

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 425

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

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

1 board is an adjunct agency.

2 B. The board shall:

3 (1) employ the executive director;

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

7 (3) develop, adopt and promulgate all
8 regulations necessary to implement and administer the
9 provisions of the Gaming Control Act;

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

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

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

21 C. The board may:

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

4 (2) conduct investigations;

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

8 (4) compel the appearance of employees of a
9 licensee or persons for the purpose of ascertaining compliance
10 with provisions of the Gaming Control Act or a regulation
11 adopted pursuant to its provisions;

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. The board may adopt any regulation:

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

13 (2) it decides is necessary to implement the
 14 provisions of the Gaming Control Act.

15 B. No regulation shall be adopted, amended or
 16 repealed without a public hearing on the proposed action before
 17 the board or a hearing officer designated by it. The public
 18 hearing shall be held in Santa Fe. Notice of the subject
 19 matter of the regulation, the action proposed to be taken, the
 20 time and place of the hearing, the manner in which interested
 21 persons may present their views and the method by which copies
 22 of the proposed regulation, amendment or repeal may be obtained
 23 shall be published once at least thirty days prior to the
 24 hearing date in a newspaper of general circulation and mailed
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underscored material = new
 [bracketed material] = delete

1 at least thirty days prior to the hearing date to all persons
2 who have made a written request for advance notice of hearing.
3 All regulations and actions taken on regulations shall be filed
4 in accordance with the State Rules Act.

5 C. The board shall adopt regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 "60-2E-47. GAMING TAX- - IMPOSITION- - ADMINISTRATION. - -

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

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

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

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

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

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