to rules and regulations
2 governing:

3 (1) security for electronic games;

4 (2) application requirements for racetrack
5 licensees, including disclosure requirements related to the
6 ownership and control of licensees and other disclosures
7 necessary to evaluate the competence, background, integrity or
8 character of the racetrack licensee; provided, however, that the
9 board shall have access to and shall utilize and review all
10 information obtained by the commission in connection with its
11 licensing of the racetrack licensee's race meet and the
12 racetrack licensee shall not be required to duplicate that
13 information for the board, and provided further that the board
14 may impose such additional requirements for information on the
15 applicant as the board may deem necessary or appropriate;

16 (3) application requirements for licensees,
17 including disclosure requirements related to the ownership and
18 control of licensees and other disclosures necessary to evaluate
19 the competence, background, integrity or character of the
20 licensee;

21 (4) the percentage chances of winning
22 electronic games and the prize structure for electronic games so
23 that the winning percentage shall be at least eighty-five
24 percent of the amount played or bet computed on a regular and
25 systematic basis;

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1 (5) the procedures to be followed by a
2 racetrack licensee in payment of valid prizes, including
3 annuities;

4 (6) the qualifications of vendors and
5 licensees, and, in cooperation with the commission, the
6 qualifications of racetrack licensees;

7 (7) minimum standards for electronic gaming
8 machines;

9 (8) the operations of distributors to ensure
10 compliance with the Horse Racing Industry Enhancement Act;

11 (9) insurance and bonding requirements for
12 vendors; and

13 (10) any other matter necessary or desirable as
14 determined by the board to promote and ensure the integrity,
15 security, honesty and fairness of the operation of electronic
16 games.

17 B. The rules and regulations promulgated pursuant to
18 this section shall be promulgated not later than ninety days
19 from the effective date of the Horse Racing Industry Enhancement
20 Act and shall be valid for no longer than a period of ten years
21 following their promulgation unless earlier reenacted by the
22 board.

23 Section 9. [NEW MATERIAL] STATE RACING COMMISSION-- POWERS
24 AND DUTIES. --

25 A. The commission shall oversee implementation of

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1 all rules and regulations adopted by the board that are
2 applicable to racetrack licensees and licensees who are licensed
3 by the commission under the Horse Racing Act.

4 B. The board may delegate to the commission the
5 authority to enforce all rules and regulations adopted by the
6 board that are applicable to racetrack licensees and licensees.

7 C. The board shall provide the commission notice and
8 an opportunity to be heard in proceedings for the adoption,
9 amendment or repeal of rules or regulations applicable to
10 racetrack licensees.

11 D. Within ninety days of the effective date of the
12 Horse Racing Industry Enhancement Act, the commission shall
13 adopt, amend or repeal such rules, regulations and policies,
14 consistent with the policy, objectives and purposes of that act,
15 as it deems necessary or desirable for the operation of
16 racetrack licensees and electronic gaming machines for the
17 purpose of maximizing revenue and enhancing purses, encouraging
18 attendance at race meets and increasing public interest in horse
19 racing in New Mexico, including, but not limited to rules,
20 regulations and policies relating to:

21 (1) enforcement of prohibitions on the playing
22 of electronic games by or for an individual younger than twenty-
23 one years of age;

24 (2) the specific games to be conducted within
25 the electronic games to ensure that no specific game is operated

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1 that is unfair or misleading;

2 (3) the hours of operation of electronic games
3 to be not less than twelve hours a day on days when there are
4 live or simulcast races being run or shown at a New Mexico
5 racetrack or racetracks;

6 (4) the number of electronic gaming machines at
7 each racetrack licensee, subject to Section 30 of the Horse
8 Racing Industry Enhancement Act;

9 (5) the establishment of criteria and
10 conditions for the operation of progressive jackpots and
11 progressive systems;

12 (6) directing and ensuring that all necessary
13 or appropriate security systems and personnel are in place at
14 racetrack licensees to ensure the security and integrity of the
15 operation of electronic games;

16 (7) the minimum and maximum bet per play; and

17 (8) such other policies, rules and regulations,
18 not inconsistent with those promulgated by the board, as may be
19 appropriate for the proper and fair operation of electronic
20 gaming under the Horse Racing Industry Enhancement Act.

21 Section 10. [NEW MATERIAL] ADMINISTRATION-- HEARING-- RULES
22 AND REGULATIONS. --

23 A. Rules and regulations shall be adopted,
24 promulgated, amended or repealed only after a public hearing by
25 the adopting authority. Notice of the hearing shall be given at

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1 least twenty days in advance in a newspaper of general
2 circulation in the state. The adopting authority shall either
3 approve or disapprove the proposed adoption, promulgation,
4 amendment or repeal of such rules and regulations within ten
5 days of the hearing.

6 B. Certified copies of any approved rules and
7 regulations shall be submitted to the committee, the board, if
8 adopted by the commission, the commission, if adopted by the
9 board, and, as required, to the state records center pursuant to
10 the State Rules Act. Copies of the rules and regulations in
11 force shall be made available to any person upon request.

12 C. The adopting authority shall adopt and promulgate
13 rules and regulations for the conduct of all hearings.

14 Section 11. [NEW MATERIAL] ADMINISTRATIVE SUPPORT. -- The
15 regulation and licensing department shall be responsible for
16 providing to the board and commission all necessary and
17 appropriate administrative support, which shall include but not
18 be limited to clerical, administrative, investigatory or such
19 other functions as are necessary or appropriate to carry out the
20 functions of the board and commission.

21 Section 12. [NEW MATERIAL] SECURITY. --

22 A. The regulation and licensing department shall be
23 responsible for providing security-related services to the board
24 and commission, including but not limited to obtaining
25 background checks on appropriate state personnel.

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1 B. The department of public safety shall perform a
2 full criminal background investigation of any state employee,
3 other than members of the board, directly involved in
4 administration, implementation or oversight of the Horse Racing
5 Industry Enhancement Act. Such background investigations shall
6 include, but not be limited to, credit checks, police record
7 checks, conviction record checks, national and statewide
8 criminal records clearinghouse checks and fingerprint checks.
9 The board shall reimburse the department of public safety for
10 the actual costs of an investigation.

11 C. An individual convicted of any crime, other than
12 a petty misdemeanor, involving gambling, moral turpitude, fraud
13 or theft or a felony shall not be eligible for state employment
14 in any capacity directly involved in administration,
15 implementation or oversight of the Horse Racing Industry
16 Enhancement Act.

17 D. Any state employee directly involved in
18 administration, implementation or oversight of the Horse Racing
19 Industry Enhancement Act shall report any arrest for or
20 conviction of any crime not a petty misdemeanor involving
21 gambling, moral turpitude, fraud or theft or a felony to the
22 board within three days of such arrest or conviction.

23 E. By July 1, 1997, and at least once every two
24 years thereafter, the board shall employ an independent firm
25 that is experienced in security, including computer security and

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1 systems security, to conduct a comprehensive confidential study
2 of all aspects of electronic gaming security, including:

3 (1) vendor, licensee and racetrack licensee
4 security;

5 (2) security against voucher counterfeiting and
6 alteration and other means of fraudulent winning;

7 (3) computer system security, data
8 communications, database and systems security;

9 (4) security of validation and payment
10 procedures;

11 (5) security of electronic gaming machines; and

12 (6) other security aspects of board operations.

13 F. The board shall provide the governor, the
14 committee and the commission with a copy of the confidential
15 security study.

16 G. The board and the commission shall develop a plan
17 to improve security of the electronic gaming based upon the
18 recommendations of the confidential security study; however,
19 nothing in this section shall be construed as requiring the
20 board or commission to implement any of the recommendations made
21 by the study.

22 Section 13. [NEW MATERIAL] INFORMATION AND DATA--
23 CONFIDENTIALITY-- DISCLOSURE. --

24 A. All of the following information and data are
25 confidential and may be revealed in whole or in part only in the

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1 course of the necessary administration of the Horse Racing
2 Industry Enhancement Act or upon the lawful order of a court of
3 competent jurisdiction, except that the board or commission may
4 reveal confidential information or data to an authorized agent
5 of any governmental agency pursuant to a reciprocal agreement
6 with the other governmental agency to share information and
7 maintain confidentiality of the information as provided in this
8 section:

9 (1) security measures and internal security
10 reports;

11 (2) information or data provided by a
12 governmental agency that is required by that agency's governing
13 law to be kept confidential;

14 (3) trade secrets and proprietary information
15 of any applicant, racetrack licensee, licensee or vendor;

16 (4) personal data, including personal financial
17 data, not otherwise public and not directly related to the
18 license or major procurement contract; and

19 (5) any information or data that are otherwise
20 made confidential by law.

21 B. Notice of the content of any information or data
22 furnished or released pursuant to this section may be given to
23 any applicant or licensee in a manner prescribed by regulations
24 adopted pursuant to the Horse Racing Industry Enhancement Act.

25 Section 14. [NEW MATERIAL] BOOKS AND RECORDS--

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1 **REQUIREMENTS. --**

2 A. The regulation and licensing department, on
3 behalf of the board and commission, shall make and keep books
4 and records that accurately and fairly reflect transactions of
5 electronic games conducted pursuant to the Horse Racing Industry
6 Enhancement Act, including the receipt of funds, expenses and
7 all other activities and financial transactions involving
8 revenue generated by electronic games, so as to permit
9 preparation of financial statements in conformity with generally
10 accepted accounting principles and to maintain daily
11 accountability.

12 B. The regulation and licensing department, on
13 behalf of the board and commission, shall maintain a file of all
14 applications for licenses and racetrack licenses under the Horse
15 Racing Industry Enhancement Act, together with a record of all
16 action taken with respect to those applications. The file and
17 record are open to public inspection, except those portions
18 declared by law to be confidential.

19 C. The regulation and licensing department, on
20 behalf of and as directed by the board and commission, may
21 maintain such other files and records as it deems desirable.

22 Section 15. **[NEW MATERIAL]** AUDITS. --

23 A. The board shall provide for a certified public
24 accountant to conduct an independent audit for each fiscal year
25 of all accounts and transactions related to electronic gaming.

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1 The independent audit shall be reviewed by the state auditor.
2 The certified public accountant shall not have an ownership
3 interest in a vendor, racetrack licensee or licensee and shall
4 report any conflict of interest to the board. The certified
5 public accountant shall present an audit report to the board,
6 the commission, the governor and the committee not later than
7 December 31 of the year following the fiscal year for which the
8 audit was performed.

9 B. Each vendor's, licensee's and racetrack
10 licensee's records relating to the Horse Racing Industry
11 Enhancement Act are subject to audit by the board.

12 C. The board and the committee shall develop a plan
13 to improve the efficiency of the board based upon the
14 recommendations of the certified public accountant; however,
15 nothing in this section shall be construed as requiring the
16 board to implement any of the recommendations made by the
17 certified public accountant.

18 D. All accounts and transactions relating to gaming
19 are exempt from the Audit Act.

20 Section 16. [NEW MATERIAL] INVESTIGATORY POWERS. -- The
21 board and the commission shall have the power to:

22 A. examine under oath any person or any officer,
23 employee or agent of any organization or corporation;

24 B. compel by subpoena the production of records; and

25 C. compel by subpoena the attendance of any person

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1 in this state to testify before the board or commission when
2 such investigation is necessary to the proper administration of
3 the Horse Racing Industry Enhancement Act.

4 Section 17. [NEW MATERIAL] ATTORNEY GENERAL-- OTHER LAW
5 ENFORCEMENT AUTHORITY-- POWERS AND DUTIES. --

6 A. The board or commission may confer with the
7 attorney general as deemed necessary and advisable for the
8 proper administration of the Horse Racing Industry Enhancement
9 Act. Upon request of the board, it shall be the duty of the
10 attorney general and any other law enforcement authority to whom
11 a violation is reported to investigate and cause appropriate
12 proceedings to be instituted without delay.

13 B. The attorney general and the department of public
14 safety shall furnish to the board and the commission any
15 information that they may have in their possession as may be
16 necessary to ensure security, honesty, fairness and integrity in
17 the operation and administration of electronic games conducted
18 pursuant to the Horse Racing Industry Enhancement Act. The
19 board and commission shall be considered to be criminal justice
20 agencies and shall be furnished such information without charge
21 upon proper written request.

22 Section 18. [NEW MATERIAL] CONFLICTS OF INTEREST--
23 NUMERATED-- COMPLIANCE WITH OTHER LAWS-- VIOLATION-- REMOVAL FROM
24 OFFICE. --

25 A. The members of the board, the committee, the

1 commission and the regulation and licensing department and other
2 restricted persons shall not, directly or indirectly:

3 (1) knowingly hold a financial interest or
4 acquire stocks, bonds or any other interest in any entity that
5 is a distributor or manufacturer, licensee, racetrack licensee
6 or vendor; or

7 (2) have a financial interest in the ownership
8 or leasing of property used in the conduct or regulation of
9 electronic games.

10 B. The members of the board, the committee, the
11 commission or the regulation and licensing department shall not
12 ask for, offer to accept or receive any gift, gratuity or other
13 thing of value that would inure to that person's benefit from

14 (1) any entity seeking to supply equipment,
15 materials or services for use in the conduct or regulation of
16 electronic games;

17 (2) any applicant for a license or racetrack
18 license; or

19 (3) any vendor, licensee or racetrack licensee.

20 C. No person seeking to supply equipment, materials
21 or services for use in the conduct or regulation of electronic
22 games, no applicant for a license and no vendor or licensee
23 shall offer or give to the members of the board, the committee,
24 the commission or the regulation and licensing department any
25 gift, gratuity or other thing of value that would inure to the

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1 recipient's personal benefit.

2 D. For purposes of this section:

3 (1) "gift, gratuity or other thing of value"
4 does not include the provision of a breakfast, luncheon, dinner
5 or other refreshment consisting of food or beverage provided for
6 immediate consumption; and

7 (2) "other restricted person" means anyone
8 living in the same household as the board member, a member of
9 the committee, a member of the commission, the superintendent of
10 regulation and licensing or any administrative personnel or
11 security personnel directly involved in administering or
12 overseeing the Horse Racing Industry Enhancement Act.

13 E. The board, commission and regulation and
14 licensing department shall comply with all state laws applicable
15 to ethics in government, conflict of interest and financial
16 disclosure.

17 F. Anyone who violates this section may be removed
18 from his position after notice and a hearing before the board,
19 committee, commission or regulation and licensing department, as
20 applicable.

21 Section 19. [NEW MATERIAL] APPLICATION OF STATE REVENUES
22 FROM ELECTRONIC GAMES--STATE GAMING FUND ESTABLISHED--
23 DISTRIBUTIONS. --

24 A. The "state gaming fund" is established as a
25 separate fund within the state treasury. The fund consists of

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1 all revenue received from electronic games and interest accrued
2 thereon, license and application fees under the Horse Racing
3 Industry Enhancement Act and all money credited to the fund from
4 any other fund or source under law, except as otherwise provided
5 in the Horse Racing Industry Enhancement Act.

6 B. Money in the state gaming fund may be used only
7 for the following purposes and shall be distributed as follows:

8 (1) the payment of costs incurred in the
9 operation and administration of electronic games, including any
10 fees paid to a vendor;

11 (2) five percent of the balance shall be
12 distributed:

13 (a) among municipalities in the same
14 proportion as the revenue raised pursuant to Subsection D of
15 Section 30 of the Horse Racing Industry Enhancement Act from
16 racetrack licensees located within a municipality bears to the
17 total revenue raised in the state from all racetrack licensees;
18 and

19 (b) among counties in the same proportion
20 as the revenue raised pursuant to Subsection D of Section 30 of
21 the Horse Racing Industry Enhancement Act from racetrack
22 licensees located in a county outside the boundaries of any
23 municipality bears to the total revenue raised in the state from
24 all racetrack licensees; and

25 (3) the balance shall be paid into the general

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1 fund.

2 Section 20. [NEW MATERIAL] PROCUREMENT OF GOODS OR
3 SERVICES-- POWERS-- LIMITATION. -- The superintendent of regulation
4 and licensing, subject to the approval of the board, shall enter
5 into all contracts for procurement of goods and services
6 required by the board to carry out its duties and
7 responsibilities under the Horse Racing Industry Enhancement
8 Act.

9 Section 21. [NEW MATERIAL] MAJOR PROCUREMENT-- VENDOR--
10 DISCLOSURE REQUIRED-- CONTRACT APPROVAL-- REQUIREMENTS. --

11 A. The board shall request proposals for major
12 procurements by the board for effectuating the purpose of the
13 Horse Racing Industry Enhancement Act. No contract for a major
14 procurement may be assigned by a vendor except by a written
15 agreement approved by the board.

16 B. The board may require major procurement vendors
17 to disclose information to enable the board to review and
18 evaluate the responses to the requests for proposals on the
19 basis of competence, background, integrity, character and nature
20 of the ownership and control of vendors and to ensure compliance
21 with the provisions of the Horse Racing Industry Enhancement
22 Act.

23 C. The board shall investigate, as part of the
24 process for analyzing responses to requests for proposals for
25 any major procurement, the financial responsibility, security

1 and integrity of any party whose proposal is under final
2 consideration. The board shall require a background
3 investigation of any person with a substantial interest, as
4 defined by the board, in a party whose proposal is under final
5 consideration. Such background investigation may include credit
6 checks, police record checks, conviction record checks, national
7 and statewide criminal records clearinghouse checks and
8 fingerprint checks. Each party whose proposal is under final
9 consideration shall pay the costs of that party's background
10 investigation.

11 D. No major procurement with any vendor shall be
12 entered into if any person with a substantial interest, as
13 defined by the board, in the vendor has been convicted of a
14 felony.

15 E. A vendor shall report any arrest for or
16 conviction of a felony for any person with a substantial
17 interest in that vendor to the board within ten days of such
18 arrest or conviction.

19 F. No contract shall be approved by the board unless
20 the vendor has complied with this section. Any contract entered
21 into with a vendor who has not complied with this section shall
22 be void.

23 G. This section shall be construed broadly and
24 liberally to achieve the end of full disclosure of all
25 information necessary to allow for a full, complete and ongoing

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1 evaluation by the board of the competence, integrity,
2 background, character and nature of the ownership and control of
3 vendors for major procurements.

4 Section 22. [NEW MATERIAL] MAJOR PROCUREMENT--VENDOR--
5 PERFORMANCE BOND.-- Each vendor for a major procurement shall
6 post a performance bond with the board, using a surety
7 acceptable to the board, in consultation with the superintendent
8 of insurance in an amount equal to the full amount estimated to
9 be paid annually to the vendor under the contract. Nothing in
10 the Horse Racing Industry Enhancement Act shall be construed to
11 restrict the authority of the board to specify liquidated or
12 other damages in contracts with vendors.

13 Section 23. [NEW MATERIAL] LICENSING.--

14 A. No person may act as a manufacturer or
15 distributor without first obtaining an appropriate license
16 pursuant to the Horse Racing Industry Enhancement Act.

17 B. Any racetrack may apply to become a racetrack
18 licensee. A racetrack that has received approval from the
19 commission for specific race days in fiscal year 1996 may apply
20 for and receive a temporary racetrack licensee's license upon
21 payment of the license fee required for regular licensure. The
22 temporary license shall expire six months from the date of
23 issuance unless otherwise extended by the board for good cause.
24 Unless the racetrack licensee has completed the application for
25 and has been granted a regular racetrack licensee's license on

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1 or before the date of expiration of the temporary license, the
2 racetrack licensee is not entitled to carry on electronic gaming
3 operations on the racetrack licensee's premises after that date
4 until the racetrack licensee applies for and receives a regular
5 license. A temporary racetrack licensee is entitled to have the
6 license fee it has paid credited as payment of its regular
7 racetrack license fee to cover the period of one year from the
8 date of issuance of the temporary racetrack license.

9 C. The board and commission shall adopt regulations
10 concerning the licensing criteria. The board shall require
11 licensees who are not distributors or manufacturers, or
12 affiliates or employees of distributors or manufacturers, to be
13 licensed by the commission and shall delegate licensing of those
14 persons to the commission. The regulations shall require
15 consideration of such factors as the applicant's financial
16 responsibility, security of the applicant's place of business or
17 activity, accessibility to the public and the applicant's
18 integrity and reputation. It shall be unlawful to consider
19 political affiliation, activities or monetary contributions to
20 political organizations or candidates for any public office.

21 D. Applicants for licensure, renewal or amendment
22 shall pay a fee to be submitted with the application not to
23 exceed the following:

24 (1) racetrack license, twenty-five dollars
25 (\$25.00) annually for each electronic gaming machine;

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1 (2) distributors, five thousand dollars
2 (\$5,000) for initial licensure and two thousand five hundred
3 dollars (\$2,500) for annual renewal;

4 (3) manufacturers, ten thousand dollars
5 (\$10,000) for initial licensure and five thousand dollars
6 (\$5,000) for annual renewal; and

7 (4) other licenses as defined by the board or
8 commission, at fee amounts determined by the board or
9 commission.

10 E. Licenses and racetrack licenses issued pursuant
11 to the Horse Racing Industry Enhancement Act shall be valid for
12 one year. Upon application for renewal, the board may require
13 such additional information as the board deems necessary to
14 evaluate the application.

15 F. The board shall require background investigations
16 of any person with a substantial interest, as defined by the
17 board, in the applicant. Such background investigations may
18 include, but not be limited to, credit checks, police record
19 checks, conviction record checks, national and statewide
20 criminal records clearinghouse checks and fingerprint checks.
21 The applicant shall pay the costs of the background
22 investigation.

23 G. No license or racetrack license shall be granted
24 to an applicant if any person with a substantial interest, as
25 defined in the regulations, in the applicant has, within ten

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1 years prior to the application, been convicted of a crime, other
2 than a petty misdemeanor, involving gambling, moral turpitude,
3 fraud or theft or a felony.

4 H. The licensee or racetrack licensee shall report
5 any arrest for or conviction of a felony of any person with a
6 substantial interest in that licensee or racetrack licensee to
7 the board within ten days of such arrest or conviction.

8 I. No license or racetrack license shall be granted
9 by the board unless the applicant complies with this section.
10 Any license or racetrack license granted to an applicant who has
11 not complied with this section shall be void.

12 J. The burden of proving qualifications for
13 licensure is on the applicant.

14 K. If an application is denied, the board shall
15 prepare and make available to the applicant a written decision
16 upon which the order denying the application is based.

17 L. The holder of any license or racetrack license
18 does not acquire any vested interest or right in or under the
19 license, and a license issued pursuant to the Horse Racing
20 Industry Enhancement Act is a revocable privilege.

21 M. This section shall be construed broadly and
22 liberally to achieve the end of full disclosure of all
23 information necessary to allow for a full and complete
24 evaluation by the board of an applicant's fitness.

25 N. The license fees paid pursuant to this section in

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1 fiscal years 1997 and 1998 are appropriated one-half to the
2 regulation and licensing department and board and one-half to
3 the commission for expenditure in that fiscal year to pay the
4 start-up costs incurred in establishing a regulatory system for
5 the gaming activities permitted pursuant to the Horse Racing
6 Industry Enhancement Act.

7 Section 24. [NEW MATERIAL] REVOCATION-- CONTRACT--
8 LICENSE. --

9 A. Failure to comply with any provision of the Horse
10 Racing Industry Enhancement Act or the rules and regulations
11 promulgated thereunder shall be sufficient cause for suspension
12 or termination of a procurement contract; provided, however,
13 that suspension or termination of a procurement contract shall
14 not relieve the vendor from prosecution for any of the alleged
15 violations or from imposition of fines and penalties.

16 B. If a licensee or racetrack licensee fails to
17 respond to a written request from the board or violates any
18 provision of the Horse Racing Industry Enhancement Act or any
19 rule or regulation promulgated thereunder, the license of the
20 offending licensee or racetrack licensee may be suspended,
21 canceled or revoked by the board; provided, however, that the
22 licensee or racetrack licensee shall have reasonable notice and
23 opportunity to be heard before the board before suspension,
24 cancellation, limitation or revocation; and provided, further,
25 that the suspension, cancellation, limitation or revocation of

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1 any license shall not relieve the licensee or racetrack licensee
2 from prosecution for any of the alleged violations or from
3 imposition of fines and penalties.

4 C. The board may levy a fine against a vendor,
5 licensee or racetrack licensee for violation of the provisions
6 of the Horse Racing Industry Enhancement Act or regulations
7 promulgated pursuant to that act, not to exceed ten thousand
8 dollars (\$10,000) per violation; provided, however, that the
9 licensee or racetrack licensee shall have a reasonable
10 opportunity to be heard by the board before the imposition of
11 such fine. Nothing in this section shall limit the board from
12 pursuing contractual remedies, including assessing penalties,
13 pursuant to the terms of a contract with a vendor.

14 Section 25. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD. --

15 A. The board may issue an emergency order for
16 suspension or limitation of a license or racetrack license.

17 B. An emergency order may be issued only when the
18 board finds that:

19 (1) any licensee or racetrack licensee has
20 failed to report, pay or truthfully account for and pay over any
21 fee or money imposed by or owed under the provisions of the
22 Horse Racing Industry Enhancement Act or attempted in any manner
23 to evade or defeat any such fee or debt or payment thereof;

24 (2) any licensee or racetrack licensee has
25 violated any provision of the Horse Racing Industry Enhancement

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1 Act and the violation impairs the security of electronic gaming
2 activities; or

3 (3) any licensee or racetrack licensee is
4 convicted of a crime, not a petty misdemeanor, involving
5 gambling, moral turpitude, fraud, theft or a felony.

6 C. The emergency order shall set forth the grounds
7 upon which it is issued, including a statement of facts
8 constituting the alleged emergency necessitating such action.

9 D. An emergency order may be issued only with the
10 approval of and upon signature by three members of the board.

11 E. The emergency order is effective immediately upon
12 issuance and service upon the licensee or racetrack licensee or
13 resident agent of the licensee or racetrack licensee. The
14 emergency order remains effective until further order of the
15 board or final disposition of the case.

16 F. The licensee or racetrack licensee may request
17 that a hearing be held by the board regarding the issuance and
18 maintenance of the emergency order. The board shall then hold a
19 hearing within twenty days.

20 Section 26. [NEW MATERIAL] CENTRAL COMPUTER SYSTEM -- Each
21 electronic gaming machine shall be linked via a communications
22 network to a central computer system or systems that monitor the
23 play or operation of each electronic gaming machine and will
24 provide financial reporting information as required by the
25 board. If only one central computer system is required by the

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1 board, that central computer system shall not limit
2 participation to only one manufacturer of electronic gaming
3 machines by either cost of implementing the necessary program
4 modifications to communicate or the inability to communicate
5 with the central computer system.

6 Section 27. [NEW MATERIAL] RACETRACK LICENSEE- - FUNDS- -
7 CONFLICTS- - CHILD SUPPORT. - -

8 A. The board may require each racetrack licensee to
9 deposit all money owed to the state under the Horse Racing
10 Industry Enhancement Act into financial institutions designated
11 by the board for credit to the state gaming fund.

12 B. The board may authorize the electronic transfer
13 of funds, other than funds derived from off-track betting, owed
14 to the state under the Horse Racing Industry Enhancement Act
15 from the accounts of racetrack licensees to the state gaming
16 fund.

17 C. No electronic gaming machine shall be played by
18 and no prize shall be awarded to any racetrack licensee or
19 business that is engaged in supplying equipment, supplies or
20 services being used in the operation of electronic gaming
21 machines or any officer, director, employee or owner of such
22 licensee or business unless authorized in writing by the board
23 for research purposes. However, no prize may be awarded as a
24 result of play for research purposes.

25 D. The superintendent of regulation and licensing

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1 shall investigate the feasibility of implementing a policy to
2 recover delinquent child support payments or outstanding state
3 tax liability from payment of electronic gaming prizes in excess
4 of six hundred dollars (\$600). If the board determines that
5 such a policy is feasible, the superintendent of regulation and
6 licensing shall implement a policy to credit any electronic
7 gaming prize first against any delinquent child support owed by
8 the winner and then against any outstanding state tax liability
9 owed by the winner and shall pay the balance of the prize to the
10 winner. The policy shall ensure that any person who
11 investigates the money owed by the prize winner shall have no
12 liability to a person to whom a delinquent child support payment
13 may be owed, to the human services department or to the taxation
14 and revenue department, if the investigator fails to discover
15 that a winner owes money that is to be applied according to the
16 policy.

17 Section 28. [NEW MATERIAL] REQUIREMENTS FOR LICENSED
18 ELECTRONIC GAMING MACHINES. --

19 A. Each electronic gaming machine licensed under the
20 Horse Racing Industry Enhancement Act shall fulfill as a minimum
21 all requirements imposed by the state of Nevada to licensure and
22 shall:

- 23 (1) offer only games authorized by the
24 commission;
- 25 (2) not have any means of manipulation that

1 affects the random probabilities of winning;

2 (3) have one or more mechanisms that accept
3 coins, tokens or cash in the form of bills. The mechanisms
4 shall be designed to prevent obtaining credits without paying by
5 any form of tampering. If such attempts involve physical
6 tampering, the machine shall suspend itself from operation until
7 reset;

8 (4) have nonresettable meters that keep a
9 permanent record of all coins, tokens and cash inserted into the
10 machine and all awards of prizes, whether in coin, tokens or
11 cash;

12 (5) have accounting software that keeps an
13 electronic record that includes but is not limited to the
14 following:

15 (a) total coins, tokens and cash inserted
16 into the machine;

17 (b) the value of coins, tokens or cash
18 paid to players; and

19 (c) the winning percentage credited
20 players of each electronic game; and

21 (6) be linked via a communications network to a
22 central computer system or systems designated by the board to
23 provide security and financial information as required by the
24 board.

25 B. The board shall examine prototypes of electronic

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1 gaming machines of licensed manufacturers. The board shall
2 require the manufacturer seeking the examination and approval of
3 any electronic gaming machine or associated equipment to pay the
4 anticipated actual costs of the examination in advance and,
5 after the completion of the examination, shall refund
6 overpayments or charge and collect amounts sufficient to
7 reimburse the board for underpayments of actual costs. The
8 board may contract for the examination of electronic gaming
9 machines and associated equipment as required by this section.

10 C. Each electronic gaming machine shall be licensed
11 by the board before placement or operation on the premises of a
12 racetrack licensee. Each machine shall have the license
13 prominently displayed thereon in such a way that an attempt at
14 alteration will result in a mutilation of the license. Any
15 machine that does not display the license required by this
16 section is contraband and a public nuisance subject to
17 confiscation by any law enforcement or peace officer.

18 Section 29. [NEW MATERIAL] AGE LIMIT--RULES FOR PLACEMENT
19 OF ELECTRONIC GAMING MACHINES. --

20 A. No person under twenty-one years of age may play
21 an electronic gaming machine licensed under the Horse Racing
22 Industry Enhancement Act.

23 B. Electronic gaming machines may only be operated
24 in an area restricted to persons twenty-one years of age or
25 older. An establishment may erect a permanent physical barrier

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1 to allow for multiple uses of the premises by persons of all
2 ages. The entrance to the area where electronic gaming machines
3 are located shall display a sign that the premises are
4 restricted to persons twenty-one years or older. Subject to the
5 prohibition of Subsection A of this section, and except as
6 otherwise permitted by the commission, persons under the age of
7 twenty-one shall not enter the premises where electronic gaming
8 machines are located unless they are accompanied by a parent,
9 guardian or spouse aged twenty-one or older.

10 Section 30. [NEW MATERIAL] RACETRACK LICENSEES--
11 ELECTRONIC GAMING MACHINES-- DISTRIBUTION. --

12 A. The number of electronic gaming machines
13 permitted upon the premises of a racetrack licensee will be that
14 number requested by the racetrack licensee and so designated by
15 the commission.

16 B. Nothing in the Horse Racing Industry Enhancement
17 Act shall prevent a racetrack licensee from leasing or owning
18 the electronic gaming machines in operation in that racetrack
19 licensee's facilities or purchasing or leasing electronic gaming
20 machines directly from a licensed manufacturer, provided that
21 the electronic gaming machines comply with the Horse Racing
22 Industry Enhancement Act and regulations promulgated thereunder.

23 C. A racetrack licensee may operate electronic
24 gaming machines at its facilities if approved by the commission,
25 provided that:

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1 (1) effective for a live licensed race meet
2 beginning after January 1, 1997, the licensed racetrack conducts
3 live racing an average of four days per week during such race
4 meet; and

5 (2) the commission may waive the live race day
6 requirements of this subsection for good cause shown with due
7 regard for the interests of the licensed racetrack, the horsemen
8 and the breeders.

9 D. Licensed racetracks shall pay:

10 (1) ten percent of the net machine income of
11 each licensed electronic gaming machine, of which:

12 (a) the amount due as gross receipts tax
13 under the Gross Receipts and Compensating Tax Act shall be paid
14 to the state general fund;

15 (b) one-fourth of one percent shall be
16 paid for addictive behavior programs into an account
17 administered by the board; and

18 (c) the balance shall be paid in lieu of
19 all other taxes, including but not limited to income taxes, to
20 the state gaming fund in a manner directed by the board;

21 (2) twenty and eighteen hundredths percent of
22 the net machine income of each electronic gaming machine to the
23 New Mexico horsemen's association, of which percentage one-
24 fourth of one percent will be distributed to the New Mexico
25 horsemen's association benevolence fund and the balance will be

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1 distributed to the appropriate New Mexico purse enhancement
2 funds; and

3 (3) four and eighty-two hundredths percent to
4 the New Mexico horse breeders' association to be divided equally
5 among the New Mexico breeder incentive fund and each New Mexico
6 bred purse enhancement fund.

7 E. Racetrack licensees shall submit an annual
8 accounting of distributions made pursuant to Paragraph (2) of
9 Subsection D of this section to the board within ninety days of
10 the end of the racetrack licensee's fiscal year each year.

11 Section 31. [NEW MATERIAL] PROHIBITED ACTS--VIOLATIONS--
12 PENALTIES.--

13 A. It is a misdemeanor for a racetrack licensee to
14 knowingly allow any person under twenty-one years of age to play
15 an electronic gaming machine.

16 B. It is a misdemeanor for a person under twenty-one
17 years of age to play an electronic gaming machine.

18 C. It is a misdemeanor to release any information
19 obtained through a background investigation performed by the
20 board without the prior written consent of the subject of the
21 investigation except as provided otherwise in the Horse Racing
22 Industry Enhancement Act.

23 D. It is a fourth degree felony to tamper with an
24 electronic gaming machine with intent to interfere with the
25 proper operation of such machine.

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1 E. It is a fourth degree felony to tamper with a
2 voucher or electronic gaming machine with intent to manipulate
3 the outcome or payoff of an electronic gaming machine.

4 F. It is a fourth degree felony to knowingly possess
5 an unlicensed electronic gaming machine.

6 G. It is a fourth degree felony to falsify
7 information provided to the board for purposes of applying for a
8 contract or a license with the board or for purposes of
9 completing a background investigation pursuant to the Horse
10 Racing Industry Enhancement Act.

11 H. Any person convicted of a violation of
12 Subsections A through C of this section shall be sentenced
13 pursuant to the provisions of Section 31-19-1 NMSA 1978. Any
14 person convicted of a violation of Subsections D through G of
15 this section shall be sentenced pursuant to the provisions of
16 Section 31-18-15 NMSA 1978.

17 Section 32. [NEW MATERIAL] DISTRICT COURT OF SANTA FE
18 COUNTY-- JURISDICTION-- APPEAL. -- The district court of Santa Fe
19 county shall have exclusive original jurisdiction of all legal
20 proceedings, except criminal actions, related to the
21 administration, enforcement or fulfillment of the
22 responsibilities, duties or functions of the board and
23 commission under the Horse Racing Industry Enhancement Act. An
24 aggrieved party, including a party subject to a fine, may seek
25 review of an order or decision of the board or commission by

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1 filing an appeal with the district court of Santa Fe county
2 within thirty days after the date of such order or decision.

3 Section 33. [NEW MATERIAL] EXEMPTION FROM LOCAL TAXES. --
4 Electronic games conducted pursuant to the Horse Racing Industry
5 Enhancement Act shall be exempt from any local tax levied or
6 assessed by any political subdivision having the power to levy,
7 assess or collect such tax.

8 Section 34. [NEW MATERIAL] LOCAL LAWS PREEMPTED--
9 APPLICABILITY OF OTHER LAWS--SEVERABILITY. --

10 A. The Horse Racing Industry Enhancement Act shall
11 be applicable and uniform throughout the state and all political
12 subdivisions, and no local authority shall enact any ordinances,
13 rules or regulations in conflict with the provisions of that
14 act.

15 B. If any provision of the Horse Racing Industry
16 Enhancement Act or the application thereof to any person or
17 circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of that act that can be given
19 effect without the invalid provision or application, and to this
20 end the provisions of that act are severable.

21 Section 35. [NEW MATERIAL] OFF-TRACK PARI-MUTUEL
22 WAGERING. --

23 A. Off-track betting at licensed OTB facilities in
24 this state is declared to be legal.

25 B. The commission is authorized and empowered to

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1 adopt, repeal and amend such rules and regulations as it may
2 deem necessary or appropriate to regulate and govern the conduct
3 of off-track betting so as to ensure the integrity, reliability
4 and security of off-track betting and for the protection of the
5 public, including, without limitation, regulations covering:

6 (1) grant, refusal and revocation of licenses
7 for OTB facilities, persons holding a direct or indirect
8 interest in or control of those facilities, and persons
9 supplying goods or services to those facilities; provided that
10 no OTB facility may be licensed to conduct off-track betting
11 unless it is doing so as an extension of a live race meet
12 conducted at a licensed New Mexico racetrack and receives,
13 except as otherwise permitted by the commission, the simulcast
14 of all live races from licensed race meets;

15 (2) inspection and visitation at reasonable
16 intervals at OTB facilities;

17 (3) the governing, restricting or regulating of
18 operation of off-track betting and all equipment used in
19 connection with it;

20 (4) the approval of all contracts and
21 agreements related to off-track betting or an OTB facility;

22 (5) supervision and regulation of the operation
23 of an entity formed or joint agreement entered into at the
24 discretion of one or more racetracks to construct, contract or
25 subcontract for, establish or operate one or more OTB

1 facilities, the formation of such an entity or the entering into
2 of such an agreement being hereby specifically authorized; and

3 (6) any and all such other matters as the
4 commission may deem necessary or appropriate to accomplish the
5 objectives of this section.

6 C. For purposes of this section, the commission
7 shall have all the powers and authority conferred upon it by the
8 Horse Racing Act as if those powers and authority were restated
9 in this section.

10 D. Distribution of the gross amount wagered at an
11 OTB facility will be made as follows:

12 (1) with respect to the gross amount wagered as
13 off-track betting on horse races run live in this state, after
14 deductions by the racetrack, racetracks or racetrack entity
15 operating the OTB facility as provided in Subsection H of
16 Section 60-1-10 NMSA 1978, except that no deduction shall be
17 taken pursuant to Paragraph (1) of Subsection B of Section
18 60-1-15 NMSA 1978, net retainage will be distributed to the
19 racetrack holding the live race meet upon which off-track
20 betting was wagered for distribution in accordance with that
21 subsection; and

22 (2) with respect to the gross amount wagered as
23 off-track betting on horse races run live other than in this
24 state, after deductions by the racetrack, racetracks or
25 racetrack entity operating the OTB facility as provided in

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1 Subsection H of Section 60-1-10 NMSA 1978, except that the
2 deduction in Paragraph (4) of that subsection for expenses
3 incurred to engage in simulcasting shall be one and one-half
4 percent and no deduction shall be taken pursuant to Paragraph
5 (1) of Subsection B of Section 60-1-15 NMSA 1978, each racetrack
6 will receive a proportion of net retainage equal to the net
7 retainage multiplied by the ratio of the number of live race
8 days run at that racetrack to the total number of live race days
9 run in this state during the preceding state fiscal year, the
10 net retainage so received by a racetrack being then distributed
11 as provided by Subsection H of Section 60-1-10 NMSA 1978.

12 Section 36. Section 10-15-1 NMSA 1978 (being Laws 1974,
13 Chapter 91, Section 1, as amended) is amended to read:

14 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
15 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

16 A. In recognition of the fact that a representative
17 government is dependent upon an informed electorate, it is
18 declared to be public policy of this state that all persons are
19 entitled to the greatest possible information regarding the
20 affairs of government and the official acts of those officers
21 and employees who represent them. The formation of public
22 policy or the conduct of business by vote shall not be conducted
23 in closed meeting. All meetings of any public body except the
24 legislature and the courts shall be public meetings, and all
25 persons so desiring shall be permitted to attend and listen to

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1 the deliberations and proceedings. Reasonable efforts shall be
2 made to accommodate the use of audio and video recording
3 devices.

4 B. All meetings of a quorum of members of any board,
5 commission, administrative adjudicatory body or other
6 policymaking body of any state agency, any agency or authority
7 of any county, municipality, district or any political
8 subdivision, held for the purpose of formulating public policy,
9 including the development of personnel policy, rules,
10 regulations or ordinances, discussing public business or for the
11 purpose of taking any action within the authority of or the
12 delegated authority of any board, commission or other
13 policymaking body are declared to be public meetings open to the
14 public at all times, except as otherwise provided in the
15 constitution of New Mexico or the Open Meetings Act. No public
16 meeting once convened that is otherwise required to be open
17 pursuant to the Open Meetings Act shall be closed or dissolved
18 into small groups or committees for the purpose of permitting
19 the closing of the meeting.

20 C. If otherwise allowed by law or rule of the public
21 body, a member of a public body may participate in a meeting of
22 the public body by means of a conference telephone or other
23 similar communications equipment when it is otherwise difficult
24 or impossible for the member to attend the meeting in person,
25 provided that each member participating by conference telephone

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1 can be identified when speaking, all participants are able to
2 hear each other at the same time and members of the public
3 attending the meeting are able to hear any member of the public
4 body who speaks during the meeting.

5 D. Any meetings at which the discussion or adoption
6 of any proposed resolution, rule, regulation or formal action
7 occurs and at which a majority or quorum of the body is in
8 attendance, and any closed meetings, shall be held only after
9 reasonable notice to the public. The affected body shall
10 determine at least annually in a public meeting what notice for
11 a public meeting is reasonable when applied to that body. That
12 notice shall include broadcast stations licensed by the federal
13 communications commission and newspapers of general circulation
14 that have provided a written request for such notice.

15 E. A public body may recess and reconvene a meeting
16 to a day subsequent to that stated in the meeting notice if,
17 prior to recessing, the public body specifies the date, time and
18 place for continuation of the meeting, and, immediately
19 following the recessed meeting, posts notice of the date, time
20 and place for the reconvened meeting on or near the door of the
21 place where the original meeting was held and in at least one
22 other location appropriate to provide public notice of the
23 continuation of the meeting. Only matters appearing on the
24 agenda of the original meeting may be discussed at the
25 reconvened meeting.

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[bracketed material] = delete

1 F. Meeting notices shall include an agenda
2 containing a list of specific items of business to be discussed
3 or transacted at the meeting or information on how the public
4 may obtain a copy of such an agenda. Except in the case of an
5 emergency, the agenda shall be available to the public at least
6 twenty-four hours prior to the meeting. Except for emergency
7 matters, a public body shall take action only on items appearing
8 on the agenda. For purposes of this subsection, an "emergency"
9 refers to unforeseen circumstances that, if not addressed
10 immediately by the public body, will likely result in injury or
11 damage to persons or property or substantial financial loss to
12 the public body.

13 G. The board, commission or other policymaking body
14 shall keep written minutes of all its meetings. The minutes
15 shall include at a minimum the date, time and place of the
16 meeting, the names of members in attendance and those absent,
17 the substance of the proposals considered and a record of any
18 decisions and votes taken that show how each member voted. All
19 minutes are open to public inspection. Draft minutes shall be
20 prepared within ten working days after the meeting and shall be
21 approved, amended or disapproved at the next meeting where a
22 quorum is present. Minutes shall not become official until
23 approved by the policymaking body.

24 H. The provisions of Subsections A, B and G of this
25 section do not apply to:

1 (1) meetings pertaining to issuance,
2 suspension, renewal or revocation of a license, except that a
3 hearing at which evidence is offered or rebutted shall be open.
4 All final actions on the issuance, suspension, renewal or
5 revocation of a license shall be taken at an open meeting;

6 (2) limited personnel matters; provided that
7 for purposes of the Open Meetings Act, "limited personnel
8 matters" means the discussion of hiring, promotion, demotion,
9 dismissal, assignment or resignation of or the investigation or
10 consideration of complaints or charges against any individual
11 public employee; provided further that this subsection is not to
12 be construed as to exempt final actions on personnel from being
13 taken at open public meetings, nor does it preclude an aggrieved
14 public employee from demanding a public hearing. Judicial
15 candidates interviewed by any commission shall have the right to
16 demand an open interview;

17 (3) deliberations by a public body in
18 connection with an administrative adjudicatory proceeding. For
19 purposes of this paragraph, an "administrative adjudicatory
20 proceeding" means a proceeding brought by or against a person
21 before a public body in which individual legal rights, duties or
22 privileges are required by law to be determined by the public
23 body after an opportunity for a trial-type hearing. Except as
24 otherwise provided in this section, the actual administrative
25 adjudicatory proceeding at which evidence is offered or rebutted

1 and any final action taken as a result of the proceeding shall
2 occur in an open meeting;

3 (4) the discussion of personally identifiable
4 information about any individual student, unless the student,
5 his parent or guardian requests otherwise;

6 (5) meetings for the discussion of bargaining
7 strategy preliminary to collective bargaining negotiations
8 between the policymaking body and a bargaining unit representing
9 the employees of that policymaking body and collective
10 bargaining sessions at which the policymaking body and the
11 representatives of the collective bargaining unit are present;

12 (6) that portion of meetings at which a
13 decision concerning purchases in an amount exceeding two
14 thousand five hundred dollars (\$2,500) that can be made only
15 from one source and that portion of meetings at which the
16 contents of competitive sealed proposals solicited pursuant to
17 the Procurement Code are discussed during the contract
18 negotiation process. The actual approval of purchase of the
19 item or final action regarding the selection of a contractor
20 shall be made in an open meeting;

21 (7) meetings subject to the attorney-client
22 privilege pertaining to threatened or pending litigation in
23 which the public body is or may become a participant;

24 (8) meetings for the discussion of the
25 purchase, acquisition or disposal of real property or water

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1 rights by the public body; [~~and~~]

2 (9) those portions of meetings of committees or
3 boards of public hospitals that receive less than fifty percent
4 of their operating budget from direct public funds and
5 appropriations where strategic and long-range business plans are
6 discussed; and

7 (10) those portions of meetings of the gaming
8 board held pursuant to the Horse Racing Industry Enhancement Act
9 during which are discussed security and investigative
10 information that is otherwise permitted by law to be
11 confidential, proprietary information furnished as part of a
12 major procurement proposal or matters made confidential pursuant
13 to Section 13 of the Horse Racing Industry Enhancement Act.

14 I. If any meeting is closed pursuant to the
15 exclusions contained in Subsection H of this section, the
16 closure:

17 (1) if made in an open meeting, shall be
18 approved by a majority vote of a quorum of the policymaking
19 body; the authority for the closure and the subject to be
20 discussed shall be stated with reasonable specificity in the
21 motion calling for the vote on a closed meeting; the vote shall
22 be taken in an open meeting; and the vote of each individual
23 member shall be recorded in the minutes. Only those subjects
24 announced or voted upon prior to closure by the policymaking
25 body may be discussed in a closed meeting; and

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1 (2) if called for when the policymaking body is
2 not in an open meeting, shall not be held until public notice,
3 appropriate under the circumstances, stating the specific
4 provision of the law authorizing the closed meeting and stating
5 with reasonable specificity the subject to be discussed is given
6 to the members and to the general public.

7 J. Following completion of any closed meeting, the
8 minutes of the open meeting that was closed or the minutes of
9 the next open meeting if the closed meeting was separately
10 scheduled shall state that the matters discussed in the closed
11 meeting were limited only to those specified in the motion for
12 closure or in the notice of the separate closed meeting. This
13 statement shall be approved by the public body under Subsection
14 G of this section as part of the minutes. "

15 Section 37. Section 30-19-1 NMSA 1978 (being Laws 1963,
16 Chapter 303, Section 19-1, as amended) is amended to read:

17 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in
18 Chapter 30, Article 19 NMSA 1978:

19 A. "antique gambling device" means a gambling device
20 twenty-five years of age or older and substantially in original
21 condition that is not used for gambling or commercial gambling
22 or located in a gambling place;

23 B. "bet" means a bargain in which the parties agree
24 that, dependent upon chance, even though accompanied by some
25 skill, one stands to win or lose anything of value specified in

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[bracketed material] = delete

1 the agreement. A bet does not include:

2 (1) bona fide business transactions that are
3 valid under the law of contracts, including [~~without~~
4 ~~limitation~~]:

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

7 (b) agreements to compensate for loss
8 caused by the happening of the chance, including [~~without~~
9 ~~limitation~~] contracts for indemnity or guaranty and life or
10 health and accident insurance;

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

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

16 (4) betting otherwise permitted by law;

17 C. "lottery" means an enterprise [~~other than~~
18 excluding both the New Mexico state lottery established and
19 operated pursuant to the New Mexico Lottery Act and the
20 operation of electronic gaming machines licensed pursuant to the
21 Horse Racing Industry Enhancement Act, wherein, for a
22 consideration, the participants are given an opportunity to win
23 a prize, the award of which is determined by chance, even though
24 accompanied by some skill. As used in this subsection,
25 "consideration" means anything of pecuniary value required to be

1 paid to the promoter in order to participate in such enterprise;

2 D. "gambling device" means a contrivance other than
3 an electronic gaming machine or other device licensed pursuant
4 to the Horse Racing Industry Enhancement Act or other lawfully
5 enacted similar act, other than an antique gambling device that,
6 for a consideration, affords the player an opportunity to obtain
7 anything of value, the award of which is determined by chance,
8 even though accompanied by some skill and whether or not the
9 prize is automatically paid by the device; and

10 E. "gambling place" means any building or tent, any
11 vehicle, whether self-propelled or not, or any room within any
12 of them, one of whose principal uses is:

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

18 Section 38. Section 30-19-6 NMSA 1978 (being Laws 1963,
19 Chapter 303, Section 19-6, as amended) is amended to read:

20 "30-19-6. [~~PERMISSIVE LOTTERY~~] PERMITTED ACTIVITIES. --

21 A. Nothing in [~~Article 19~~] Chapter 30, Article 19
22 NMSA 1978 shall be construed to apply to any sale or drawing of
23 any prize at any fair held in this state for the benefit of any
24 church, public library or religious society situate or being in
25 this state, or for charitable purposes when all the proceeds of

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1 [such] the fair shall be expended in this state for the benefit
2 of [such] the church, public library, religious society or
3 charitable purposes.

4 A lottery shall be operated for the benefit of the
5 organization or charitable purpose only when the entire proceeds
6 of the lottery go to the organization or charitable purpose and
7 no part of such proceeds go to any individual member or employee
8 thereof.

9 B. Nothing in [~~Article 19~~] Chapter 30, Article 19
10 NMSA 1978 shall be held to prohibit any bona fide motion picture
11 theatre from offering prizes of cash or merchandise for
12 advertising purposes, in connection with such business or for
13 the purpose of stimulating business, whether or not any
14 consideration other than a monetary consideration in excess of
15 the regular price of admission is exacted for participation in
16 drawings for prizes.

17 C. Nothing in [~~Article 19~~] Chapter 30, Article 19
18 NMSA 1978 shall be held to apply to any bona fide county fair,
19 including fairs for more than one county, which shall have been
20 held annually at the same location for at least two years and
21 which shall offer prizes of livestock or poultry in connection
22 with [such] the fair when the proceeds of [such] the drawings
23 shall be used for the benefit of [~~said~~] the fair.

24 D. Nothing in [~~Article 19~~] Chapter 30, Article 19
25 NMSA 1978 shall be construed to apply to any lottery operated by

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1 an organization exempt from the state income tax pursuant to
2 Subsection [€] B of Section 7-2-4 NMSA 1978 and not subject to
3 the provisions of Subsection A of this section; provided that:

4 (1) no more than two lotteries shall be
5 operated in any year by such an organization;

6 (2) all the gross proceeds less the reasonable
7 cost of prizes of any lottery operated by such an organization
8 shall be expended in the state for the benefit of the
9 organization or public purposes; and

10 (3) no part of the proceeds of any lottery
11 shall go to any individual member or employee of any
12 organization except as payment for the purchase of prizes at no
13 more than the reasonable retail price.

14 E. Nothing in Chapter 30, Article 19 NMSA 1978
15 prohibits or applies to gaming activities permitted pursuant to
16 the Horse Racing Industry Enhancement Act. "

17 Section 39. Section 60-1-3 NMSA 1978 (being Laws 1933,
18 Chapter 55, Section 2, as amended by Laws 1989, Chapter 99,
19 Section 1 and also by Laws 1989, Chapter 377, Section 1) is
20 amended to read:

21 "60-1-3. APPLICATION FOR LICENSES--STATE RACING COMMISSION
22 CREATED-- MEMBERS-- TERMS OF OFFICE-- VACANCIES-- POWERS AND
23 DUTIES. --

24 A. Any person, firm, association or corporation
25 desiring to hold a horse race or to engage in horse race

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1 meetings shall apply to the state racing commission for a
2 license.

3 B. There is created the "state racing commission".
4 The state racing commission shall consist of five members, no
5 more than three of whom shall be members of the same political
6 party. They shall be appointed by the governor, and no less
7 than three of them shall be practical breeders of racehorses
8 within the state. Each member shall be an actual resident of
9 New Mexico and of such character and reputation as to promote
10 public confidence in the administration of racing affairs.

11 C. The term of office of each member of the state
12 racing commission shall be six years from his appointment, and
13 he shall serve until his successor is appointed and qualified.
14 In case of any vacancy in the membership of the commission, the
15 governor shall fill the vacancy by appointment for the unexpired
16 term.

17 D. No person shall be eligible for appointment as a
18 member of the state racing commission who is an officer,
19 official or director in any association or corporation
20 conducting racing within the state.

21 E. Members of the state racing commission shall
22 receive no salary, but each member of the commission shall
23 receive per diem and mileage in accordance with the Per Diem and
24 Mileage Act. The commission may appoint a secretary and fix his
25 duties and compensation.

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1 F. The state racing commission has the power to:
2 (1) grant, refuse and revoke licenses;
3 (2) make rules and regulations for the holding,
4 conducting and operating of all race meets and races held in the
5 state and to fix and set racing dates;

6 (3) oversee implementation of all rules and
7 regulations adopted by the gaming board acting pursuant to the
8 Horse Racing Industry Enhancement Act that are applicable to
9 racetrack licensees and licensees who are authorized to operate
10 electronic gaming machines at racetracks in the state and are
11 authorized to operate pari-mutuel wagering at facilities other
12 than racetracks pursuant to the Horse Racing Industry
13 Enhancement Act and who are licensed by the commission under the
14 Horse Racing Act; and, subject to a delegation of such authority
15 to the commission by the gaming board, enforce all rules and
16 regulations adopted by the gaming board that are applicable to
17 racetrack licensees and licensees pursuant to the Horse Racing
18 Industry Enhancement Act;

19 [~~(3)~~] (4) make an annual report to the governor
20 of its administration of the racing laws;

21 [~~(4)~~] (5) require of each applicant for a
22 license the full name of the person, association or corporation
23 applying and, if the applicant is a corporation or an
24 association, the name of the state in which incorporated, the
25 nationality and residence of the members of the association and

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[bracketed material] = delete

1 the names of the stockholders and directors of the corporation;

2 [~~(5)~~] (6) require of an applicant for a license
3 the exact location where it is desired to conduct or hold a race
4 or race meeting, whether or not the racetrack or plant is owned
5 or leased and, if leased, the name and residence of the fee
6 owner or, if the owner is a corporation, the names of the
7 directors and stockholders, a statement of the assets and
8 liabilities of the person, association or corporation making the
9 application, the kind of racing to be conducted and the period
10 desired and such other information as the commission may
11 require;

12 [~~(6)~~] (7) require on each application a
13 statement under oath that the information contained in the
14 application is true;

15 [~~(7)~~] (8) personally or by agents and
16 representatives supervise and check the making of pari-mutuel
17 pools and the distribution from those pools;

18 [~~(8)~~] (9) cause the various places where race
19 meets are held to be visited and inspected at reasonable
20 intervals;

21 [~~(9)~~] (10) make rules governing, restricting or
22 regulating bids on leases;

23 [~~(10)~~] (11) regulate rates charged by the
24 licensee for admission to races or for the performance of any
25 service or the sale of any article on the premises of the

Underscored material = new
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1 licensee;

2 [~~(11)~~] (12) approve all proposed extensions,
3 additions or improvements to the buildings, stables or tracks
4 upon property owned or leased by a licensee and require the
5 removal of any employee or official employed by the licensee;

6 [~~(12)~~] (13) completely supervise and control
7 the pari-mutuel machines and equipment at all races held or
8 operated by the state or any state agency or commission;

9 [~~(13)~~] (14) approve all contracts and
10 agreements for the payment of money and all salaries, fees and
11 compensations by any licensee;

12 [~~(14)~~] (15) regulate the size of the purse,
13 stake or reward to be offered for the conducting of any race;

14 [~~(15)~~] (16) exclude or compel the exclusion of,
15 from all racecourses, any person whom the commission deems
16 detrimental to the best interests of racing or any person who
17 willfully violates the racing laws or any rule, regulation or
18 order of the commission or any law of the United States or of
19 this state;

20 [~~(16)~~] (17) compel the production of all
21 documents showing the receipts and disbursements of any licensee
22 and determine the manner in which such financial records shall
23 be kept;

24 [~~(17)~~] (18) investigate the operations of any
25 licensee, and the commission has authority to place attendants

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1 and such other persons as may be deemed necessary in the
2 offices, on the tracks or in places of business of any licensee
3 for the purpose of satisfying itself that the rules and
4 regulations are strictly complied with; and

5 [~~(18)~~] (19) employ staff as peace officers for
6 the purpose of conducting investigations and for enforcing rules
7 and regulations of the state racing commission and the laws of
8 the state and to obtain documents and information from other
9 agencies in order to assist the state racing commission. Staff
10 employed as peace officers shall be required to satisfactorily
11 complete a basic law enforcement training program, but such
12 peace officers shall not carry firearms or other deadly weapons
13 while on duty.

14 G. The state racing commission shall publicly state
15 its reasons for refusing an application for a license. The
16 reasons shall be included in the minute book of the commission,
17 and the minute book shall be subject to public inspection at all
18 reasonable times.

19 H. The state racing commission has the power to
20 summon witnesses, books, papers, documents or tangible things
21 and to administer oaths for the effectual discharge of the
22 commission's duties. The commission may appoint a hearing
23 officer to conduct any hearing required by the Horse Racing Act
24 or any rule or regulation promulgated pursuant to that act."

25 Section 40. A new Section 60-1-9.1 NMSA 1978 is enacted to

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1 read:

2 "60-1-9. 1. [NEW MATERIAL] GAMING BOARD TO HAVE ACCESS TO
3 LICENSURE INFORMATION. --The state racing commission shall
4 provide access to all information obtained by the commission in
5 connection with its licensing of horse race meetings to the
6 gaming board operating pursuant to the Horse Racing Industry
7 Enhancement Act, and the board shall utilize and review all such
8 information in connection with the issuance of licenses pursuant
9 to that act and shall not require the duplication of such
10 information."

11 Section 41. Section 60-1-10 NMSA 1978 (being Laws 1933,
12 Chapter 55, Section 6, as amended) is amended to read:

13 "60-1-10. PARI-MUTUEL METHOD LEGALIZED--MAXIMUM
14 COMMISSIONS--HORSEMEN'S COMMISSION--GAMBLING STATUTES NOT
15 REPEALED--COMMISSION DISTRIBUTION.--

16 A. Within the enclosure where any horse races are
17 conducted, either as live on-track horse races or as horse races
18 simulcast pursuant to Section 60-1-25 NMSA 1978, and where the
19 licensee has been licensed to use the pari-mutuel method or
20 system of wagering on races, the pari-mutuel system is lawful,
21 but only within the enclosure where races are conducted.

22 B. The sale to patrons present on the grounds of
23 pari-mutuel tickets or certificates on the races or the use of
24 the pari-mutuel system shall not be construed to be betting,
25 gambling or pool selling and is authorized under the conditions

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[bracketed material] = delete

1 provided by law.

2 C. There shall be for each class A licensee a
3 commission of nineteen percent of the gross amount wagered on
4 win, place and show through the pari-mutuel system, of which
5 eighteen and three-fourths percent shall be retained by a class
6 A licensee and one-fourth of one percent shall be allocated to
7 the general fund. A commission in an amount determined by the
8 licensee of not less than eighteen and six-eighths percent and
9 not greater than twenty-five percent of the gross amount wagered
10 on win, place and show through the pari-mutuel system shall be
11 retained by a class B licensee. Each class B licensee shall
12 advise the state racing commission not less than thirty days in
13 advance of each horse racing meeting of the percentage the
14 licensee shall retain as commission. From that commission, each
15 class A and class B licensee shall allocate five-eighths of one
16 percent to the New Mexico horse breeders' association weekly for
17 distribution pursuant to the provisions of Subsection C of
18 Section 60-1-17 NMSA 1978.

19 D. Except as otherwise provided in this subsection,
20 a commission shall be retained by the licensee at the election
21 of each class A licensee of not less than twenty-one percent and
22 not greater than twenty-five percent of the gross amount wagered
23 on exotic wagering and at the election of each class B licensee,
24 and with the approval of the state racing commission, of not
25 less than twenty-one percent and not greater than thirty percent

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1 of the gross amount wagered on exotic wagering. For the purpose
2 of this subsection, "exotic wagering" means all wagering other
3 than win, place and show, through the pari-mutuel system. Each
4 licensee shall advise the state racing commission not less than
5 thirty days in advance of each horse racing meeting of the
6 amount of the commission of the gross amount wagered on exotic
7 wagering to be retained by the licensee. From that commission,
8 the licensee shall allocate one and three-eighths percent to the
9 New Mexico horse breeders' association weekly for distribution
10 pursuant to the provisions of Subsection C of Section 60-1-17
11 NMSA 1978.

12 E. The odd cents of all redistributions to the
13 wagerer over the next lowest multiple of ten from the gross
14 amount wagered through the pari-mutuel system shall be retained
15 by the licensee, with fifty percent of the total being allocated
16 to enhance the race purses of established stake races that
17 include only horses registered as New Mexico bred with the New
18 Mexico horse breeders' association, to be distributed by the New
19 Mexico horse breeders' association pursuant to Paragraph (3) of
20 Subsection C of Section 60-1-17 NMSA 1978 subject to the
21 approval of the state racing commission.

22 F. All money resulting from the failure of patrons
23 who purchased winning pari-mutuel tickets during the meeting to
24 redeem their winning tickets before the end of the sixty-day
25 period immediately succeeding the closing day of the meeting and

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[bracketed material] = delete

1 all money resulting from the failure of patrons who purchased
2 pari-mutuel tickets that were entitled to refund but were not
3 refunded during the same sixty-day period shall be apportioned
4 as follows:

5 (1) thirty-three and thirty-three hundredths
6 percent shall be retained by the licensee;

7 (2) thirty-three and thirty-four hundredths
8 percent shall be distributed to the New Mexico horse breeders'
9 association to enhance each track's established overnight purses
10 for races that include only horses registered as New Mexico bred
11 with the New Mexico horse breeders' association pursuant to
12 Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978,
13 subject to the approval of the state racing commission; and

14 (3) thirty-three and thirty-three hundredths
15 percent shall be allocated to [~~horseman's~~] horsemen's race
16 purses.

17 G. To promote and improve the quality of horse
18 racing and simulcasting and the participation of interested
19 persons in horse racing in New Mexico, one-half of one percent
20 of the gross amount wagered on simulcast horse races at each
21 licensed racetrack in New Mexico that receives simulcast horse
22 races shall be allocated by each licensee for distribution to
23 the New Mexico horsemen's association, provided that at least
24 one-quarter of one percent of the gross amount wagered on
25 simulcast races that is so allocated is used solely for medical

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[bracketed material] = delete

1 benefits for the members of the New Mexico horsemen's
2 association, and provided further that the remaining one-quarter
3 of one percent of the gross amount wagered on simulcast races
4 that is so allocated shall be used to enhance purses at each
5 such licensed racetrack. The state racing commission shall by
6 regulation provide for the timing and manner of the distribution
7 required by this subsection and shall audit, or arrange for an
8 independent audit of, the disbursement required by this
9 subsection.

10 H. Subject to the provisions of Subsection D of
11 Section 35 of the Horse Racing Industry Enhancement Act, fifty
12 percent of the net retainage of each licensee shall be allocated
13 to race purses. For purposes of this section, "net retainage"
14 of the licensee means the commission retained by the licensee on
15 all forms of wagers minus:

16 (1) the taxes delineated in Sections 60-1-8 and
17 60-1-15 NMSA 1978;

18 (2) money allocated to the New Mexico horse
19 breeders' association by this section and Section 60-1-17 NMSA
20 1978;

21 (3) money allocated to the New Mexico
22 horsemen's association by this section;

23 (4) a deduction for expenses incurred to engage
24 in intrastate simulcasting pursuant to Section
25 60-1-25 NMSA 1978, provided that:

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[bracketed material] = delete

1 (a) the deduction for each licensee shall
2 be a portion of five percent of the gross amount wagered at all
3 the sites receiving the same simulcast horse races;

4 (b) the deduction portion for each
5 licensee shall be an amount allocated to the licensee by
6 agreement voluntarily reached among all the licensees sending or
7 receiving the same simulcast horse races; and

8 (c) the deduction portion for each
9 licensee shall be an amount allocated to the licensee by the
10 state racing commission if all the licensees sending or
11 receiving the same simulcast horse races fail to reach a
12 voluntary agreement under Subparagraph (b) of this paragraph;
13 and

14 (5) a deduction for fees and commissions
15 incurred to receive interstate simulcasts pursuant to Section
16 60-1-25 NMSA 1978.

17 I. Existing statutes of this state against horse
18 racing on Sundays or on bookmaking, pool selling or other
19 methods of wagering on the racing of horses are not repealed but
20 are hereby expressly continued in effect, with the exception
21 that the operation of the pari-mutuel method or system in
22 connection with the racing of horses, when used as provided by
23 law, is lawful.

24 J. In the event any money paid or allocated to the
25 New Mexico horse breeders' association or the New Mexico

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1 Appaloosa racing association pursuant to the Horse Racing Act
2 cannot be paid to or allocated or administered by such
3 associations, then the state racing commission, or such other
4 organization as may be designated, retained or absolutely
5 controlled by the state racing commission, shall receive all
6 such money and shall pay, allocate and administer all such money
7 pursuant to the provisions of Section 60-1-17 NMSA 1978. If the
8 state racing commission or its controlled designee is required
9 to pay, allocate or administer money on behalf of the New Mexico
10 horse breeders' association or the New Mexico Appaloosa racing
11 association pursuant to this subsection, then the maximum
12 percentage of funds set forth in Paragraph (3) of Subsection C
13 of Section 60-1-17 NMSA 1978 shall be paid by the state racing
14 commission to the New Mexico horse breeders' association or the
15 New Mexico Appaloosa racing association as a fee to obtain the
16 certification of the registry of the dam and stud of the New
17 Mexico bred horse.

18 K. In the event any money paid or allocated to the
19 New Mexico horsemen's association pursuant to the Horse Racing
20 Act cannot be paid to or allocated or administered by the
21 association, then the state racing commission, or such other
22 organization as may be designated, retained or absolutely
23 controlled by the state racing commission, shall receive all
24 such money and shall pay, allocate and administer all such money
25 to achieve the purposes of the provisions of this section. "

Underscored material = new
[bracketed material] = delete

1 Section 42. Section 60-7A-19 NMSA 1978 (being Laws 1981,
2 Chapter 39, Section 96) is amended to read:

3 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

4 A. It is a violation of the Liquor Control Act for a
5 licensee to knowingly allow commercial gambling on the licensed
6 premises.

7 B. In addition to any criminal penalties, any person
8 who violates Subsection A of this section may have his license
9 suspended or revoked or a fine imposed, or both, pursuant to the
10 Liquor Control Act.

11 C. For purposes of this section, "commercial
12 gambling" means:

13 (1) participating in the earnings of or
14 operating a gambling place;

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

17 (3) possessing facilities with the intent to
18 receive, record or forward bets or offers to bet;

19 (4) for gain, becoming a custodian of anything
20 of value bet or offered to be bet;

21 (5) conducting a lottery where both the
22 consideration and the prize are money, or whoever with intent to
23 conduct a lottery possesses facilities to do so; or

24 (6) setting up for use for the purpose of
25 gambling, or collecting the proceeds of, any gambling device or

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1 game.

2 D. A horse racetrack or off-track betting facility
3 licensed to conduct parimutuel wagering or electronic gaming is
4 exempt from the application of the provisions of this section."

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

HOUSE BILL 548

**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 548**

**DO PASS, and thence referred to the JUDICIARY
COMMITTEE.**

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HBIC/HB 548

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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: Gubbels, Varella

Absent: None

H0548BI 1

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 10, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HBI C/HB 548

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H0548BI 1

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SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Excused: Gubbels, Varella

Absent: None

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HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 548

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

AN ACT

RELATING TO GAMING; ENACTING THE GAMING CONTROL ACT; PERMITTING
MACHINE GAMING AT RACETRACKS AND BY CERTAIN NONPROFIT
ORGANIZATIONS; PROVIDING FOR LICENSING AND REGULATION OF THE
PERMITTED ACTIVITIES; PERMITTING CERTAIN TRIBAL GAMING;
PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978; MAKING AN APPROPRIATION; DECARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. Sections 1
through 62 of this act may be cited as the "Gaming Control Act".

Section 2. [NEW MATERIAL] LEGISLATIVE POLICY.--It is the
policy of the legislature that:

A. limited gaming activities should be permitted in
the state if those activities are strictly regulated to ensure
honest and competitive gaming free from criminal and corruptive
elements and influence; and

1 B. the holder of any license or permit issued by the
2 state in connection with the regulation of gaming activities has
3 only a revocable privilege and has no property right or vested
4 interest in the license or permit.

5 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Gaming Control Act:

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

11 B. "affiliated company" means a subsidiary company,
12 holding company, intermediate company or any other form of
13 business organization that:

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

16 (2) is involved in gaming activities or
17 involved in the ownership of property upon which gaming is
18 conducted;

19 C. "applicant" means any person who has applied for
20 a gaming operator's license, manufacturer's license,
21 distributor's license, service technician's license or gaming
22 machine license pursuant to the provisions of the Gaming Control
23 Act or approval of any act or transaction for which approval is
24 required or permitted under the provisions of that act;

25 D. "application" means a request for the issuance of

1 a gaming operator's license, manufacturer's license, distributor's
2 license, service technician's license or gaming machine license
3 pursuant to the provisions of the Gaming Control Act or approval of
4 any act or transaction for which approval is required or permitted
5 under the provisions of that act but does not include any
6 supplemental forms or information that may be required with the
7 application;

8 E. "associated equipment" means any equipment or
9 mechanical, electromechanical or electronic contrivance, component
10 or machine used in connection with gaming;

11 F. "board" means the gaming control board created
12 pursuant to the Gaming Control Act;

13 G. "company" means a corporation, partnership, limited
14 partnership, trust, association, joint stock company, joint
15 venture, limited liability company or other form of business
16 organization that is not a natural person;

17 H. "credit instrument" means a writing that evidences a
18 gaming debt owed to a person who holds a gaming operator's license
19 at the time the debt is created and includes any writing taken in
20 consolidation, redemption or payment of a prior credit instrument;

21 I. "director" means the director appointed by the
22 board;

23 J. "distributor" means a person who distributes gaming
24 devices to a gaming operator;

25 K. "distributor's license" means any license issued by

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1 the board that authorizes the person named to be a distributor;

2 L. "equity security" means:

3 (1) any voting stock of a company or similar
4 security;

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

9 (3) any warrant or right to subscribe to or
10 purchase voting stock or similar security; or

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

13 M "finding of suitability" means an approval issued by
14 the board permitting a person to be involved directly or indirectly
15 with a licensee and related only to the specified involvement for
16 which it is made;

17 N. "game" or "gambling game" means any game played with
18 cards, dice, equipment or any mechanical, electromechanical or
19 electronic device or machine for money, property, checks, credit or
20 any representative of value; but "game" or "gambling game" does not
21 include games played with cards in private homes or residences in
22 which no person makes money for operating the game except as a
23 player;

24 O. "gaming" or "gambling" means to operate, carry on,
25 conduct, maintain or expose for play any game;

1 P. "gaming device" means any mechanical,
 2 electromechanical or electronic contrivance, component or machine
 3 used in connection with gaming or any game that affects the result
 4 of a wager by determining win or loss. "Gaming device" includes a
 5 system for processing information that can alter the normal
 6 criteria of random selection that affects the operation of any game
 7 or determines the outcome of a game. "Gaming device" does not
 8 include a system or device that affects a game solely by stopping
 9 its operation so that the outcome remains undetermined;

10 Q. "gaming employee" means any person connected
 11 directly with the operation of a gaming establishment licensed to
 12 conduct any gaming. "Gaming employee" also includes employees of a
 13 person holding a manufacturer's license whose duties are directly
 14 involved with manufacture of gaming devices within New Mexico;
 15 employees of a person holding a distributor's license whose duties
 16 are directly involved with the distributor of or gaming devices
 17 within New Mexico; and employees of a person whose duties are
 18 directly involved with servicing and repairing gaming devices
 19 within New Mexico. "Gaming employee" does not include bartenders,
 20 cocktail servers or other persons engaged solely in preparing or
 21 serving food or beverages, or secretarial personnel, janitorial,
 22 stage, sound and light technicians and other nongaming personnel;

23 R. "gaming establishment" means the premises on which
 24 or in which gaming is conducted;

25 S. "gaming machine" means any mechanical, electrical,

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1 electronic or electromechanical device, contrivance or machine
2 that, upon insertion of a coin, token or similar object, or upon
3 payment of any consideration, is available to play or operate, the
4 play or operation of which, whether by reason of the skill of the
5 player or operator or application of the element of chance, or
6 both, may deliver or entitle the player or operator to receive
7 cash, premiums, credits, merchandise, tokens or any thing of value,
8 whether the payoff is made automatically from the machine or in any
9 other manner;

10 T. "gaming operator" means a person who operates or
11 conducts gaming activities;

12 U. "gaming operator's license" means any license issued
13 by the board that authorizes the person named therein to engage in
14 gaming operations;

15 V. "gross revenue" means the total of all the
16 following, less the total of all cash paid out as losses to winning
17 patrons and those amounts paid to purchase annuities to fund losses
18 paid to winning patrons over several years by independent
19 administrators:

20 (1) cash received from patrons for the purpose of
21 gaming;

22 (2) cash received in payment for credit extended
23 by a licensee to a patron for the purpose of gaming; and

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

1 W. "holding company" means any company that directly or
2 indirectly owns or has the power or right to control a company that
3 holds or applies for a gaming operator's, supplier's or
4 distributor's license; provided that a company that does not have a
5 beneficial ownership of more than ten percent of the voting
6 securities of a publicly traded corporation shall not be considered
7 a holding company;

8 X. "institutional investor" means:

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

11 (2) an insurance company as defined in Section
12 2(a)(17) of the federal Investment Company Act of 1940, as amended;

13 (3) an investment company registered under
14 Section 8 of the federal Investment Company Act of 1940, as
15 amended;

16 (4) an investment advisor registered under
17 Section 203 of the federal Investment Advisors Act of 1940, as
18 amended;

19 (5) collective trust funds as defined in Section
20 3(c)(11) of the federal Investment Company Act of 1940, as amended;

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

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1 (7) a state or federal government pension plan;

2 (8) a group comprised entirely of persons

3 specified in Paragraphs (1) through (6) of this subsection; or

4 (9) such other persons as the board may determine
5 for reasons consistent with the state policies expressed in Section
6 2 of the Gaming Control Act.

7 To qualify as an "institutional investor", a person other
8 than a state or federal pension plan shall meet the requirements of
9 a "qualified institutional buyer" as defined in Rule 144A of the
10 federal Securities Act of 1933;

11 Y. "intermediary company" means any company that:

12 (1) is a holding company with respect to a
13 company that holds or applies for a gaming operator's, supplier's
14 or distributor's license; and

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

17 Z. "key executive" means any executive that is a
18 department head of a gaming licensee having the power to exercise a
19 significant influence over decisions concerning any part of the
20 gaming operations of the gaming licensee, or whose compensation
21 exceeds an amount determined by the board by regulation;

22 AA. "license" means a gaming operator's license, a
23 manufacturer's license, a distributor's license, a technician's
24 license or a license required by the board by rule for conducting
25 other gaming activities;

1 BB. "licensee" means any person to whom a valid license
2 has been issued;

3 CC. "manufacturer" means a person who manufactures,
4 assembles, produces, programs or makes modifications to any gaming
5 device for use or play in New Mexico or for distribution outside
6 New Mexico from any location within New Mexico;

7 DD. "manufacturer's license" means any license issued
8 by the board that authorizes the licensee to manufacture, assemble,
9 produce, program or otherwise produce or make modifications to any
10 gaming device in New Mexico or from a location outside New Mexico
11 for use or play in New Mexico;

12 EE. "person" means an individual or other entity;

13 FF. "premises" means land, together with all buildings,
14 improvements and personal property located thereon;

15 GG. "progressive jackpot" means a prize that increases
16 over time or as electronic gaming devices that are linked to a
17 progressive system are played. Upon conditions established by the
18 board, a progressive jackpot may be paid by an annuity;

19 HH. "progressive system" means one or more electronic
20 gaming devices linked to one or more common progressive jackpots.

21 A "local area progressive system" shall consist solely of
22 electronic gaming devices located at a single licensed
23 establishment. A "wide area progressive system" may link
24 electronic gaming devices at multiple gaming establishments;

25 II. "publicly traded corporation" means a corporation

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1 that:

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

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

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

12 JJ. "registration" means an approval or board action
13 that authorizes a company to be a holding company with respect to a
14 company that holds or applies for a gaming license or that relates
15 to other persons required to be registered under the Gaming Control
16 Act;

17 KK. "regulation" means a rule, standard, directive or
18 statement of general applicability that effectuates the law or
19 policy or describes the procedures of the board, but "regulation"
20 does not include:

21 (1) a statement concerning only the internal
22 management of the board and not affecting the rights or procedures
23 available to any licensee or other person;

24 (2) a declaratory ruling;

25 (3) an interagency memorandum; or

1 (4) the board's decision in a contested case or
2 relating to the application for a license;

3 LL. "subsidiary" means any corporation or company, all
4 or any part of whose outstanding equity securities are owned,
5 subject to a power or right of control, or held, with power to
6 vote, by a holding company or intermediary company; and

7 MM "work permit" means any card, certificate or permit
8 issued by the board, whether denominated as a work permit,
9 registration card or otherwise, authorizing the employment of the
10 holder as a gaming employee. A document issued by any governmental
11 authority for any employment other than gaming is not a valid work
12 permit for the purposes of the Gaming Control Act.

13 Section 4. [NEW MATERIAL] GAMING CONTROL BOARD CREATED. --

14 A. The "gaming control board" is created and consists
15 of three members appointed by the governor with the consent of the
16 senate. All members of the board shall be residents of New Mexico
17 and citizens of the United States. One member of the board shall
18 have a minimum of five years of previous employment in a first-
19 level management position in law enforcement, and one member of the
20 board shall be a licensed certified public accountant in New Mexico
21 who has had at least five years of public accountancy practice
22 experience.

23 B. The members of the board shall be appointed for
24 terms of five years, except, of the members who are first
25 appointed, the member with law enforcement experience shall be

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1 appointed for a term of five years, the member who is a certified
2 public accountant shall be appointed for a term of four years and
3 the third member shall be appointed for a term of three years.

4 Thereafter, all members shall be appointed for terms of five years.

5 C. Vacancies on the board shall be filled within thirty
6 days by the governor with the consent of the senate for the
7 unexpired portion of the term in which the vacancy occurs. A
8 person appointed to fill a vacancy shall meet all qualification
9 requirements of the office established in this section.

10 D. The governor shall appoint a chair annually from the
11 board's membership.

12 E. No more than two members of the board shall be from
13 the same political party.

14 F. The members of the board shall be full-time state
15 officials and shall receive a salary set by the governor.

16 G. The special investigations division of the
17 department of public safety shall conduct background investigations
18 of all members of the board prior to confirmation by the senate.

19 To assist the department of public safety in this background
20 investigation, the prospective board member shall furnish a
21 disclosure statement to the department on a form provided by the
22 department and requiring that information deemed by the department
23 as necessary for completion of a detailed and thorough background
24 investigation. As a minimum, the required information shall
25 include:

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

3 (2) complete information and details with respect
4 to the prospective board member's antecedents, habits, character,
5 criminal records, business activities and business associates
6 covering at least a ten-year period immediately preceding the date
7 of submitting the disclosure statement; and

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

10 H. A prospective board member shall provide any
11 assistance or information requested by the department of public
12 safety or the governor and shall cooperate in any inquiry or
13 investigation of the prospective board member's fitness or
14 qualifications to hold the office to which he is appointed. The
15 senate shall refuse to confirm a prospective board member if it has
16 reasonable cause to believe that the prospective board member has:

17 (1) knowingly misrepresented or omitted a
18 material fact required in a disclosure statement; or

19 (2) been convicted of a felony, a gambling-
20 related offense or any crime involving fraud, theft or moral
21 turpitude within ten years immediately preceding the date of
22 submitting a disclosure statement required pursuant to Subsection G
23 of this section.

24 I. No member of the board or any member of his
25 immediate family or household shall have any financial interest in

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1 or derive any financial benefit from a business that is regulated
2 by the board, and at the time of taking office, each board member
3 shall file with the secretary of state a sworn statement to that
4 effect.

5 Section 5. [NEW MATERIAL] MEETINGS--QUORUM-RECORDS.--

6 A. A majority of the qualified membership of the board
7 then in office constitutes a quorum. No action may be taken by the
8 board unless at least two members concur.

9 B. Written notice of the time and place of each board
10 meeting shall be given to each member of the board at least ten
11 days prior to the meeting.

12 C. Meetings of the board shall be open and public in
13 accordance with the Open Meetings Act, except that the board may
14 have closed meetings to hear security and investigative
15 information.

16 D. All proceedings of the board shall be recorded by
17 audio tape or other equivalent verbatim audio recording device.

18 E. The chairman of the board, the director or a
19 majority of the members of the board then in office may call a
20 special meeting of the board upon written notice to all members of
21 the board and the director.

22 Section 6. [NEW MATERIAL] BOARD'S POWERS AND DUTIES.--

23 A. The board shall develop and implement the state's
24 policy on gaming consistent with the provisions of the Gaming
25 Control Act. It has the duty to fulfill all responsibilities

1 assigned to it pursuant to that act and has all authority necessary
2 to carry out those responsibilities. It may delegate authority to
3 the director, but it retains accountability. The board is an
4 adjunct agency.

5 B. The board shall:

6 (1) employ the director;

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

10 (3) develop, adopt and promulgate all regulations
11 necessary to implement and administer the provisions of the Gaming
12 Control Act;

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

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

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

24 C. The board may:

25 (1) impose civil fines not to exceed ten thousand

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1 dollars (\$10,000) for the first violation and fifteen thousand
2 dollars (\$15,000) for subsequent violations of any prohibitory
3 provision of the Gaming Control Act or any prohibitory provision of
4 a regulation adopted pursuant to that act;

5 (2) conduct investigations, subpoena persons and
6 documents to compel access to or for the production of books,
7 papers, records or memoranda in the custody or control of any
8 licensee or compel the appearance of employees of a licensee or
9 other persons for the purpose of ascertaining compliance with any
10 provision of the Gaming Control Act or a regulation adopted
11 pursuant to its provisions;

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

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

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

20 (6) conduct audits of applicants, licensees and
21 persons affiliated with licensees;

22 (7) inspect all places where gaming is conducted
23 or gaming devices are manufactured, sold or distributed and inspect
24 all equipment and supplies in those places;

25 (8) summarily seize and remove from places

1 inspected and impound any equipment, supplies, documents or records
2 for the purpose of examination or inspection; and

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

6 Section 7. [NEW MATERIAL] BOARD REGULATIONS--DISCRETIONARY
7 REGULATIONS--PROCEDURE--REQUIRED PROVISIONS.--

8 A. The board may adopt any regulation:

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

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

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

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1 C. The board shall adopt regulations:

2 (1) prescribing the method and form of
3 application to be followed by applicants for licenses;

4 (2) prescribing the information to be furnished
5 by any applicant or licensee concerning his antecedents, habits,
6 character, associates, criminal records, business activities and
7 financial affairs, past or present;

8 (3) requiring work permits for gaming employees
9 and prescribing the information to be furnished by a licensee about
10 his gaming employees;

11 (4) requiring the fingerprinting or other
12 reliable methods of identification of applicants;

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

15 (6) requiring an applicant to pay all or part of
16 the fees and costs of investigation of the applicant as determined
17 by the board;

18 (7) prescribing the manner and method of
19 collection and payment of fees and the issuance of licenses;

20 (8) for authorized gaming, defining the area,
21 games and gaming devices permitted and the methods of operation of
22 the games and gaming devices;

23 (9) for authorized gaming, establishing hours of
24 operation;

25 (10) prescribing under what conditions the

1 nonpayment of a gambling debt is grounds for suspension or
2 revocation of a license;

3 (11) governing the manufacture, sale,
4 distribution, repair and servicing of gaming devices and associated
5 equipment;

6 (12) requiring any applicant or licensee to waive
7 any privilege with respect to any testimony at any hearing or
8 meeting of the board, except a privilege afforded by the
9 constitutions of the United States or New Mexico;

10 (13) governing the specifications for approval
11 and licensing of gaming machines;

12 (14) governing accounting procedures, security,
13 collection and verification procedures required of licensees and
14 matters regarding financial responsibility of licensees;

15 (15) establishing grounds and procedures for the
16 denial, suspension or revocation of a license;

17 (16) prescribing what shall be considered to be
18 an unsuitable method of operation;

19 (17) restricting access to confidential
20 information obtained under the Gaming Control Act and ensuring that
21 the confidentiality of such information is maintained and
22 protected;

23 (18) prescribing financial reporting and internal
24 control requirements for gaming operator licensees;

25 (19) prescribing the manner in which winnings,

1 compensation from games and gaming devices and gross revenue shall
2 be computed and reported by the gaming operator licensee;

3 (20) requiring audits of the financial statements
4 of all gaming operator licensees;

5 (21) requiring periodic financial reports from
6 each gaming operator licensee consistent with standards and
7 intervals prescribed by the board;

8 (22) prescribing the procedures to be followed by
9 gaming operator licensees for the exclusion of certain persons from
10 gaming establishments;

11 (23) prescribing the procedures to be followed by
12 gaming operator licensees for cash transactions; and

13 (24) establishing criteria and conditions for the
14 operation of progressive systems.

15 Section 8. [NEW MATERIAL] DIRECTOR--EMPLOYMENT--
16 QUALIFICATIONS.--

17 A. The director shall be employed by and serve at the
18 pleasure of the board.

19 B. The director shall have had at least five years of
20 responsible administrative experience in public or business
21 administration.

22 Section 9. [NEW MATERIAL] DIRECTOR--DUTIES.--

23 A. The director shall implement the policies of the
24 board.

25 B. The director shall employ all personnel of the

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

6 C. The director shall establish those units he
 7 determines are appropriate to administer the provisions of the
 8 Gaming Control Act.

9 D. The director:

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

13 (2) shall take administrative action by issuing
 14 orders and instructions, not inconsistent with the Gaming Control
 15 Act and regulations of the board, to assure implementation of and
 16 compliance with the provisions of that act and those regulations;

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

20 (4) may provide courses of instruction and
 21 practical training for employees of the board and other persons
 22 involved in the activities regulated by the board with the
 23 objectives of improving operations of the board and achieving
 24 compliance with the law and regulations;

25 (5) shall prepare an annual budget for the board

1 and submit it to the board for its approval; and

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

6 Section 10. [NEW MATERIAL] CONFLICTS OF INTEREST-- BOARD--
7 DIRECTOR. --

8 A. In addition to all other provisions of New Mexico
9 law regarding conflicts of interest of state officials and
10 employees, a member of the board, the director or any person
11 residing in the household of a member of the board or the director
12 shall not:

13 (1) directly or indirectly, individually, as a
14 member of a partnership or other association, or as a stockholder,
15 director or officer of a corporation, have an interest in a
16 business licensed pursuant to the Gaming Control Act; or

17 (2) accept or agree to accept any economic
18 opportunity, gift, loan, gratuity, special discount, favor,
19 hospitality or service having an aggregate value of one hundred
20 dollars (\$100) or more in any calendar year from a person licensed
21 or applying for a license pursuant to the Gaming Control Act.

22 B. If a member of the board, the director or any person
23 residing in the household of any of the named persons violates any
24 provision of this section or Subsection I of Section 4 of the
25 Gaming Control Act, the member of the board or the director shall

1 be removed from his office or position.

2 Section 11. [NEW MATERIAL] PERMITTED GAMING--RACETRACKS--
3 MACHINE GAMING--NET TAKE DISTRIBUTIONS.--

4 A. A racetrack licensed by the state racing commission
5 pursuant to the Horse Racing Act to conduct live horse races or
6 simulcast races may conduct machine gaming on its premises where
7 live racing is conducted if the racetrack is licensed as a gaming
8 operator pursuant to the Gaming Control Act and regulations adopted
9 to implement and enforce that act.

10 B. A racetrack's gaming operator's license shall
11 automatically become void if:

12 (1) the racetrack no longer holds an active
13 license to conduct pari-mutuel wagering; or

14 (2) the racetrack fails to maintain ninety
15 percent of the number of racing days and conduct ninety percent of
16 the number of live horse races as it did in the 1994 calendar year,
17 unless otherwise approved by the board in consultation with the
18 state racing commission.

19 C. The gaming operator's license of a racetrack that
20 did not conduct live racing in 1994 shall automatically become void
21 if:

22 (1) the racetrack no longer holds an active
23 license to conduct pari-mutuel wagering; or

24 (2) the racetrack fails to conduct that number of
25 live horse races on that number of racing days that would represent

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1 the minimum number of the horse races and racing days conducted by
2 any racetrack in New Mexico in the 1994 calendar year, unless
3 otherwise approved by the board in consultation with the state
4 racing commission.

5 D. No license shall be issued to a racetrack that has
6 dismantled or removed any part of the facilities required for the
7 operation of the track, including offices, stables, sheds or patron
8 seating or shelter, within two years prior to the date on which the
9 Gaming Control Act becomes effective.

10 E. A gaming operator licensee that is a racetrack may
11 have an unlimited number of gaming machines, provided that the
12 number of gaming machines to be located on the licensee's premises
13 is specified in the gaming operator's license.

14 F. A gaming operator licensee that is a racetrack shall
15 pay:

16 (1) twenty and eighteen hundredths percent of the
17 net take of each gaming machine to the New Mexico horsemen's
18 association, of which percentage one-fourth of one percent shall be
19 distributed to the New Mexico horsemen's association benevolence
20 fund and the balance shall be distributed to the appropriate New
21 Mexico purse enhancement funds; and

22 (2) four and eighty-two hundredths percent to the
23 New Mexico horse breeders' association for the New Mexico breeder
24 incentive fund.

25 G. A gaming operator licensee that is a racetrack shall

1 submit an accounting of distributions made pursuant to Paragraphs
 2 (1) and (2) of Subsection F of this section to the board by
 3 December 31 of each calendar year.

4 H. Gaming machines may be played on the premises of a
 5 licensed racetrack only on days when the racetrack conducts live
 6 horse races or simulcast races and during times established by
 7 regulation of the board, which shall provide for at least twelve
 8 hours a day.

9 Section 12. [NEW MATERIAL] PERMITTED GAMING-- CERTAIN
 10 NONPROFIT ORGANIZATIONS-- MACHINE GAMING-- NET TAKE DISTRIBUTIONS. --

11 A. A nonprofit organization may conduct machine gaming
 12 on its premises if the nonprofit organization is licensed as a
 13 gaming operator pursuant to the Gaming Control Act and the
 14 regulations adopted to implement and enforce that act and if the
 15 nonprofit organization:

16 (1) is an organization described in Section
 17 501(c) (8), (10), (19) or (23) of the federal Internal Revenue Code
 18 of 1986 and is exempt from federal income taxation pursuant to
 19 Section 501(a) of that code;

20 (2) has been issued a license pursuant to Section
 21 60-6A-5 NMSA 1978; and

22 (3) has been in continuous existence in the state
 23 since before January 1, 1994.

24 B. No more than twenty-five gaming machines may be
 25 offered for play on the premises of a nonprofit organization having

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1 a gaming operator's license. No gaming machine that dispenses cash
2 or coins directly from the machine may be offered for play on the
3 premises of a nonprofit organization having a gaming operator's
4 license.

5 C. No gaming machine on the premises of a nonprofit
6 organization having a gaming operator's license may award a prize
7 that exceeds one thousand dollars (\$1,000).

8 D. Nonprofit organizations having a gaming operator's
9 license shall distribute a minimum of twenty percent of the net
10 take of each gaming machine to organizations with at least one
11 office located in New Mexico that are described in Section
12 501(c)(3) of the federal Internal Revenue Code of 1986 and have
13 received an exemption from payment of federal income taxes pursuant
14 to Section 501(a) of that code. No money shall be distributed from
15 the proceeds of gaming machines to organizations described in that
16 section by which an officer, director or employee or a family
17 member of an officer, director or employee is employed or will
18 directly benefit.

19 E. Nonprofit organizations having a gaming operator's
20 license shall submit an accounting of distributions made pursuant
21 to Subsection D of this section to the board by December 31 of each
22 calendar year.

23 F. Gaming machines may be played on the premises of a
24 nonprofit organization having a gaming operator's license Sunday
25 through Saturday from 12:00 noon until 12:00 midnight.

1 Section 13. [NEW MATERIAL] OTHER GAMING NOT TO BE
2 LICENSED. --No gaming other than the gaming permitted pursuant to
3 Sections 11 and 12 of the Gaming Control Act shall be licensed in
4 the state pursuant to that act.

5 Section 14. [NEW MATERIAL] LICENSE REQUIRED FOR CERTAIN
6 ACTIVITIES. --

7 A. No person shall engage in gaming unless he is
8 licensed as a gaming operator.

9 B. No person shall sell or distribute in the state any
10 gaming device or associated equipment unless he is licensed as a
11 distributor.

12 C. No person shall manufacture, assemble, program or
13 make modifications to a gaming device for use or play in this state
14 or for distribution outside of this state unless he is licensed as
15 a manufacturer.

16 D. No person shall possess or control a place where
17 there is an unlicensed gaming machine. Any unlicensed gaming
18 machine, except one in the possession of a licensee while awaiting
19 licensure of the machine, is subject to forfeiture and confiscation
20 by any law enforcement agency or officer.

21 E. No person shall service or repair a gaming device or
22 associated equipment unless he is licensed as a service technician.

23 F. No person shall engage in any activity for which the
24 board requires a license or permit without obtaining the license or
25 permit.

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1 Section 15. [NEW MATERIAL] LICENSURE--APPLICATION. --

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

- 4 (1) manufacturers;
- 5 (2) distributors;
- 6 (3) operators;
- 7 (4) machines;
- 8 (5) service technicians; or
- 9 (6) any other category of license deemed

10 necessary for secure, orderly, effective and efficient control and
11 operation of gaming in the state.

12 B. No licensee shall hold more than one type of license
13 issued pursuant to the provisions of the Gaming Control Act or own
14 a majority interest in, manage or otherwise control a holder of
15 another type of license issued pursuant to the provisions of that
16 act.

17 C. Applicants for a license shall apply on forms
18 provided by the board and furnish all information requested by the
19 board. Submission of an application constitutes consent to a
20 credit check of the applicant and all persons having a substantial
21 interest in the applicant and any other background investigations
22 required pursuant to the Gaming Control Act or deemed necessary by
23 the board.

24 D. All licenses issued by the board pursuant to the
25 provisions of this section shall be reviewed for renewal annually,

1 unless revoked, suspended, canceled or terminated.

2 E. No license issued pursuant to the provisions of the
3 Gaming Control Act shall be transferred or assigned.

4 F. The application for a license shall include:

- 5 (1) the name of the proposed licensee;
- 6 (2) the location of the proposed operation;
- 7 (3) the gaming devices to be operated, supplied,

8 distributed or serviced;

9 (4) the names of all persons directly or
10 indirectly interested in the business of the applicant and the
11 nature of such interest; and

12 (5) such other information and details as the
13 board may require.

14 G. The board shall furnish to the applicant
15 supplemental forms that the applicant shall complete and file with
16 the application. Such supplemental forms shall require, but shall
17 not be limited to, complete information and details with respect to
18 the applicant's antecedents, habits, character, criminal records,
19 business activities, financial affairs and business associates,
20 covering at least a ten-year period immediately preceding the date
21 of filing of the application.

22 Section 16. [NEW MATERIAL] LICENSE FEES. --

23 A. The following license fees shall be paid to the
24 board:

- 25 (1) manufacturer's license, twenty thousand

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1 dollars (\$20,000) for the initial license and five thousand dollars
2 (\$5,000) for annual renewal;

3 (2) distributor's license, ten thousand dollars
4 (\$10,000) for the initial license and one thousand dollars (\$1,000)
5 for annual renewal;

6 (3) operator's license for a racetrack, fifty
7 thousand dollars (\$50,000) for the initial license and ten thousand
8 dollars (\$10,000) for annual renewal; operator's license for a
9 nonprofit organization, one thousand dollars (\$1,000) for the
10 initial license and two hundred dollars (\$200) for annual renewal;
11 and

12 (4) for each separate gaming machine licensed,
13 five hundred dollars (\$500) initially and one hundred dollars
14 (\$100) annually for renewal.

15 B. The board shall establish the license fee for
16 service technicians and the fee for any other license or permit by
17 regulation, but no fee established by the board shall exceed one
18 hundred dollars (\$100). The board shall also establish by
19 regulation a nonrefundable application fee of no more than five
20 hundred dollars (\$500) to be charged to any applicant.

21 Section 17. [NEW MATERIAL] GAMING OPERATOR LICENSEES--
22 GENERAL PROVISIONS--PLAYER AGE LIMIT--RULES FOR PLACEMENT.--

23 A. An applicant for licensure as a gaming operator
24 shall submit with the application a plan for assisting in the
25 prevention, education and treatment of compulsive gambling. The

1 plan shall include regular educational training sessions for
 2 employees. Plan approval is a condition of issuance of the
 3 license.

4 B. Gaming operator licensees shall be granted a license
 5 to operate a specific number of machines on the premises identified
 6 in the license application consistent with the Gaming Control Act
 7 and regulations adopted pursuant to that act and shall be granted a
 8 license for each gaming machine.

9 C. A gaming operator licensee that desires to change
 10 the number of machines in operation on his premises shall apply to
 11 the board for an amendment to his license authorizing a change in
 12 the number of machines.

13 D. Gaming machines may be available for play only in an
 14 area restricted to persons twenty-one years of age or older. A
 15 gaming operator licensee shall erect a permanent physical barrier
 16 to allow for multiple uses of the premises by persons of all ages.
 17 For purposes of this section, "permanent physical barrier" means a
 18 floor-to-ceiling wall separating the general areas from the
 19 restricted areas. The entrance to the area where gaming machines
 20 are located shall display a sign that the premises are restricted
 21 to persons twenty-one years or older. Persons under the age of
 22 twenty-one shall not enter the premises where gaming machines are
 23 located.

24 E. No gaming operator licensee shall have automated
 25 teller machines on the premises.

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1 F. No gaming operator licensee shall provide, allow,
2 contract or arrange to provide alcohol or food at reduced prices as
3 an incentive or enticement to gamble.

4 G. No nonprofit organization shall be granted a license
5 as a gaming operator if gaming is intended as its primary business
6 or activity.

7 Section 18. [NEW MATERIAL] ACTION BY BOARD ON
8 APPLICATIONS. --

9 A. Any person that the board determines is qualified to
10 receive a license pursuant to the provisions of the Gaming Control
11 Act, having due consideration for the proper protection of the
12 health, safety, morals, good order and general welfare of the
13 inhabitants of this state and the declared policy of this state,
14 may be issued a license. The burden of proving qualifications is
15 on the applicant.

16 B. An application to receive a license shall not be
17 granted unless the board is satisfied that the applicant is:

18 (1) a person of good moral character, honesty and
19 integrity;

20 (2) a person whose prior activities, criminal
21 record, if any, reputation, habits and associations do not pose a
22 threat to the public interest or to the effective regulation and
23 control of gaming or create or enhance the dangers of unsuitable,
24 unfair or illegal practices, methods and activities in the conduct
25 of gaming or the carrying on of the business and financial

1 arrangements incidental thereto; and

2 (3) in all other respects qualified to be
3 licensed consistent with the laws of this state.

4 C. A license shall not be granted pursuant to the
5 Gaming Control Act unless the applicant has satisfied the board
6 that:

7 (1) the applicant has adequate business probity,
8 competence and experience in business or gaming;

9 (2) the proposed financing of the applicant is
10 adequate for the nature of the proposed license and from a suitable
11 source; any lender or other source of money or credit that the
12 board finds does not meet the standards set forth in Subsection B
13 of this section shall be deemed unsuitable; and

14 (3) the applicant is sufficiently capitalized
15 under standards set by the board to conduct the business covered by
16 the license applied for.

17 D. An application to receive a license constitutes a
18 request for a determination of the applicant's general moral
19 character, integrity and ability to participate or engage in or be
20 associated with gaming. Any written or oral statement made in the
21 course of an official proceeding of the board or by any witness
22 testifying under oath that is relevant to the purpose of the
23 proceeding is absolutely privileged and does not impose liability
24 for defamation or constitute a ground for recovery in any civil
25 action.

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1 E. The board shall investigate the qualifications of
2 each applicant before any license is issued by the board and shall
3 continue to observe and monitor the conduct of all licensees and
4 the persons having a material involvement directly or indirectly
5 with a licensed gaming operation.

6 F. The board has the authority to deny any application
7 or limit, condition, restrict, revoke or suspend any license for
8 any reasonable cause.

9 G. The board may issue or deny a license to the
10 applicant. The board may limit or place those reasonable
11 conditions it deems necessary to the public interest upon any
12 license for which application has been made.

13 H. After the issuance of the license, it shall continue
14 in effect upon proper payment of the initial and renewal license
15 fees, subject to the power of the board to revoke, suspend,
16 condition or limit licenses.

17 I. The board has full and absolute power and authority
18 to deny any application for any cause it deems reasonable. If an
19 application is denied, the board shall prepare and file its written
20 decision upon which its order denying the application is based.

21 Section 19. [NEW MATERIAL] INVESTIGATION FOR LICENSES. --
22 Within thirty days after filing of an application and receipt of
23 such supplemental information as the board may require, the board
24 shall commence the investigation of the applicant and shall conduct
25 those proceedings in accordance with applicable regulations as the

1 board may deem necessary.

2 Section 20. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS FOR
3 COMPANIES. --In order to be eligible to receive a license, a company
4 shall:

5 A. be incorporated or otherwise organized and in good
6 standing in this state or incorporated or otherwise organized in
7 another state and qualified to do business in this state;

8 B. comply with all of the requirements of the laws of
9 this state pertaining to the company; and

10 C. maintain a ledger in the principal office of the
11 company in this state, which shall:

12 (1) at all times reflect the ownership of every
13 class of security issued by the company; and

14 (2) be available for inspection by the board at
15 all reasonable times without notice.

16 Section 21. [NEW MATERIAL] REGISTRATION WITH BOARD BY
17 COMPANY APPLICANTS--REQUIRED INFORMATION. --A company that applies
18 for a license shall provide the following information to the board
19 on forms provided by the board:

20 A. the organization, financial structure and nature of
21 the business to be operated, including the names and personal
22 history of all officers, directors and key executives;

23 B. the rights and privileges acquired by the holders of
24 different classes of authorized securities;

25 C. the terms and conditions of all outstanding loans,

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1 mortgages, trust deeds, pledges or any other indebtedness or
2 security device pertaining to the proposed gaming operation or
3 other licensed activity in this state;

4 D. remuneration to persons other than directors,
5 officers and key executives exceeding one hundred thousand dollars
6 (\$100,000) per year;

7 E. bonus and profit-sharing arrangements within the
8 company;

9 F. management and service contracts pertaining to the
10 proposed gaming operation or other licensed activity in this state;

11 G. balance sheets and profit and loss statements for at
12 least the three preceding fiscal years, or, if the company has not
13 been in business for a period of three years, balance sheets and
14 profit and loss statements from the time of its commencement of
15 business operations and projected for three years from the time of
16 its commencement of business operations. All balance sheets and
17 profit and loss statements shall be certified by independent
18 certified public accountants; and

19 H. any further financial data that the board may deem
20 necessary or appropriate for the protection of the state or
21 licensed gaming, or both.

22 Section 22. [NEW MATERIAL] INDIVIDUAL LICENSING OF
23 OFFICERS, DIRECTORS AND OTHER PERSONS. --All officers, directors,
24 equity security holders of five percent or more, partners, general
25 partners, limited partners, trustees and beneficiaries of the

1 company that holds or has applied for a license shall be licensed
 2 individually, according to the provisions of the Gaming Control
 3 Act, and if, in the judgment of the board, the public interest will
 4 be served by requiring any or all of the company's key executives
 5 to be licensed, the company shall require those persons to apply
 6 for a license in accordance with the laws and requirements in
 7 effect at the time the board requires the licensing. A person who
 8 is required to be licensed by this section shall apply for a
 9 license within thirty days after becoming an officer, director,
 10 equity security holder of five percent or more, partner, general
 11 partner, limited partner of five percent or more, trustee,
 12 beneficiary or key executive. A person who is required to be
 13 licensed pursuant to a decision of the board shall apply for a
 14 license within thirty days after the board so requests.

15 Section 23. [NEW MATERIAL] REQUIREMENTS IF COMPANY IS OR
 16 BECOMES SUBSIDIARY-- INVESTIGATIONS-- RESTRICTIONS ON UNSUITABLE
 17 PERSONS-- OTHER REQUIREMENTS. --

18 A. If the company applying for or holding a license is
 19 or becomes a subsidiary, each nonpublicly traded holding company
 20 and intermediary company with respect to the subsidiary company
 21 shall:

- 22 (1) qualify to do business in New Mexico; and
 - 23 (2) register with the board and furnish the board
- 24 the following information:
- 25 (a) a complete list of all beneficial owners

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1 of five percent or more of its equity securities, which shall be
2 updated within thirty days after any change;

3 (b) the names of all corporate officers and
4 directors within thirty days of their appointment or election;

5 (c) the organization, financial structure
6 and nature of the business it operates;

7 (d) the terms, position, rights and
8 privileges of the different classes of securities outstanding;

9 (e) the terms on which its securities are to
10 be, and during the preceding three years have been, offered to the
11 public or otherwise;

12 (f) the terms and conditions of all
13 outstanding loans, mortgages, trust deeds, pledges or any other
14 indebtedness or security device pertaining to the applicant or
15 licensee;

16 (g) the extent of the securities holdings or
17 other interest in the holding company or intermediary company of
18 all officers, directors, key executives, underwriters, partners,
19 principals, trustees or any direct or beneficial owner, and the
20 amount of any remuneration paid them as compensation for their
21 services, in the form of salary, wages, fees or by contract,
22 pertaining to the licensee;

23 (h) remuneration to persons other than
24 directors, officers and key executives exceeding one hundred
25 thousand dollars (\$100,000) per year;

1 (i) bonus and profit-sharing arrangements
2 within the holding company or intermediary company;

3 (j) management and service contracts
4 pertaining to the licensee;

5 (k) options existing or to be created in
6 respect to their securities or other interests;

7 (l) balance sheets and profit and loss
8 statements, certified by independent certified public accountants,
9 for not more than the three preceding fiscal years, or, if the
10 holding company or intermediary company has not been in existence
11 more than three years, balance sheets and profit and loss
12 statements from the time of its establishment, together with
13 projections for three years from the time of its establishment;

14 (m) any further financial statements
15 necessary or appropriate for the protection of the state, licensed
16 gaming, or both; and

17 (n) an annual profit and loss statement and
18 an annual balance sheet, and a copy of its annual federal income
19 tax return, within thirty days after the return is filed with the
20 federal government.

21 B. All equity security holders of five percent or more
22 of a holding company or intermediary company shall apply for and be
23 issued a license.

24 C. The board may in its discretion make such
25 investigations concerning the officers, directors, underwriters,

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1 security holders, partners, principals, trustees or direct or
2 beneficial owners of any interest in any holding company or
3 intermediary company as it deems necessary, either at the time of
4 initial registration or at any time thereafter.

5 D. If at any time the board finds that any person
6 owning, controlling or holding with power to vote all or any part
7 of any class of securities of, or any interest in, any holding
8 company or intermediary company is unsuitable to be connected with
9 a licensee, it shall so notify both the unsuitable person and the
10 holding company or intermediary company. The unsuitable person
11 shall immediately offer the securities or other interest to the
12 issuing company for purchase. The company shall purchase the
13 securities or interest offered upon the terms and within the time
14 period ordered by the board.

15 E. Beginning upon the date when the board serves notice
16 of a determination of unsuitability pursuant to Subsection D of
17 this section, it is unlawful for the unsuitable person to:

18 (1) receive any dividend or interest upon any
19 securities held in the holding company or intermediary company, or
20 any dividend, payment or distribution of any kind from the holding
21 company or intermediary company;

22 (2) exercise, directly or indirectly or through
23 any proxy, trustee or nominee, any voting right conferred by the
24 securities or interest; or

25 (3) receive any remuneration in any form from the

1 licensee, or from any holding company or intermediary company with
2 respect to that licensee, for services rendered or otherwise.

3 F. A holding company or intermediary company subject to
4 the provisions of Subsection A of this section shall not make any
5 public offering of any of its equity securities unless such public
6 offering has been approved by the board.

7 G. This section does not apply to publicly traded
8 corporations, the stock of which is traded on recognized stock
9 exchanges, which shall instead comply with the provisions of
10 Section 24 of the Gaming Control Act.

11 Section 24. [NEW MATERIAL] REGISTRATION OF PUBLICLY TRADED
12 CORPORATIONS. --

13 A. If a company applying for or holding a license is or
14 becomes a publicly traded corporation, the publicly traded
15 corporation shall register with the board and provide the following
16 information:

17 (1) the ownership of record of persons holding
18 five percent or more of the outstanding shares of any class of
19 equity securities issued by the publicly traded corporation; the
20 ledger may initially consist of a copy of its latest list of record
21 equity securities holders and thereafter be maintained by adding a
22 copy of such material as it is regularly received from the transfer
23 agent for its equity securities of any class that is outstanding;

24 (2) the names of all officers within thirty days
25 of their appointment;

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1 (3) the names of all directors within thirty days
2 of their election or appointment;

3 (4) the organization, financial structure and
4 nature of the businesses it operates;

5 (5) the terms, position, rights and privileges of
6 the different classes of securities outstanding;

7 (6) the terms on which its securities are to be,
8 and during the preceding three years have been, offered to the
9 public or otherwise initially issued by it;

10 (7) the terms and conditions of all outstanding
11 loans, mortgages, trust deeds, pledges or any other indebtedness or
12 security device pertaining directly or indirectly to the licensee;

13 (8) remuneration exceeding one hundred thousand
14 dollars (\$100,000) per year paid to persons other than directors,
15 officers and key executives who are actively and directly engaged
16 in the administration or supervision of the gaming activities of
17 the licensee;

18 (9) bonus and profit-sharing arrangements within
19 the publicly traded corporation directly or indirectly relating to
20 the gaming activities of the licensee;

21 (10) management and service contracts of the
22 publicly traded corporation pertaining to the licensee;

23 (11) options existing or to be created in respect
24 of its equity securities;

25 (12) balance sheets and profit and loss

1 statements, certified by independent certified public accountants,
2 for not less than the three preceding fiscal years. These balance
3 sheets and profit and loss statements may be those filed by it with
4 or furnished by it to another government agency that requires the
5 filing of substantially similar balance sheets;

6 (13) any further financial statements deemed
7 necessary or appropriate for the protection of the state, licensed
8 gaming, or both; and

9 (14) a description of the publicly traded
10 corporation's affiliated companies and intermediary companies, and
11 the various gaming licenses and approvals obtained by such
12 entities.

13 B. The board shall consider the following criteria in
14 determining whether to issue a registration to a publicly traded
15 corporation:

16 (1) the business history of the applicant,
17 including its record of financial stability, integrity and success
18 of its gaming operations in other jurisdictions;

19 (2) the current business activities and interest
20 of the applicant, as well as those of its officers, promoters,
21 lenders and other sources of financing, or any other individuals
22 associated therewith;

23 (3) the current financial structure of the
24 applicant, as well as changes that could reasonably be undisputed
25 to occur to that financial structure as a consequence of the

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1 proposed action of the applicant;

2 (4) the present and proposed compensation
3 arrangement between the applicant and its directors, officers, key
4 executives, securities holders, lenders or other sources of
5 financing;

6 (5) the equity investment, commitment or
7 contribution of present or prospective directors, key executives,
8 investors, lenders or other sources of financing; and

9 (6) the dealings and arrangements, prospective or
10 otherwise, between the applicant and any investment bankers,
11 promoters, finders or lenders and other sources of financing.

12 C. The board may issue an order of registration upon
13 receipt of a proper application and consideration of the criteria
14 set forth in Subsection B of this section if it finds that the
15 registration would not be contrary to the public interest or the
16 policy set forth in the Gaming Control Act.

17 Section 25. [NEW MATERIAL] INDIVIDUAL LICENSING OF
18 DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION IF
19 FOUND UNSUITABLE OR IF LICENSE IS DENIED OR REVOKED--SUSPENSION OF
20 SUITABILITY BY BOARD. --

21 A. Each officer, director and key executive of a
22 holding company, intermediary company or publicly traded
23 corporation that the board determines is or is to become actively
24 and directly engaged in the administration or supervision of, or
25 any other significant involvement with, the activities of the

1 subsidiary licensee or applicant shall apply for and be issued a
 2 finding of suitability therefor.

3 B. If any officer, director or key executive of a
 4 holding company, intermediary company or publicly traded
 5 corporation required to be found suitable pursuant to Subsection A
 6 of this section fails to apply for a finding of suitability within
 7 thirty days after being requested to do so by the board, or is not
 8 found suitable by the board, or if his finding of suitability is
 9 revoked after appropriate findings by the board, the holding
 10 company, intermediary company or publicly traded corporation shall
 11 immediately remove that officer, director or key executive from any
 12 office or position in which the person is engaged in the
 13 administration or supervision of, or any other involvement with,
 14 the activities of the subsidiary licensee until the person is
 15 thereafter found to be suitable. If the board suspends the finding
 16 of suitability of any officer, director or key executive, the
 17 holding company, intermediary company or publicly traded
 18 corporation shall, immediately and for the duration of the
 19 suspension, suspend that officer, director or key executive from
 20 performance of any duties in which he is actively and directly
 21 engaged in administration or supervision of, or any other
 22 significant involvement with, the activities of the subsidiary
 23 licensee.

24 Section 26. [NEW MATERIAL] SUITABILITY OF INDIVIDUALS
 25 ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY

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Underscored material = new
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1 TRADED CORPORATION-- REPORT OF ACQUISITION-- APPLICATION--
2 PROHIBITION.--

3 A. Each person who individually or in association with
4 others, acquires, directly or indirectly, beneficial ownership of
5 five percent or more of any voting securities in a publicly traded
6 corporation registered with the board may be required to be found
7 suitable if the board has reason to believe that the acquisition of
8 the ownership would otherwise be inconsistent with the declared
9 policy of this state.

10 B. Each person who, individually or in association with
11 others, acquires, directly or indirectly, beneficial ownership of
12 five percent or more of any class of voting securities of a
13 publicly traded corporation registered with the board shall notify
14 the board within ten days after acquiring such interest.

15 C. Each person who, individually or in association with
16 others, acquires, directly or indirectly, the beneficial ownership
17 of more than ten percent of any class of voting securities of a
18 publicly traded corporation registered with the board, shall apply
19 to the board for a finding of suitability within thirty days after
20 acquiring such interest.

21 D. Institutional investors that have been exempted from
22 or have received a waiver of suitability requirements pursuant to
23 regulations adopted by the board are not required to comply with
24 this section.

25 E. Any person required by the board or by this section

1 to be found suitable shall:

2 (1) apply for a finding of suitability within
3 thirty days after the board requests that he do so; and

4 (2) together with the application, deposit with
5 the board a sum of money that will be adequate to pay the
6 reasonable costs and charges incurred in the investigation and
7 processing of the application, and deposit such additional sums as
8 are required by the board to pay final costs and charges.

9 F. Any person required by the board or this section to
10 be found suitable who subsequently is found unsuitable by the board
11 shall not hold directly or indirectly the beneficial ownership of
12 any security of a publicly traded corporation that is registered
13 with the board beyond that period of time prescribed by the board.

14 G. The board may, but is not required to, deem a person
15 qualified to hold a license or finding of suitability as required
16 by this section if such person currently holds a valid license or
17 finding of suitability issued by gaming regulatory authorities in
18 another jurisdiction, provided that the board finds that such other
19 jurisdiction has conducted a thorough investigation of the
20 applicant and has criteria substantially similar to those of the
21 board to determine when a person is to be found suitable or to
22 obtain a license.

23 Section 27. [NEW MATERIAL] REPORT OF PROPOSED ISSUANCE OR
24 TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE OFFICERS AND
25 DIRECTORS--APPROVAL OF BOARD.--

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1 A. Before a licensed company, other than a publicly
2 traded corporation, may issue or transfer five percent or more of
3 its securities to any person, it shall file a report of its
4 proposed action with the board, which report shall request the
5 approval of the board. The board shall have ninety days within
6 which to approve or deny the request. If the board fails to act in
7 ninety days, the request is deemed approved. If the board denies
8 the request, the company shall not issue or transfer five percent
9 or more of its securities to the person about whom the request was
10 made.

11 B. A licensed company shall file a report of each
12 change of the corporate officers and directors with the board
13 within thirty days of such change. The board shall have ninety
14 days from the date the report is filed within which to approve or
15 disapprove such change. During the ninety-day period and
16 thereafter, if the board does not disapprove the change, an officer
17 or director shall be entitled to exercise all powers of the office
18 to which he was so elected or appointed.

19 C. A licensed company shall report to the board in
20 writing any change in company personnel who have been designated as
21 key executives. The report shall be made no later than thirty days
22 after the change.

23 D. The board may require that any licensed company
24 furnish the board with a copy of its federal income tax return
25 within thirty days after the return is filed with the federal

1 government.

2 Section 28. [NEW MATERIAL] LICENSING OF MANUFACTURERS OF
3 GAMING DEVICES-- EXCEPTION-- DISPOSITION OF GAMING DEVICES. --

4 A. Except as otherwise provided in Subsections B and C
5 of this section, it is unlawful for any person to operate, carry
6 on, conduct or maintain any form of manufacturing of any gaming
7 device for use or play in New Mexico or any form of manufacturing
8 of any gaming device in New Mexico for use or play outside of New
9 Mexico without first procuring and maintaining a manufacturer's
10 license.

11 B. A company that holds a gaming operator's license or
12 any of its registered holding companies may ship gaming devices to
13 affiliates licensed to conduct gaming operations in other
14 jurisdictions, or receive shipments of gaming devices from those
15 affiliates.

16 C. A company that holds a gaming operator's license or
17 the holding company of the licensed company may, within two years
18 after cessation of business, upon specific approval by the board,
19 dispose of by sale in a manner approved by the board any or all of
20 its gaming devices.

21 D. Any person whom the board determines is a suitable
22 person to receive a license under the provisions of this section
23 may be issued a manufacturer's license.

24 E. If the board determines that a person is unsuitable
25 to receive or hold a manufacturer's license:

Underscored material = new
[bracketed material] = delete

1 (1) no new gaming device manufactured by the
2 person may be approved for use in this state;

3 (2) any previously approved gaming device
4 manufactured by the person is subject to revocation of approval if
5 the reasons for the denial of the license also apply to that gaming
6 device;

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

10 (4) any association or agreement between the
11 manufacturer and a licensed distributor in New Mexico shall be
12 terminated, unless otherwise provided by the board; an agreement
13 between a manufacturer of gaming devices and a licensed distributor
14 in New Mexico shall be deemed to include a provision for its
15 termination without liability on the part of the licensed
16 distributor upon a finding by the board that the manufacturer is
17 unsuitable. Failure to include that condition in the agreement is
18 not a defense in any action brought pursuant to this section to
19 terminate the agreement.

20 F. A gaming device shall not be used and offered for
21 play by a licensed gaming operator unless it is identical in all
22 material aspects to a model that has been specifically tested and
23 approved by:

24 (1) the board;

25 (2) a laboratory selected by the board; or

1 (3) gaming officials in Nevada or New Jersey
2 after January 1, 1990.

3 G. The board may inspect every gaming device that is
4 manufactured:

5 (1) for use in New Mexico; or

6 (2) in New Mexico for use outside of New Mexico.

7 H. The board may inspect every gaming device that is
8 offered for play within New Mexico by a licensed gaming operator.

9 I. The board may inspect all associated equipment that
10 is manufactured and sold for use in New Mexico.

11 J. In addition to all other fees and charges imposed by
12 the Gaming Control Act, the board may determine, charge and collect
13 an inspection fee from each manufacturer, which shall not exceed
14 the actual cost of inspection and investigation.

15 K. The board may prohibit the use of a gaming device,
16 or associated equipment by a gaming operator licensee if it finds
17 that the gaming device or associated equipment does not meet the
18 requirements of this section or is otherwise inimical to the policy
19 of this state concerning gaming.

20 Section 29. [NEW MATERIAL] LICENSING OF DISTRIBUTORS OF
21 GAMING DEVICES. --

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

Underscored material = new
[bracketed material] = delete

1 B. Any person whom the board determines is a suitable
2 person to receive a license under the provisions of this section
3 may be issued a distributor's license.

4 C. If the board determines that a person is unsuitable
5 to receive or hold a distributor's license:

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

8 (2) any previously approved gaming device
9 distributed by the person is subject to revocation of approval if
10 the reasons for the denial of the license also apply to that gaming
11 device;

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

15 (4) any association or agreement between the
16 distributor and a licensed gaming operator shall be terminated,
17 unless otherwise provided by the board. An agreement between a
18 distributor of gaming devices and a licensed gaming operator shall
19 be deemed to include a provision for its termination without
20 liability on the part of either party upon a finding by the board
21 that the other party is unsuitable. Failure to include that
22 condition in the agreement is not a defense in any action brought
23 pursuant to this section to terminate the agreement.

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

1 E. The board may inspect all associated equipment that
2 is distributed for use in New Mexico.

3 F. In addition to all other fees and charges imposed by
4 the Gaming Control Act, the board may determine, charge and collect
5 an inspection fee from each distributor, which shall not exceed the
6 actual cost of inspection and investigation.

7 Section 30. ~~[NEW MATERIAL]~~ SUITABILITY OR LICENSING OF
8 CERTAIN PERSONS FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS
9 WITH GAMING LICENSEE-- TERMINATION OF ASSOCIATION. --

10 A. The board may determine the suitability of any
11 person who furnishes services or property to a licensed gaming
12 operator under any arrangement pursuant to which the person
13 receives compensation based on earnings, profits or receipts from
14 gaming. The board may require the person to comply with the
15 requirements of the Gaming Control Act and with the regulations of
16 the board. If the board determines that the person is unsuitable,
17 it may require the arrangement to be terminated.

18 B. The board may require the application of any person
19 for a determination of suitability to be associated with a licensed
20 gaming operator if the person:

21 (1) does business on the premises of a gaming
22 establishment; or

23 (2) provides any goods or services to a licensed
24 gaming operator for a compensation that the board finds to be
25 grossly disproportionate to the value of the goods or services.

Underscored material = new
[bracketed material] = delete

1 C. If the board determines that a person is unsuitable
2 to be associated with a licensed gaming operator, the association
3 shall be terminated. Any agreement that entitles a business other
4 than gaming to be conducted on the premises of a gaming
5 establishment, or entitles a person other than a licensed gaming
6 operator to conduct business with the licensed gaming operator, is
7 subject to termination upon a finding of unsuitability of the
8 person associated therewith. Every such agreement shall be deemed
9 to include a provision for its termination without liability on the
10 part of the licensed gaming operator upon a finding by the board
11 that the person associated therewith is unsuitable to be associated
12 with the licensed gaming operator. Failure to include that
13 condition in the agreement is not a defense in any action brought
14 pursuant to this section to terminate the agreement. If the
15 application is not presented to the board within thirty days
16 following demand or the unsuitable association is not terminated,
17 the board may pursue any remedy or combination of remedies provided
18 in the Gaming Control Act.

19 Section 31. REASONS FOR INVESTIGATIONS BY BOARD--COMPLAINT
20 BY BOARD--BOARD TO APPOINT HEARING EXAMINER--REVIEW BY BOARD--ORDER
21 OF BOARD. --

22 A. The board shall make appropriate investigations to:
23 (1) determine whether there has been any
24 violation of the Gaming Control Act or of any regulations adopted
25 pursuant to that act;

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

5 (3) aid in adopting regulations;

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

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

11 B. If after any investigation the board is satisfied
12 that a license, registration, finding of suitability or prior
13 approval by the board of any transaction for which approval was
14 required or permitted under the provisions of the Gaming Control
15 Act should be limited, conditioned, suspended or revoked, or that a
16 fine should be levied, the board shall initiate a hearing by filing
17 a complaint and transmitting a copy of it to the licensee, together
18 therewith a summary of evidence in its possession bearing on the
19 matter and the transcript of testimony at any investigative hearing
20 conducted by or on behalf of the board. The complaint shall be a
21 written statement of charges that sets forth in ordinary and
22 concise language the acts or omissions with which the respondent is
23 charged. It shall specify the statutes or regulations that the
24 respondent is alleged to have violated but shall not consist merely
25 of charges raised in the language of the statutes or regulations.

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[bracketed material] = delete

1 The summary of the evidence shall be confidential and made
2 available only to the respondent until such time as it is offered
3 into evidence at any public hearing on the matter.

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

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

8 E. The hearing examiner shall conduct proceedings in
9 accordance with the Gaming Control Act and the regulations adopted
10 by the board. After such proceedings as may be required or
11 permitted, the hearing examiner may recommend that the board take
12 any appropriate action, including revocation, suspension,
13 limitation or conditioning of a license, or imposition of a fine
14 not to exceed ten thousand dollars (\$10,000) for each violation.

15 F. The hearing examiner shall prepare a written
16 decision containing his recommendation to the board and shall serve
17 it on all parties. Any respondent that disagrees with the hearing
18 examiner's recommendation may request the board, within ten days of
19 service of the recommendation, to review the recommendation.

20 G. If properly requested the board shall review the
21 recommendation. The board may remand the case to the hearing
22 examiner for the presentation of additional evidence upon a showing
23 of good cause why such evidence could not have been presented at
24 the previous hearing.

25 H. The board shall by a majority vote accept, reject or

1 modify the recommendation.

2 I. If the board limits, conditions, suspends or revokes
3 any license or imposes a fine or limits, conditions, suspends or
4 revokes any registration, finding of suitability or prior approval,
5 it shall issue its written order therefor.

6 J. The board's order is effective unless and until
7 reversed upon judicial review, except that the board may stay its
8 order pending a rehearing or judicial review upon such terms and
9 conditions as it deems proper.

10 Section 32. [NEW MATERIAL] EMERGENCY ORDERS OF BOARD.--The
11 board may issue an emergency order for suspension, limitation or
12 conditioning of a license, registration, finding of suitability or
13 work permit or may issue an emergency order requiring a licensed
14 gaming establishment to exclude an individual licensee from the
15 premises of the licensed gaming establishment or not to pay an
16 individual licensee any remuneration for services or any profits,
17 income or accruals on his investment in the licensed gaming
18 establishment in the following manner:

19 A. an emergency order may be issued only when the board
20 believes that:

21 (1) any licensee has willfully failed to report,
22 pay or truthfully account for and pay over any fee imposed by the
23 provisions of the Gaming Control Act or willfully attempted in any
24 manner to evade or defeat any such fee or payment thereof;

25 (2) any licensee or gaming employee has cheated

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1 at any gambling game; or

2 (3) the emergency order is necessary for the
3 immediate preservation of the public peace, health, safety, morals,
4 good order or general welfare;

5 B. the emergency order shall set forth the grounds upon
6 which it is issued, including a statement of facts constituting the
7 alleged emergency necessitating such action;

8 C. the emergency order is effective immediately upon
9 issuance and service upon the licensee or resident agent of the
10 licensee, gaming employee, or, in cases involving registration or
11 findings of suitability, upon issuance and service upon the person
12 or entity involved or resident agent of the entity involved; the
13 emergency order may suspend, limit, condition or take other action
14 in relation to the license of one or more persons in an operation,
15 without affecting other individual licensees or the licensed gaming
16 establishment. The emergency order remains effective until further
17 order of the board or final disposition of the case; and

18 D. within five days after issuance of an emergency
19 order, the board shall cause a complaint to be filed and served
20 upon the person or entity involved; thereafter, the person or
21 entity against whom the emergency order has been issued and served
22 is entitled to a hearing before the board and to judicial review of
23 the decision and order of the board in accordance with the
24 provisions of the board's regulations.

25 Section 33. [NEW MATERIAL] EXCLUSION OR EJECTION OF CERTAIN

1 PERSONS FROM ESTABLISHMENTS-- PERSONS INCLUDED. --

2 A. The board shall by regulation provide for the
3 establishment of a list of persons who are to be excluded or
4 ejected from any gaming establishment. The list may include any
5 person whose presence in the establishment is determined by the
6 board to pose a threat to the public interest or to licensed
7 gaming, or both.

8 B. In making the determination in Subsection A of this
9 section, the board may consider any:

10 (1) prior conviction of a crime that is a felony
11 under state or federal law, a crime involving moral turpitude or a
12 violation of the gaming laws of any jurisdiction;

13 (2) violation or conspiracy to violate the
14 provisions of the Gaming Control Act relating to:

15 (a) the failure to disclose an interest in a
16 gaming activity for which the person must obtain a license; or

17 (b) willful evasion of fees or taxes;

18 (3) notorious or unsavory reputation that would
19 adversely affect public confidence and trust that the gaming
20 industry is free from criminal or corruptive demands; or

21 (4) written order of any other governmental
22 agency in this state or any other state that authorizes the
23 exclusion or ejection of the person from an establishment at which
24 gaming is conducted.

25 C. A licensed gaming operator has the right, without

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1 any list established by the board, to exclude or eject any person
2 from its gaming establishment who poses a threat to the public
3 interest or to licensed gaming or for any business reason.

4 D. Race, color, creed, national origin or ancestry,
5 age, disability or sex shall not be grounds for placing the name of
6 a person upon the list or for exclusion or ejection under
7 Subsection C of this section.

8 Section 34. [NEW MATERIAL] INTERNAL AND EXTERNAL CONTROL
9 SYSTEMS. --

10 A. Each licensed gaming operator shall adopt internal
11 and external control systems that shall include, but not be limited
12 to, provisions for:

13 (1) safeguarding its assets and revenues,
14 especially the recording of cash and evidences of indebtedness;

15 (2) making and maintaining reliable records,
16 accounts and reports of transactions, operations and events,
17 including reports to the board; and

18 (3) a system by which the amount wagered on each
19 gaming machine and the amount paid out by each machine is recorded
20 on a daily basis, which results may be obtained by the board by
21 appropriate means as described in regulations promulgated by the
22 board; all manufacturers will be required to have such a system
23 available for licensed gaming operators for the gaming machines
24 that it supplies for use in New Mexico, and all distributors shall
25 make such a system available to operators.

1 B. The internal control system shall be designed to
2 reasonably ensure that:

- 3 (1) assets are safeguarded;
- 4 (2) financial records are accurate and reliable;
- 5 (3) transactions are performed only in accordance
6 with management's general or specific authorization;

- 7 (4) transactions are recorded adequately to
8 permit proper reporting of gaming revenue and of fees and taxes,
9 and to maintain accountability of assets;

- 10 (5) access to assets is permitted only in
11 accordance with management's specific authorization;

- 12 (6) recorded accountability for assets is
13 compared with actual assets at reasonable intervals and appropriate
14 action is taken with respect to any discrepancies; and

- 15 (7) functions, duties and responsibilities are
16 appropriately segregated and performed in accordance with sound
17 accounting and management practices by competent, qualified
18 personnel.

19 C. Each licensed gaming operator and each applicant for
20 a gaming operator's license shall describe, in the manner the board
21 may approve or require, its administrative and accounting
22 procedures in detail in a written system of internal control. Each
23 licensed gaming operator and applicant for a gaming operator's
24 license shall submit a copy of its written system to the board.
25 Each written system shall include:

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1 (1) an organizational chart depicting appropriate
2 segregation of functions and responsibilities;

3 (2) a description of the duties and
4 responsibilities of each position shown on the organizational
5 chart;

6 (3) a detailed, narrative description of the
7 administrative and accounting procedures designed to satisfy the
8 requirements of Subsection A of this section;

9 (4) a written statement signed by the licensee's
10 chief financial officer and either the licensee's chief executive
11 officer or a licensed owner attesting that the system satisfies the
12 requirements of this section;

13 (5) if the written system is submitted by an
14 applicant, a letter from an independent certified public accountant
15 stating that the applicant's written system has been reviewed by
16 the accountant and complies with the requirements of this section;
17 and

18 (6) such other items as the board may require.

19 D. The board shall adopt and publish minimum standards
20 for internal control procedures.

21 Section 35. [NEW MATERIAL] GAMING EMPLOYEES--ISSUANCE OF
22 WORK PERMITS--REVOCATION OF WORK PERMITS.--

23 A. A person shall not be employed as a gaming employee
24 unless the person holds a valid work permit issued by the board.

25 B. A work permit shall be issued and may be revoked by

1 the board as provided in regulations adopted by the board.

2 C. Any person whose work permit has been denied or
3 revoked may seek judicial review as provided in applicable law.

4 Section 36. [NEW MATERIAL] AGE REQUIREMENT FOR PATRONS AND
5 GAMING EMPLOYEES. --A person under the age of twenty-one years of
6 age shall not:

7 A. play, be allowed to play, place wagers or collect
8 winnings from, whether personally or through an agent, any game
9 authorized under the Gaming Control Act; or

10 B. be employed as a gaming employee.

11 Section 37. [NEW MATERIAL] ACCEPTANCE OF CREDIT INSTRUMENTS
12 BY LICENSEE. --

13 A. A credit instrument evidencing a gaming debt is
14 authorized by the Gaming Control Act and may be enforced by legal
15 process.

16 B. A gaming operator licensee or person acting on the
17 licensee's behalf may accept an incomplete credit instrument that
18 is signed by a patron and states the amount of the debt in figures.
19 The licensee may complete the instrument as is necessary for the
20 instrument to be presented for payment.

21 C. A gaming operator licensee or person acting on
22 behalf of a licensee:

23 (1) shall not accept a credit instrument that is
24 incomplete except as authorized in Subsection B of this section;
25 and

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1 (2) may accept a credit instrument that is
2 payable to an affiliate or affiliated company or may complete a
3 credit instrument in the name of an affiliate or affiliated company
4 as payout if the credit instrument otherwise complies with this
5 section and the records of the affiliate or an affiliated company
6 pertaining to the credit instrument are made available to the board
7 upon request.

8 D. This section does not prohibit the establishment of
9 an account by a deposit of cash, recognized traveler's check or any
10 other instrument that is equivalent to cash.

11 E. Any person, gaming operator licensee or its agents
12 or employees that violate the provisions of this section are
13 subject only to the penalties provided by regulations of the board.
14 The failure of a person to comply with the provisions of this
15 section or the regulations of the board does not invalidate a
16 credit instrument or affect the ability to enforce the credit
17 instrument or the debt that the credit instrument represents.

18 Section 38. [NEW MATERIAL] FACE VALUE OF CREDIT INSTRUMENT
19 INCLUDED IN COMPUTATION OF GROSS REVENUE--EXCEPTIONS--CASH RECEIVED
20 IN PAYMENT OF DEBT NOT INCLUDED IN GROSS REVENUE. --

21 A. For the purposes of the Gaming Control Act, except
22 as otherwise provided in Subsection C of this section, the
23 computation of gross revenue shall include the face value of any
24 credit instrument if, within two years after the last day of the
25 month following the month in which that instrument was accepted by

1 the gaming operator licensee, the board determines that:

2 (1) the instrument was not signed by the patron
3 or otherwise acknowledged by him in a written form satisfactory to
4 the board;

5 (2) the licensee did not have an address for the
6 patron at the time of accepting the instrument, or, in lieu of that
7 address, has not provided the board, within a reasonable time after
8 its request, the current address of the patron to whom the credit
9 was extended;

10 (3) the licensee has not provided the board any
11 evidence that the licensee made a reasonable effort to collect the
12 debt;

13 (4) the licensee has not provided the board any
14 evidence that the licensee checked the credit history of the patron
15 before extending credit to him;

16 (5) the licensee has not produced the instrument
17 within a reasonable time after a request by the board for the
18 instrument unless it:

19 (a) is in the possession of a court,
20 governmental agency or financial institution;

21 (b) has been returned to the patron upon his
22 partial payment of the instrument and the licensee has obtained a
23 substitute credit instrument for the remaining balance;

24 (c) has been stolen and the licensee has
25 made a written report of the theft to the appropriate law

1 enforcement agency; or

2 (d) cannot be produced because of any other
3 circumstance that is beyond the licensee's control;

4 (6) the signature of the patron on the instrument
5 was forged and the licensee has not made a written report of the
6 forgery to the appropriate law enforcement agency; or

7 (7) upon an audit by the board, the licensee
8 requested the auditors not to confirm the unpaid balance of the
9 debit with the patron and there is not other satisfactory means of
10 confirmation.

11 B. For the purpose of the Gaming Control Act, the
12 computation of gross revenue shall not include cash or its
13 equivalent that is received in full or partial payment of a debt
14 previously included in the computation of gross revenue pursuant to
15 Subsection A of this section.

16 C. The provisions of Subsection A of this section do
17 not apply to any credit instrument that is settled for less than
18 its face amount to:

19 (1) induce a substantial partial payment;

20 (2) compromise a dispute; or

21 (3) obtain a patron's business if:

22 (a) an agreement is entered into to discount
23 the face amount of a credit instrument before it is issued to
24 induce timely payment of the credit instrument; and

25 (b) the percentage of discount of the

1 instrument is reasonable as compared to the prevailing practice in
2 the industry.

3 Section 39. [NEW MATERIAL] CALCULATION OF GROSS REVENUE--
4 CERTAIN EXPENSES NOT DEDUCTIBLE.--

5 A. In calculating gross revenue, any prizes, premiums,
6 drawings, benefits or tickets that are redeemable for money or
7 merchandise or other promotional allowance, except money or tokens
8 paid at face value directly to a patron as the result of a specific
9 wager and the amount of cash paid to purchase an annuity to fund
10 losses paid to winning patrons, shall not be deducted as losses
11 from winnings at any game except a gaming machine.

12 B. In calculating gross revenue from gaming machines,
13 the actual cost to the licensee of any personal property
14 distributed to a patron as the result of a legitimate wager may be
15 deducted as a loss, but not travel expenses, food, refreshments,
16 lodging or services. For the purposes of this section, "as the
17 result of a legitimate wager" means that the patron must make a
18 wager prior to receiving the personal property, regardless of
19 whether the receipt of the personal property is dependent on the
20 outcome of the wager.

21 Section 40. [NEW MATERIAL] LIMITATIONS ON TAXES AND LICENSE
22 FEES.--No municipality or other political subdivision of the state
23 shall impose any license fee or tax on any licensee licensed
24 pursuant to the Gaming Control Act except for the imposition of
25 property taxes and gross receipts taxes.

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1 Section 41. [NEW MATERIAL] USE OF CHIPS, TOKENS OR LEGAL
2 TENDER REQUIRED FOR ALL GAMING. --All gaming shall be conducted with
3 chips, tokens or other instrumentalities approved by the board or
4 with the legal currency of the United States.

5 Section 42. [NEW MATERIAL] RECORDS OF GAMING OPERATOR
6 LICENSEES. --

7 A. A gaming operator licensee shall keep its books and
8 records to clearly show the amount of gross revenue and other
9 revenues received.

10 B. On a monthly basis, the gaming operator licensee
11 shall furnish to the board reports and information as the board may
12 require with respect to its activities on forms designed and
13 supplied for that purpose by the board.

14 Section 43. [NEW MATERIAL] COMMUNICATION OR DOCUMENT OF
15 APPLICANT OR LICENSEE ABSOLUTELY PRIVILEGED-- PRIVILEGE NOT WAIVED--
16 DISCLOSURE OF PRIVILEGED INFORMATION PROHIBITED. --

17 A. Any communication or document of an applicant or
18 licensee is absolutely privileged and does not impose liability for
19 defamation or constitute a ground for recovery in any civil action
20 if it is required by:

21 (1) law or the regulations of the board; or

22 (2) a subpoena issued by the board to be made or
23 transmitted to the board.

24 B. The privilege created pursuant to Subsection A of
25 this section is not waived or lost because the document or

1 communication is disclosed to the board.

2 C. Notwithstanding the powers granted to the board by
3 the Gaming Control Act, the board:

4 (1) shall not release or disclose any privileged
5 information, documents or communications provided by an applicant
6 or licensee without the prior written consent of the applicant or
7 licensee or pursuant to a lawful court order after timely notice of
8 the proceedings has been given to the applicant or licensee;

9 (2) shall maintain all privileged information,
10 documents and communications in a secure place accessible only to
11 members of the board; and

12 (3) shall adopt procedures and regulations to
13 protect the privileged nature of information, documents and
14 communications provided by an applicant or licensee.

15 Section 44. [NEW MATERIAL] MOTION FOR RELEASE OF
16 CONFIDENTIAL INFORMATION. --An application to a court for an order
17 requiring the board to release any information declared by law to
18 be confidential shall be made only upon motion in writing on ten
19 days' written notice to the board, the attorney general and all
20 persons who may be affected by the entry of such an order. Copies
21 of the motion and all papers filed in support of it shall be served
22 with the notice by delivering a copy in person or by certified mail
23 to the last known address of the person to be served.

24 Section 45. [NEW MATERIAL] GAMING MACHINE CENTRAL SYSTEM --
25 The board shall develop and operate a central system into which all

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1 licensed gaming machines are connected. The central system shall
2 be capable of:

3 A. monitoring continuously, retrieving and auditing the
4 operation, financial data and program information of the network;

5 B. disabling from operation or play any gaming machine
6 in the network that does not comply with the provisions of the
7 Gaming Control Act or the regulations of the board;

8 C. communicating, through program modifications or
9 other means equally effective, with all gaming machines licensed by
10 the board;

11 D. interacting, reading, communicating and linking with
12 gaming machines from a broad spectrum of manufacturers and
13 associated equipment; and

14 E. providing linkage to each gaming machine in the
15 network at a reasonable and affordable cost to the state or the
16 operator and allowing for program modifications and system updating
17 at a reasonable rate of cost.

18 Section 46. [NEW MATERIAL] MACHINE SPECIFICATIONS. --To be
19 eligible for licensure, each gaming machine shall meet all
20 specifications established by regulations of the board and:

21 A. be unable to be manipulated in a manner that affects
22 the random probability of winning plays or in any other manner
23 determined by the board to be desirable;

24 B. have at least one mechanism that accepts coins or
25 currency, but does not accept bills of denominations greater than

1 twenty dollars (\$20.00);

2 C. be capable of having play suspended through the
3 central system by the director until the director resets the gaming
4 machine;

5 D. house nonresettable mechanical and electronic meters
6 within a readily accessible locked area of the gaming machine that
7 maintain a permanent record of all money inserted into the machine,
8 all cash payouts of winnings, all refunds of winnings made by the
9 machine's printer, all credits played for additional games and all
10 credits won by players;

11 E. have a printing mechanism capable of printing out at
12 the request of the director readings on the electronic meters of
13 the machine;

14 F. be capable of printing a ticket voucher stating the
15 value of a cash prize won by the player at the completion of each
16 game, the date and time of the day the game was played in a twenty-
17 four-hour format showing hours and minutes, the machine serial
18 number, the sequential number of the ticket voucher and an
19 encrypted validation number for determining the validity of a
20 winning ticket voucher;

21 G. be capable of being linked to the board's central
22 system for the purpose of monitoring continuously and auditing the
23 operation, financial data and program information of the network as
24 required by the board;

25 H. provide for a payback value for each credit wagered,

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1 determined over time, of not less than eighty percent or more than
2 ninety-six percent;

3 I. offer only games authorized and examined by the
4 board; and

5 J. display the gaming machine license issued for that
6 machine in an easily accessible place, before and during the time
7 that a machine is available for use.

8 Section 47. [NEW MATERIAL] POSTING OF GAMING MACHINE ODDS. --
9 The odds of winning on each gaming machine shall be posted on or
10 near each gaming machine. The board shall provide the manner in
11 which the odds shall be posted by regulation.

12 Section 48. [NEW MATERIAL] EXAMINATION OF MACHINES AND
13 EQUIPMENT-- COST ALLOCATION. --

14 A. The board shall examine prototypes of video gaming
15 machines and associated equipment of manufacturers seeking a
16 license as required pursuant to the provisions of the Gaming
17 Control Act.

18 B. The board by regulation shall require the
19 manufacturer seeking the licensing of a gaming machine or
20 associated equipment to pay the anticipated actual costs of the
21 examination in advance and, after the completion of the
22 examination, shall refund overpayments or charge and collect
23 amounts sufficient to reimburse the board for underpayments of
24 actual costs.

25 C. The board may contract for the examination of gaming

1 machines and associated equipment to meet the requirements of this
2 section.

3 Section 49. [NEW MATERIAL] GAMING TAX--IMPOSITION--
4 ADMINISTRATION.--

5 A. An excise tax is imposed upon the privilege of
6 conducting gaming in the state. This tax shall be known as the
7 "gaming tax".

8 B. The gaming tax is measured as a percentage of gross
9 revenue of every licensed gaming operator. The rate of the tax is
10 fifteen percent.

11 C. The gaming tax shall be administered and collected
12 by the taxation and revenue department in cooperation with the
13 board, and the provisions of the Tax Administration Act apply to
14 the collection and administration of the tax.

15 Section 50. [NEW MATERIAL] APPLICATION OF STATE REVENUES
16 FROM GAMING--STATE GAMING FUND ESTABLISHED--DISTRIBUTIONS.--

17 A. The "state gaming fund" is established as a separate
18 fund within the state treasury. The fund consists of all revenue
19 received from the imposition of the gaming tax, license and
20 application fees and any other source pursuant to the Gaming
21 Control Act. Interest accrued on the fund shall be credited to the
22 fund.

23 B. Money in the state gaming fund may be used only for
24 the following purposes and shall be distributed as follows:

- 25 (1) the payment of costs of administering the

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1 Gaming Control Act and the money necessary to pay those costs is
2 appropriated to the board;

3 (2) five percent of the balance shall be
4 distributed at such times as the board provides by regulation, but
5 not less often than quarterly:

6 (a) among municipalities in the same
7 proportion as the gaming tax revenue raised pursuant to the Gaming
8 Control Act from racetrack licensees located within a municipality
9 bears to the total gaming tax revenue raised in the state from all
10 racetrack licensees; and

11 (b) among counties in the same proportion as
12 the gaming tax revenue raised pursuant to the Gaming Control Act
13 from racetrack licensees located in a county outside the boundaries
14 of any municipality bears to the total gaming tax revenue raised in
15 the state from all racetrack licensees; and

16 (3) the balance shall be paid into the general
17 fund.

18 Section 51. [NEW MATERIAL] FRAUDULENT ACTS--PENALTY.--

19 A. A person commits an offense if the person knowingly:

20 (1) alters or misrepresents the outcome of a game
21 or other event on which wagers have been made after the outcome is
22 made sure but before it is revealed to the players;

23 (2) places, increases or decreases a bet or
24 determines the course of play after acquiring knowledge, not
25 available to all players, of the outcome of the game, or any event

1 that affects the outcome of the game or that is the subject of the
2 bet, or aids anyone in acquiring that knowledge for the purpose of
3 placing, increasing or decreasing a bet or determining the course
4 of play contingent upon that event or outcome;

5 (3) claims, collects or takes, or attempts to
6 claim, collect or take, money or anything of value in or from a
7 gambling game, with intent to defraud, without having made a wager
8 contingent thereon or claims, collects or takes an amount greater
9 than the amount won;

10 (4) entices or induces another to go to any place
11 where a gambling game is being conducted or operated in violation
12 of the provisions of the Gaming Control Act with the intent that
13 the other person play or participate in that gambling game;

14 (5) places or increases a bet after acquiring
15 knowledge of the outcome of the game or other event that is the
16 subject of the bet, including past-posting and pressing bets;

17 (6) reduces the amount wagered or cancels the bet
18 after acquiring knowledge of the outcome of the game or other event
19 that is the subject of the bet, including pinching bets; or

20 (7) manipulates, with the intent to cheat, any
21 component of a gaming device in a manner contrary to the designed
22 and normal operational purpose of the component, including, but not
23 limited to, varying the pull of the handle of a slot machine, with
24 knowledge that the manipulation affects the outcome of the game or
25 with knowledge of any event that affects the outcome of the game.

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1 B. An offense under this section is a fourth degree
2 felony and upon conviction a person shall be sentenced pursuant to
3 the provisions of Section 31-18-15 NMSA 1978.

4 Section 52. [NEW MATERIAL] USE OF DEVICE FOR CALCULATING
5 PROBABILITIES. --

6 A. A person commits an offense who, at a gaming
7 establishment, uses or possesses with the intent to use any device
8 to assist:

9 (1) in projecting the outcome of the game;

10 (2) in keeping track of the cards played;

11 (3) in analyzing the probability of the
12 occurrence of an event relating to the game; or

13 (4) in analyzing the strategy for playing or
14 betting to be used in the game.

15 B. An offense under this section is a misdemeanor and
16 upon conviction a person shall be sentenced pursuant to the
17 provisions of Section 31-19-1 NMSA 1978.

18 Section 53. [NEW MATERIAL] USE OF COUNTERFEIT OR UNAPPROVED
19 CHIPS OR TOKENS OR UNLAWFUL COINS OR DEVICES---POSSESSION OF
20 CERTAIN DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS. --

21 A. A person commits an offense who knowingly uses
22 counterfeit chips in a gambling game.

23 B. A person commits an offense who, in playing or using
24 any gambling game designed to be played with, to receive or to be
25 operated by chips or tokens approved by the board or by lawful

1 currency of the United States, knowingly uses chips or tokens other
 2 than those approved by the board, uses currency that is not lawful
 3 currency of the United States or uses currency not of the same
 4 denomination as the currency intended to be used in that gambling
 5 game.

6 C. A person, other than a duly authorized employee of a
 7 gaming operator licensee or of the board acting in furtherance of
 8 his employment within a gaming establishment, commits an offense
 9 who knowingly has on his person or in his possession on or off the
 10 premises of any licensed gaming establishment any device intended
 11 to be used by him to violate the provisions of the Gaming Control
 12 Act.

13 D. A person, other than a duly authorized employee of a
 14 gaming operator licensee acting in furtherance of his employment
 15 within a gaming establishment, commits an offense who knowingly has
 16 on his person or in his possession on or off the premises of any
 17 gaming establishment any key or device known by him to have been
 18 designed for the purpose of and suitable for opening, entering or
 19 affecting the operation of any gambling game, drop box or any
 20 electronic or mechanical device connected thereto or for removing
 21 money or other contents therefrom.

22 E. A person commits an offense who knowingly and with
 23 intent to use them for cheating has on his person or in his
 24 possession any paraphernalia for manufacturing slugs. As used in
 25 this subsection, "paraphernalia for manufacturing slugs" means the

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1 equipment, products and materials that are intended for use or
2 designed for use in manufacturing, producing, fabricating,
3 preparing, testing, analyzing, packaging, storing or concealing a
4 counterfeit facsimile of the chips or tokens approved by the board
5 or a lawful coin of the United States, the use of which is unlawful
6 pursuant to the Gaming Control Act. The term includes, but is not
7 limited to:

- 8 (1) lead or lead alloys;
- 9 (2) molds, forms or similar equipment capable of
10 producing a likeness of a gaming token or coin;
- 11 (3) melting pots or other receptacles;
- 12 (4) torches; and
- 13 (5) tongs, trimming tools or other similar
14 equipment.

15 F. Possession of more than two items of the equipment,
16 products or material described in Subsection E of this section
17 permits a rebuttable inference that the possessor intended to use
18 them for cheating.

19 G. An offense under this section is a third degree
20 felony and upon conviction a person shall be sentenced pursuant to
21 the provisions of Section 31-18-15 NMSA 1978.

22 Section 54. [NEW MATERIAL] CHEATING. --

23 A. A person commits an offense who knowingly cheats at
24 any gambling game.

25 B. An offense under this section is a fourth degree

1 felony and upon conviction a person shall be sentenced pursuant to
2 the provisions of Section 31-18-15 NMSA 1978.

3 Section 55. [NEW MATERIAL] PENALTY FOR POSSESSION OF
4 DEVICE, EQUIPMENT OR MATERIAL MANUFACTURED, SOLD OR DISTRIBUTED IN
5 VIOLATION OF LAW. --

6 A. A person commits an offense who knowingly possesses
7 any gaming device that has been manufactured, sold or distributed
8 in violation of the Gaming Control Act.

9 B. An offense under this section is a fourth degree
10 felony and upon conviction a person shall be sentenced pursuant to
11 the provisions of Section 31-18-15 NMSA 1978.

12 Section 56. [NEW MATERIAL] UNLAWFUL MANUFACTURE, SALE,
13 DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF EQUIPMENT AND
14 DEVICES ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION. --

15 A. A person commits an offense who manufactures, sells
16 or distributes any cards, chips, dice, game or device that is
17 intended by him to be used to violate any provision of the Gaming
18 Control Act.

19 B. A person commits an offense who marks, alters or
20 otherwise modifies any associated equipment or gaming device in a
21 manner that:

22 (1) affects the result of a wager by determining
23 win or loss; or

24 (2) alters the normal criteria of random
25 selection that affects the operation of a game or that determines

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1 the outcome of a game.

2 C. A person commits an offense who instructs another in
3 cheating or in the use of any device for that purpose, with the
4 knowledge or intent that the information or use so conveyed may be
5 employed to violate any provision of the Gaming Control Act.

6 D. An offense under this section is a fourth degree
7 felony and upon conviction a person shall be sentenced pursuant to
8 the provisions of Section 31-18-15 NMSA 1978.

9 Section 57. [NEW MATERIAL] REPORTING AND RECORD
10 VIOLATIONS--PENALTY.--

11 A. A person commits an offense if the person, in a
12 license application, in a book or record required to be maintained
13 by the Gaming Control Act or by a regulation adopted under that
14 act, or in a report required to be submitted by that act or a
15 regulation adopted under that act:

16 (1) knowingly makes a statement or entry that the
17 person knows to be false or misleading; or

18 (2) fails to maintain or make an entry the person
19 knows is required to be maintained or made.

20 B. A person commits an offense if the person knowingly
21 refuses to produce for inspection by the board a book, record or
22 document required to be maintained or made by the Gaming Control
23 Act or a regulation adopted under that act.

24 C. An offense under this section is a fourth degree
25 felony and upon conviction a person shall be sentenced pursuant to

1 the provisions of Section 31-18-15 NMSA 1978.

2 Section 58. [NEW MATERIAL] GAMING BY INDIVIDUAL UNDER
3 TWENTY-ONE YEARS OF AGE. --

4 A. A person commits an offense if the person knowingly
5 permits an individual who the person knows is younger than twenty-
6 one years of age to participate in gaming.

7 B. An individual commits an offense if the individual
8 participates in gaming and the individual is younger than twenty-
9 one years of age at the time of participation.

10 C. An offense under this section is a misdemeanor and
11 upon conviction a person shall be sentenced pursuant to the
12 provisions of Section 31-19-1 NMSA 1978.

13 Section 59. [NEW MATERIAL] GENERAL PENALTIES FOR VIOLATION
14 OF ACT. --

15 A. A person commits an offense who willfully violates,
16 attempts to violate or conspires to violate any of the provisions
17 of the Gaming Control Act specifying prohibited acts.

18 B. Any offense under the Gaming Control Act, the
19 classification of which is not specifically stated in that act, is
20 a misdemeanor and upon conviction a person shall be sentenced
21 pursuant to the provisions of Section 31-19-1 NMSA 1978.

22 Section 60. [NEW MATERIAL] DETENTION AND QUESTIONING OF
23 PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--
24 POSTING OF NOTICE. --

25 A. Any gaming operator licensee or its officers,

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1 employees or agents may question any person in its gaming
2 establishment suspected of violating any of the provisions of the
3 Gaming Control Act. No gaming operator licensee or any of its
4 officers, employees or agents is criminally or civilly liable:

5 (1) on account of any such questioning; or

6 (2) for reporting to the board or law enforcement
7 authorities the person suspected of the violation.

8 B. Any gaming operator licensee or any of its officers,
9 employees or agents who has reasonable cause for believing that
10 there has been a violation of the Gaming Control Act in the gaming
11 establishment by any person may take that person into custody and
12 detain him in the establishment in a reasonable manner and for a
13 reasonable length of time. Such a taking into custody and
14 detention does not render the licensee or his officers, employees
15 or agents criminally or civilly liable unless it is established by
16 clear and convincing evidence that the taking into custody and
17 detention are unreasonable under all the circumstances.

18 C. No gaming operator licensee or its officers,
19 employees or agents is entitled to the immunity from liability
20 provided for in Subsection B of this section unless there is
21 displayed in a conspicuous place in the gaming establishment a
22 notice in boldface type clearly legible and in substantially this
23 form:

24 "Any gaming operator licensee or any of his officers,
25 employees or agents who has reasonable cause for believing

1 that any person has violated any provision of the Gaming
2 Control Act prohibiting cheating in gaming may detain that
3 person in the establishment. "

4 Section 61. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF BOARD
5 OR DIRECTOR ACTION. --

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

14 B. The board shall adopt procedural regulations to
15 govern the procedures to be followed in administrative hearings
16 pursuant to the provisions of this section. As a minimum, the
17 regulations shall provide:

- 18 (1) for the hearings to be public;
- 19 (2) for the appointment of a hearing officer to
20 conduct the hearing and make his recommendation to the board not
21 more than ten days after the completion of the hearing;
- 22 (3) procedures for discovery;
- 23 (4) assurance that procedural due process
24 requirements are satisfied;
- 25 (5) for the maintenance of a record of the

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1 hearing proceedings and assessment of costs of any transcription of
2 testimony that is required for judicial review purposes; and

3 (6) for the place of the hearing to be in Santa
4 Fe for hearings on actions of statewide application and for
5 enforcement hearings on actions of statewide application and for
6 enforcement hearings and for hearings on actions of limited local
7 concern to be held in the place or area affected.

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

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

12 (2) made public when taken;

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

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

17 Section 62. [NEW MATERIAL] JUDICIAL REVIEW OF
18 ADMINISTRATIVE ACTIONS. --

19 A. Any person adversely affected by an action taken by
20 the board after review pursuant to the provisions of Section 60 of
21 the Gaming Control Act may appeal the action to the court of
22 appeals. The appeal shall be on the record made at the hearing.
23 To support his appeal, the appellant shall make arrangements with
24 the board for a sufficient number of transcripts of the record of
25 the hearing on which the appeal is based. The appellant shall pay

1 for the preparation of the transcripts.

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

4 (1) arbitrary, capricious or an abuse of
5 discretion;

6 (2) not supported by substantial evidence in the
7 whole record; or

8 (3) otherwise not in accordance with law.

9 Section 63. [NEW MATERIAL] PERMITTED GAMING. --

10 A. The gaming activities listed in Subsection B of this
11 section are permitted within the state, but only on Indian land:

12 (1) under governmental control of an Indian
13 nation, tribe or pueblo that has a valid compact with the state of
14 New Mexico pursuant to the provisions of the federal Indian Gaming
15 Regulatory Act; and

16 (2) the title to which is held in trust by the
17 federal government or is subject to restriction by the federal
18 government against alienation.

19 B. Gaming activities that are permitted pursuant to the
20 conditions stated in Subsection A of this section are limited to:

21 (1) electronic video gaming machines;

22 (2) electronic, electromechanical or mechanical
23 slot machines;

24 (3) card games, including:

25 (a) poker;

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- 1 (b) blackjack; or
- 2 (c) baccarat;
- 3 (4) roulette;
- 4 (5) craps;
- 5 (6) wheels of fortune;
- 6 (7) keno; or
- 7 (8) lotteries.

8 Section 64. Section 7-1-2 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 2, as amended) is amended to read:

10 "7-1-2. APPLICABILITY. -- The Tax Administration Act applies
11 to and governs:

12 A. the administration and enforcement of the following
13 taxes or tax acts as they now exist or may hereafter be amended:

- 14 (1) Income Tax Act;
- 15 (2) Withholding Tax Act;
- 16 (3) Gross Receipts and Compensating Tax Act and
17 any state gross receipts tax;
- 18 (4) Liquor Excise Tax Act;
- 19 (5) Local Liquor Excise Tax Act;
- 20 [~~(6)~~] ~~Banking and Financial Corporations Tax Act;~~
- 21 ~~(7)~~] (6) any municipal local option gross
22 receipts tax;
- 23 [~~(8)~~] (7) any county local option gross receipts
24 tax;
- 25 [~~(9)~~] (8) Special Fuels Supplier Tax Act;

- 1 [~~(10)~~] (9) Gasoline Tax Act;
- 2 [~~(11)~~] (10) petroleum products loading fee, which
- 3 fee shall be considered a tax for the purpose of the Tax
- 4 Administration Act;
- 5 [~~(12)~~] (11) Cigarette Tax Act;
- 6 [~~(13)~~] (12) Estate Tax Act;
- 7 [~~(14)~~] (13) Railroad Car Company Tax Act;
- 8 [~~(15)~~] (14) Investment Credit Act;
- 9 [~~(16)~~] (15) Corporate Income Tax Act;
- 10 [~~(17)~~] (16) Corporate Income and Franchise Tax
- 11 Act;
- 12 [~~(18)~~] (17) Uniform Division of Income for Tax
- 13 Purposes Act;
- 14 [~~(19)~~] (18) Multistate Tax Compact;
- 15 [~~(20)~~] (19) Tobacco Products Tax Act;
- 16 [~~(21)~~] (20) Filmmaker's Credit Act; and
- 17 [~~(22)~~] (21) the telecommunications relay service
- 18 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge
- 19 shall be considered a tax for the purposes of the Tax
- 20 Administration Act;
- 21 B. the administration and enforcement of the following
- 22 taxes, surtaxes, advanced payments or tax acts as they now exist or
- 23 may hereafter be amended:
- 24 (1) Resources Excise Tax Act;
- 25 (2) Severance Tax Act;

- 1 (3) any severance surtax;
- 2 (4) Oil and Gas Severance Tax Act;
- 3 (5) Oil and Gas Conservation Tax Act;
- 4 (6) Oil and Gas Emergency School Tax Act;
- 5 (7) Oil and Gas Ad Valorem Production Tax Act;
- 6 (8) Natural Gas Processors Tax Act;
- 7 (9) Oil and Gas Production Equipment Ad Valorem
- 8 Tax Act;
- 9 (10) Copper Production Ad Valorem Tax Act; and
- 10 (11) any advance payment required to be made by
- 11 any act specified in this subsection, which advance payment shall
- 12 be considered a tax for the purposes of the Tax Administration Act;

13 C. the administration and enforcement of the following

14 taxes, surcharges, fees or acts as they now exist or may hereafter

15 be amended:

- 16 (1) Weight Distance Tax Act;
- 17 (2) Special Fuels Tax Act;
- 18 (3) the workers' compensation fee authorized by
- 19 Section 52-5-19 NMSA 1978, which fee shall be considered a tax for
- 20 purposes of the Tax Administration Act;
- 21 (4) Controlled Substance Tax Act;
- 22 (5) Uniform Unclaimed Property Act;
- 23 (6) 911 emergency surcharge and the network and
- 24 database surcharge, which surcharges shall be considered taxes for
- 25 purposes of the Tax Administration Act;

1 (7) the solid waste assessment fee authorized by
2 the Solid Waste Act, which fee shall be considered a tax for
3 purposes of the Tax Administration Act; [~~and~~]

4 (8) the water conservation fee imposed by Section
5 74-1-13 NMSA 1978, which fee shall be considered a tax for the
6 purposes of the Tax Administration Act; and

7 (9) the gaming tax imposed pursuant to the Gaming
8 Control Act; and

9 D. the administration and enforcement of all other
10 laws, with respect to which the department is charged with
11 responsibilities pursuant to the Tax Administration Act, but only
12 to the extent that such other laws do not conflict with the Tax
13 Administration Act. "

14 Section 65. A new section of the Tax Administration Act is
15 enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION OF GAMING TAX. --A distribution
17 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state
18 gaming fund of the net receipts attributable to the gaming tax. "

19 Section 66. Section 10-15-1 NMSA 1978 (being Laws 1974,
20 Chapter 91, Section 1, as amended) is amended to read:

21 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
22 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

23 A. In recognition of the fact that a representative
24 government is dependent upon an informed electorate, it is declared
25 to be public policy of this state that all persons are entitled to

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1 the greatest possible information regarding the affairs of
2 government and the official acts of those officers and employees
3 who represent them. The formation of public policy or the conduct
4 of business by vote shall not be conducted in closed meeting. All
5 meetings of any public body except the legislature and the courts
6 shall be public meetings and all persons so desiring shall be
7 permitted to attend and listen to the deliberations and
8 proceedings. Reasonable efforts shall be made to accommodate the
9 use of audio and video recording devices.

10 B. All meetings of a quorum of members of any board,
11 commission, administrative adjudicatory body or other policymaking
12 body of any state agency, any agency or authority of any county,
13 municipality, district or any political subdivision, held for the
14 purpose of formulating public policy, including the development of
15 personnel policy, rules, regulations or ordinances, discussing
16 public business or for the purpose of taking any action within the
17 authority of or the delegated authority of any board, commission or
18 other policymaking body are declared to be public meetings open to
19 the public at all times, except as otherwise provided in the
20 constitution of New Mexico or the Open Meetings Act. No public
21 meeting once convened that is otherwise required to be open
22 pursuant to the Open Meetings Act shall be closed or dissolved into
23 small groups or committees for the purpose of permitting the
24 closing of the meeting.

25 C. If otherwise allowed by law or rule of the public

1 body, a member of a public body may participate in a meeting of the
 2 public body by means of a conference telephone or other similar
 3 communications equipment when it is otherwise difficult or
 4 impossible for the member to attend the meeting in person, provided
 5 that each member participating by conference telephone can be
 6 identified when speaking, all participants are able to hear each
 7 other at the same time and members of the public attending the
 8 meeting are able to hear any member of the public body who speaks
 9 during the meeting.

10 D. Any meetings at which the discussion or adoption of
 11 any proposed resolution, rule, regulation or formal action occurs
 12 and at which a majority or quorum of the body is in attendance, and
 13 any closed meetings, shall be held only after reasonable notice to
 14 the public. The affected body shall determine at least annually in
 15 a public meeting what notice for a public meeting is reasonable
 16 when applied to that body. That notice shall include broadcast
 17 stations licensed by the federal communications commission and
 18 newspapers of general circulation that have provided a written
 19 request for such notice.

20 E. A public body may recess and reconvene a meeting to
 21 a day subsequent to that stated in the meeting notice if, prior to
 22 recessing, the public body specifies the date, time and place for
 23 continuation of the meeting, and, immediately following the
 24 recessed meeting, posts notice of the date, time and place for the
 25 reconvened meeting on or near the door of the place where the

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1 original meeting was held and in at least one other location
2 appropriate to provide public notice of the continuation of the
3 meeting. Only matters appearing on the agenda of the original
4 meeting may be discussed at the reconvened meeting.

5 F. Meeting notices shall include an agenda containing a
6 list of specific items of business to be discussed or transacted at
7 the meeting or information on how the public may obtain a copy of
8 such an agenda. Except in the case of an emergency, the agenda
9 shall be available to the public at least twenty-four hours prior
10 to the meeting. Except for emergency matters, a public body shall
11 take action only on items appearing on the agenda. For purposes of
12 this subsection, an "emergency" refers to unforeseen circumstances
13 that, if not addressed immediately by the public body, will likely
14 result in injury or damage to persons or property or substantial
15 financial loss to the public body.

16 G. The board, commission or other policymaking body
17 shall keep written minutes of all its meetings. The minutes shall
18 include at a minimum the date, time and place of the meeting, the
19 names of members in attendance and those absent, the substance of
20 the proposals considered and a record of any decisions and votes
21 taken that show how each member voted. All minutes are open to
22 public inspection. Draft minutes shall be prepared within ten
23 working days after the meeting and shall be approved, amended or
24 disapproved at the next meeting where a quorum is present. Minutes
25 shall not become official until approved by the policymaking body.

1 H. The provisions of Subsections A, B and G of this
2 section do not apply to:

3 (1) meetings pertaining to issuance, suspension,
4 renewal or revocation of a license, except that a hearing at which
5 evidence is offered or rebutted shall be open. All final actions
6 on the issuance, suspension, renewal or revocation of a license
7 shall be taken at an open meeting;

8 (2) limited personnel matters; provided that for
9 purposes of the Open Meetings Act, "limited personnel matters"
10 means the discussion of hiring, promotion, demotion, dismissal,
11 assignment or resignation of or the investigation or consideration
12 of complaints or charges against any individual public employee;
13 provided further that this subsection is not to be construed as to
14 exempt final actions on personnel from being taken at open public
15 meetings, nor does it preclude an aggrieved public employee from
16 demanding a public hearing. Judicial candidates interviewed by any
17 commission shall have the right to demand an open interview;

18 (3) deliberations by a public body in connection
19 with an administrative adjudicatory proceeding. For purposes of
20 this paragraph, an "administrative adjudicatory proceeding" means a
21 proceeding brought by or against a person before a public body in
22 which individual legal rights, duties or privileges are required by
23 law to be determined by the public body after an opportunity for a
24 trial-type hearing. Except as otherwise provided in this section,
25 the actual administrative adjudicatory proceeding at which evidence

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1 is offered or rebutted and any final action taken as a result of
2 the proceeding shall occur in an open meeting;

3 (4) the discussion of personally identifiable
4 information about any individual student, unless the student, his
5 parent or guardian requests otherwise;

6 (5) meetings for the discussion of bargaining
7 strategy preliminary to collective bargaining negotiations between
8 the policymaking body and a bargaining unit representing the
9 employees of that policymaking body and collective bargaining
10 sessions at which the policymaking body and the representatives of
11 the collective bargaining unit are present;

12 (6) that portion of meetings at which a decision
13 concerning purchases in an amount exceeding two thousand five
14 hundred dollars (\$2,500) that can be made only from one source, and
15 that portion of meetings at which the contents of competitive
16 sealed proposals solicited pursuant to the Procurement Code are
17 discussed during the contract negotiation process. The actual
18 approval of purchase of the item or final action regarding the
19 selection of a contractor shall be made in an open meeting;

20 (7) meetings subject to the attorney-client
21 privilege pertaining to threatened or pending litigation in which
22 the public body is or may become a participant;

23 (8) meetings for the discussion of the purchase,
24 acquisition or disposal of real property or water rights by the
25 public body; [and]

1 (9) those portions of meetings of committees or
 2 boards of public hospitals that receive less than fifty percent of
 3 their operating budget from direct public funds and appropriations
 4 where strategic and long-range business plans are discussed; and

5 (10) that portion of a meeting of the gaming
 6 control board dealing with information made confidential pursuant
 7 to the provisions of the Gaming Control Act.

8 I. If any meeting is closed pursuant to the exclusions
 9 contained in Subsection H of this section, the closure:

10 (1) if made in an open meeting, shall be approved
 11 by a majority vote of a quorum of the policymaking body; the
 12 authority for the closure and the subject to be discussed shall be
 13 stated with reasonable specificity in the motion calling for the
 14 vote on a closed meeting; the vote shall be taken in an open
 15 meeting; and the vote of each individual member shall be recorded
 16 in the minutes. Only those subjects announced or voted upon prior
 17 to closure by the policymaking body may be discussed in a closed
 18 meeting; and

19 (2) if called for when the policymaking body is
 20 not in an open meeting, shall not be held until public notice,
 21 appropriate under the circumstances, stating the specific provision
 22 of the law authorizing the closed meeting and stating with
 23 reasonable specificity the subject to be discussed is given to the
 24 members and to the general public.

25 J. Following completion of any closed meeting, the

1 minutes of the open meeting that was closed or the minutes of the
2 next open meeting if the closed meeting was separately scheduled
3 shall state that the matters discussed in the closed meeting were
4 limited only to those specified in the motion for closure or in the
5 notice of the separate closed meeting. This statement shall be
6 approved by the public body under Subsection G of this section as
7 part of the minutes."

8 Section 67. Section 30-19-1 NMSA 1978 (being Laws 1963,
9 Chapter 303, Section 19-1, as amended) is amended to read:

10 "30-19-1. DEFINITIONS RELATING TO GAMBLING.--As used in
11 Chapter 30, Article 19 NMSA 1978:

12 A. "antique gambling device" means a gambling device
13 twenty-five years of age or older and substantially in original
14 condition that is not used for gambling or commercial gambling or
15 located in a gambling place;

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

20 (1) bona fide business transactions that are
21 valid under the law of contracts, including [~~without limitation~~]:

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

24 (b) agreements to compensate for loss caused
25 by the happening of the chance, including [~~without limitation~~]

1 contracts for indemnity or guaranty and life or health and accident
 2 insurance;

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

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

8 (4) betting otherwise permitted by law;

9 ~~[C. "lottery" means an enterprise other than the New
 10 Mexico state lottery established and operated pursuant to the New
 11 Mexico Lottery Act wherein, for a consideration, the participants
 12 are given an opportunity to win a prize, the award of which is
 13 determined by chance, even though accompanied by some skill. As
 14 used in this subsection, "consideration" means anything of
 15 pecuniary value required to be paid to the promoter in order to
 16 participate in such enterprise~~

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

24 ~~[E.]~~ D. "gambling place" means ~~[any]~~ a building or
 25 tent, ~~[any]~~ a vehicle, whether self-propelled or not, or ~~[any]~~ a

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1 room within any of them, that is not within the premises of a
2 person licensed as a lottery retailer or to provide gaming pursuant
3 to the New Mexico Lottery Act or the Gaming Control Act and one of
4 whose principal uses is:

5 (1) making and settling of bets;

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

8 (3) conducting lotteries; or

9 (4) playing gambling devices; and

10 E. "lottery" means an enterprise wherein, for a
11 consideration, the participants are given an opportunity to win a
12 prize, the award of which is determined by chance, even though
13 accompanied by some skill. "Lottery" does not include the New
14 Mexico state lottery established and operated pursuant to the New
15 Mexico Lottery Act or gaming that is licensed and operated pursuant
16 to the Gaming Control Act. As used in this section,

17 "consideration" means anything of pecuniary value required to be
18 paid to the promoter in order to participate in a gambling or
19 gaming enterprise. "

20 Section 68. Section 30-19-6 NMSA 1978 (being Laws 1963,
21 Chapter 303, Section 19-6, as amended) is amended to read:

22 "30-19-6. [~~PERMISSIVE LOTTERY~~] AUTHORIZED ACTIVITIES--
23 FAIRS-- THEATERS-- TAX- EXEMPT ORGANIZATIONS. --

24 A. Nothing in [~~Article 19~~] Chapter 30, Article 19 NMSA
25 1978 [~~shall be construed to apply to any~~] prohibits a sale or

1 drawing of ~~[any]~~ a prize at ~~[any]~~ a fair held in this state for the
 2 benefit of ~~[any]~~ a church, public library or religious society
 3 ~~[situate or being]~~ located in this state, or for charitable
 4 purposes when all the proceeds of ~~[such]~~ the fair ~~[shall be]~~ are
 5 expended in this state for the benefit of ~~[such]~~ the church, public
 6 library, religious society or charitable purposes.

7 A ~~[lottery shall be operated]~~ sale or drawing conducted
 8 pursuant to this subsection is for the benefit of the organization
 9 or charitable purpose only ~~[when]~~ if the entire proceeds ~~[of the~~
 10 ~~lottery]~~ from the sale or drawing go to the organization or
 11 charitable purpose and no part of ~~[such]~~ the proceeds go to any
 12 individual member or employee ~~[thereof]~~ of the organization.

13 B. Nothing in ~~[Article 19]~~ Chapter 30, Article 19 NMSA
 14 1978 ~~[shall be held to prohibit any]~~ prohibits a bona fide motion
 15 picture ~~[theatre]~~ theater from offering prizes of cash or
 16 merchandise for advertising purposes, in connection with ~~[such]~~ the
 17 business of the theater or for the purpose of stimulating business,
 18 whether or not ~~[any]~~ consideration other than a monetary
 19 consideration in excess of the regular price of admission is
 20 ~~[exacted]~~ charged for participation in drawings for prizes.

21 C. Nothing in ~~[Article 19]~~ Chapter 30, Article 19 NMSA
 22 1978 ~~[shall be held to apply to any]~~ prohibits a bona fide county
 23 fair, including ~~[fairs]~~ fair for more than one county, ~~[which shall~~
 24 ~~have]~~ that has been held annually at the same location for at least
 25 two years ~~[and which shall offer]~~ from offering prizes of livestock

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1 or poultry in connection with ~~[such]~~ the fair ~~[when]~~ if the
2 proceeds of ~~[such]~~ the drawings ~~[shall be]~~ are used for the benefit
3 of ~~[said]~~ the fair.

4 D. Nothing in ~~[Article 19]~~ Chapter 30, Article 19 NMSA
5 1978 ~~[shall be construed to apply to]~~ prohibits any lottery
6 operated by an organization exempt from the state income tax
7 pursuant to Subsection C of Section 7-2-4 NMSA 1978 and not subject
8 to the provisions of Subsection A of this section; provided that:

9 (1) no more than two lotteries shall be operated
10 in any year by such an organization;

11 (2) all the gross proceeds less the reasonable
12 cost of prizes of any lottery operated by such an organization
13 shall be expended in the state for the benefit of the organization
14 or public purposes; and

15 (3) no part of the proceeds of any lottery shall
16 go to any individual member or employee of any organization except
17 as payment for the purchase of prizes at no more than the
18 reasonable retail price."

19 Section 69. A new section of the Horse Racing Act is enacted
20 to read:

21 "[NEW MATERIAL] OFF-TRACK PARI-MUTUEL WAGERING. --

22 A. Off-track betting at licensed off-track betting
23 facilities in this state is permitted on and after April 1, 1997.

24 B. The state racing commission is authorized to adopt,
25 repeal and amend rules and regulations as it deems necessary or

1 appropriate to regulate and govern the conduct of off-track betting
 2 so as to ensure the integrity, reliability and security of off-
 3 track betting and for the protection of the public, including,
 4 without limitation, regulations covering:

5 (1) grant, refusal and revocation of licenses for
 6 off-track betting facilities, persons holding a direct or indirect
 7 interest in or control of those facilities and persons supplying
 8 goods or services to those facilities; provided that no off-track
 9 betting facility may be licensed to conduct off-track betting
 10 unless it is doing so as an extension of a live race meet conducted
 11 at a licensed New Mexico racetrack and receives, except as
 12 otherwise permitted by the commission, the simulcast of all live
 13 races from licensed race meets;

14 (2) inspection and visitation at reasonable
 15 intervals at off-track betting facilities;

16 (3) the governing, restricting or regulating of
 17 operation of off-track betting and all equipment used in connection
 18 with it;

19 (4) the approval of all contracts and agreements
 20 related to off-track betting or an off-track betting facility;

21 (5) supervision and regulation of the operation
 22 of an entity formed or joint agreement entered into at the
 23 discretion of one or more racetracks to construct, contract or
 24 subcontract for, establish or operate one or more off-track betting
 25 facilities, the formation of such an entity or the entering into of

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1 such an agreement being hereby specifically authorized; and

2 (6) any and all such other matters as the
3 commission may deem necessary or appropriate to accomplish the
4 objectives of this section.

5 C. For purposes of this section, the commission shall
6 have all the powers and authority conferred upon it by the Horse
7 Racing Act as if those powers and authority were restated in this
8 section.

9 D. Distribution of the gross amount wagered at an off-
10 track betting facility will be made as follows:

11 (1) with respect to the gross amount wagered as
12 off-track betting on horse races run live in this state, after
13 deductions by the racetrack, racetracks or racetrack entity
14 operating the off-track betting facility, as provided in Subsection
15 H of Section 60-1-10 NMSA 1978, except that no deduction shall be
16 taken pursuant to Paragraph (1) of Subsection B of Section
17 60-1-15 NMSA 1978, net retainage will be distributed to the
18 racetrack holding the live race meet upon which off-track betting
19 was wagered for distribution in accordance with that subsection;
20 and

21 (2) with respect to the gross amount wagered as
22 off-track betting on horse races run live other than in this state,
23 after deductions by the racetrack, racetracks or racetrack entity
24 operating the off-track betting facility, as provided in Subsection
25 H of Section 60-1-10 NMSA 1978, except that the deduction in

1 Paragraph (4) of that subsection for expenses incurred to engage in
 2 simulcasting shall be one and one-half percent and no deduction
 3 shall be taken pursuant to Paragraph (1) of Subsection B of Section
 4 60-1-15 NMSA 1978, each racetrack will receive a proportion of net
 5 retainage equal to the net retainage multiplied by the ratio of the
 6 number of live race days run at that racetrack to the total number
 7 of live race days run in this state during the preceding state
 8 fiscal year, the net retainage so received by a racetrack being
 9 then distributed, as provided by Subsection H of Section 60-1-10
 10 NMSA 1978. "

11 Section 70. Section 60-2B-9 NMSA 1978 (being Laws 1981,
 12 Chapter 259, Section 9, as amended) is amended to read:

13 "60-2B-9. REPORTS REQUIRED--CRITERIA--DEFINITIONS--TAX
 14 IMPOSED. --

15 A. On April 15, July 15, October 15 and January 15 of
 16 each year, the licensee shall file with the licensing authority
 17 upon forms prescribed by the licensing authority a duly verified
 18 statement covering the preceding calendar quarter showing the
 19 amount of the gross receipts derived during that period from games
 20 of chance, the expenses incurred or paid and a brief description of
 21 the classification of the expenses, the name and address of each
 22 person to whom has been paid two hundred fifty dollars (\$250) or
 23 more and the purpose of the expenditure, the net proceeds derived
 24 from each game of chance and the uses to which the net proceeds
 25 have been or are to be applied. It is the duty of each licensee to

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1 maintain and keep the books and records necessary to substantiate
2 the particulars of each report.

3 B. If a licensee fails to file reports within the time
4 required or if the reports are not properly verified or not fully,
5 accurately and truthfully completed, any existing license may be
6 suspended until the default has been corrected.

7 C. All money collected or received from the sale of
8 admission, extra regular cards, special game cards, sale of
9 supplies and all other receipts from the games of bingo shall be
10 deposited in a special account of the licensee, which shall contain
11 only such money. All expenses for the game shall be withdrawn from
12 the account by consecutively numbered checks duly signed by
13 specified officers of the licensee and payable to a specific person
14 or organization. There shall be written on the check the nature of
15 the expense for which the check is drawn. No check shall be drawn
16 to "cash" or a fictitious payee.

17 D. No part of the net profits, after they have been
18 given over to another organization, shall be used by the donee
19 organization to pay any person for services rendered or materials
20 purchased in connection with the conducting of games of bingo by
21 the donor organization.

22 E. No item of expense shall be incurred or paid in
23 connection with holding, operating or conducting any game of chance
24 pursuant to any license except bona fide expenses of a reasonable
25 amount. Expenses may be incurred only for the following purposes:

1 (1) the purchase of goods, wares and merchandise
2 furnished;

3 (2) payment for services rendered that are
4 reasonably necessary for repairs of equipment, operating or
5 conducting the game of bingo;

6 (3) for rent if the premises are rented or for
7 janitorial services if not rented;

8 (4) for accountant's fees;

9 (5) for license fees; and

10 (6) for utilities.

11 F. For the purposes enumerated in Subsection E of this
12 section:

13 (1) "goods, wares and merchandise" means prizes,
14 equipment as defined in Section 60-2B-3 NMSA 1978 and articles of a
15 minor nature such as pencils, crayons, tickets, envelopes, paper
16 clips and coupons necessary to the conduct of games of chance; and

17 (2) "services rendered" means repair to
18 equipment, reasonable compensation to bookkeepers or accountants,
19 not more than two in the aggregate, for services in preparing
20 financial reports for an amount not exceeding the total amount of
21 thirty dollars (\$30.00) for each occasion, rental of premises not
22 exceeding the amount of fifty dollars (\$50.00) for each occasion
23 except upon prior approval of a greater amount by the licensing
24 authority, a reasonable amount for janitorial service not exceeding
25 a total amount of fifty dollars (\$50.00) for each occasion, a

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1 reasonable amount for assisting in the operation not exceeding a
2 total amount of two hundred fifty dollars (\$250), and not exceeding
3 twenty-five dollars (\$25.00) for any one employee, for each
4 occasion and a reasonable amount for security expense based on
5 established need as determined by the licensing authority.

6 G. There shall be paid to the licensing authority a tax
7 equal to three percent of the net proceeds of any game of chance
8 held, operated or conducted under the provisions of the Bingo and
9 Raffle Act, and no other state or local gross receipts tax shall
10 apply to the gross receipts of any such game of chance. This tax
11 does not apply to a licensee that is a gaming operator licensee
12 pursuant to the Gaming Control Act, and all receipts of that
13 licensee are subject to state and local gross receipts taxes."

14 Section 71. Section 60-7A-19 NMSA 1978 (being Laws 1981,
15 Chapter 39, Section 96) is amended to read:

16 "60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES. --

17 A. It is a violation of the Liquor Control Act for a
18 licensee to knowingly allow commercial gambling on the licensed
19 premises.

20 B. In addition to any criminal penalties, any person
21 who violates Subsection A of this section may have his license
22 suspended or revoked or a fine imposed, or both, pursuant to the
23 Liquor Control Act.

24 C. ~~[For purposes of]~~ As used in this section:

25 (1) "commercial gambling" means:

1 [~~(1)~~] (a) participating in the earnings of
2 or operating a gambling place;

3 [~~(2)~~] (b) receiving, recording or forwarding
4 bets or offers to bet;

5 [~~(3)~~] (c) possessing facilities with the
6 intent to receive, record or forward bets or offers to bet;

7 [~~(4)~~] (d) for gain, becoming a custodian of
8 anything of value bet or offered to be bet;

9 [~~(5)~~] (e) conducting a lottery where both
10 the consideration and the prize are money or whoever with intent to
11 conduct a lottery possesses facilities to do so; or

12 [~~(6)~~] (f) setting up for use for the purpose
13 of gambling, or collecting the proceeds of, any gambling device or
14 game; and

15 (2) "commercial gambling" does not include:

16 (a) activities authorized pursuant to the
17 New Mexico Lottery Act;

18 (b) the conduct of activities pursuant to
19 Subsection D of Section 30-19-6 NMSA 1978; and

20 (c) gaming authorized pursuant to the Gaming
21 Control Act on the premises of a gaming operator licensee licensed
22 pursuant to that act."

23 Section 72. SEVERABILITY. -- If any part or application of the
24 Gaming Control Act is held invalid, the remainder or its
25 application to other situations or persons shall not be affected.

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