

AN ACT
RELATING TO GAMING; AMENDING THE GAMING CONTROL ACT TO
REDUCE THE GAMING TAX ON THE NET TAKE OF NONPROFIT GAMING
OPERATOR LICENSEES AND CLARIFYING AUDIT POWERS OF THE BOARD.

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

Section 1. Section 60-2E-7 NMSA 1978 (being Laws 1997,
Chapter 190, Section 9) is amended to read:

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

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

B. The board shall:

- (1) employ the executive director;
- (2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act;
- (3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act;

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

(5) meet at least once each month; and

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

C. The board may:

(1) impose civil fines not to exceed twenty-five thousand dollars (\$25,000) for the first violation and fifty thousand dollars (\$50,000) for subsequent violations of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act;

(2) conduct investigations;

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

(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a

regulation adopted pursuant to its provisions;

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

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

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

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

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

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

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

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

examination or inspection;

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

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

D. The board shall monitor all activity authorized in an Indian Gaming Compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact. "

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

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

A. The board may adopt any regulation:

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

(2) it decides is necessary to implement

the provisions of the Gaming Control Act.

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

C. The board shall adopt regulations:

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

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

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

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

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

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

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

(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;

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

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

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

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

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

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

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

(16) establishing criteria and conditions for the operation of progressive systems;

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

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

Section 3. Section 60-2E-47 NMSA 1978 (being Laws 1997, Chapter 190, Section 49, as amended) is amended to read:

"60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-five percent of the net take of every other gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes. " _____