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SENATE BILL 278

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO GAMING; PROHIBITING ACQUISITION OF FUNCTIONING  
GAMING MACHINES FOR USE IN PRIVATE HOMES; AMENDING THE GAMING  
CONTROL ACT.

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

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

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

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

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under

1 common control with a company licensee; and

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

5 C. "applicant" means a person who has applied for a  
6 license or for approval of an act or transaction for which  
7 approval is required or allowed pursuant to the provisions of  
8 the Gaming Control Act;

9 D. "application" means a request for the issuance  
10 of a license or for approval of an act or transaction for which  
11 approval is required or allowed pursuant to the provisions of  
12 the Gaming Control Act, but "application" does not include a  
13 supplemental form or information that may be required with the  
14 application;

15 E. "associated equipment" means equipment or a  
16 mechanical, electromechanical or electronic contrivance,  
17 component or machine used in connection with gaming activity;

18 F. "board" means the gaming control board;

19 G. "certification" means a notice of approval by  
20 the board of a person required to be certified by the board;

21 H. "certified technician" means a person certified  
22 by a manufacturer licensee to repair and service gaming  
23 devices, but who is prohibited from programming gaming devices;

24 I. "company" means a corporation, partnership,  
25 limited partnership, trust, association, joint stock company,

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

4 J. "distributor" means a person who supplies gaming  
5 devices to a gaming operator but does not manufacture gaming  
6 devices;

7 K. "equity security" means an interest in a company  
8 that is evidenced by:

9 (1) voting stock or similar security;

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

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

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

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

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

25 N. "game" means an activity in which, upon payment

1 of consideration, a player receives a prize or other thing of  
2 value, the award of which is determined by chance even though  
3 accompanied by some skill [~~"game" does not include an activity~~  
4 ~~played in a private residence in which no person makes money~~  
5 ~~for operating the activity except through winnings as a~~  
6 ~~player~~];

7 O. "gaming" means offering a game for play;

8 P. "gaming activity" means an endeavor associated  
9 with the manufacture or distribution of gaming devices or the  
10 conduct of gaming;

11 Q. "gaming device" means associated equipment or a  
12 gaming machine and includes a system for processing information  
13 that can alter the normal criteria of random selection that  
14 affects the operation of a game or determines the outcome of a  
15 game;

16 R. "gaming employee" means a person connected  
17 directly with a gaming activity; "gaming employee" does not  
18 include:

19 (1) bartenders, cocktail servers or other  
20 persons engaged solely in preparing or serving food or  
21 beverages;

22 (2) secretarial or janitorial personnel;

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

24 (4) other nongaming personnel;

25 S. "gaming establishment" means the premises on or

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1 in which gaming is conducted;

2 T. "gaming machine" means a mechanical,  
3 electromechanical or electronic contrivance or machine that,  
4 upon insertion of a coin, token or similar object, or upon  
5 payment of any consideration, [~~is available~~] functions to play  
6 or operate a game, whether the payoff is made automatically  
7 from the machine or in any other manner and without regard to  
8 whether the machine is used for gaming;

9 U. "gaming operator" means a person who conducts  
10 gaming;

11 V. "holding company" means a company that directly  
12 or indirectly owns or has the power or right to control a  
13 company that is an applicant or licensee, but a company that  
14 does not have a beneficial ownership of more than ten percent  
15 of the equity securities of a publicly traded corporation is  
16 not a holding company;

17 W. "immediate family" means natural persons who are  
18 related to a specified natural person by affinity or  
19 consanguinity in the first through the third degree;

20 X. "independent administrator" means a person who  
21 administers an annuity, who is not associated in any manner  
22 with the gaming operator licensee for which the annuity was  
23 purchased and is in no way associated with the person who will  
24 be receiving the annuity;

25 Y. "institutional investor" means a state or

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1 federal government pension plan or a person that meets the  
2 requirements of a qualified institutional buyer as defined in  
3 Rule 144A of the federal Securities Act of 1933, and is:

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

6 (2) an insurance company as defined in Section  
7 2(a)(17) of the federal Investment Company Act of 1940;

8 (3) an investment company registered under  
9 Section 8 of the federal Investment Company Act of 1940;

10 (4) an investment adviser registered under  
11 Section 203 of the federal Investment Advisers Act of 1940;

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

14 (6) an employee benefit plan or pension fund  
15 that is subject to the federal Employee Retirement Income  
16 Security Act of 1974, excluding an employee benefit plan or  
17 pension fund sponsored by a publicly traded corporation  
18 registered with the board; or

19 (7) a group comprised entirely of persons  
20 specified in Paragraphs (1) through (6) of this subsection;

21 Z. "intermediary company" means a company that:

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

24 (2) is a subsidiary with respect to any  
25 holding company;

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1 AA. "key executive" means an executive of a  
2 licensee or other person having the power to exercise  
3 significant influence over decisions concerning any part of the  
4 licensed operations of the licensee or whose compensation  
5 exceeds an amount established by the board in a rule;

6 BB. "license" means an authorization required by  
7 the board for engaging in gaming activities;

8 CC. "licensee" means a person to whom a valid  
9 license has been issued;

10 DD. "manufacturer" means a person who manufactures,  
11 fabricates, assembles, produces, programs or makes  
12 modifications to any gaming device for use or play in New  
13 Mexico or for sale, lease or distribution outside New Mexico  
14 from any location within New Mexico;

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

20 (1) cash received from patrons for playing a  
21 game;

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

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

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FF. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

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

GG. "person" means a legal entity;

HH. "premises" means land, together with all buildings, improvements and personal property located on the land;

II. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

JJ. "public post-secondary educational institution" means an institution designated in Article 12, Section 11 of the constitution of New Mexico and an institution designated in



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1 Chapter 21, Articles 13, 14 and 16 [~~and 17~~] NMSA 1978;

2 KK. "progressive system" means one or more gaming  
3 machines linked to one or more common progressive jackpots;

4 LL. "publicly traded corporation" means a  
5 corporation that:

6 (1) has one or more classes of securities  
7 registered pursuant to the securities laws of the United States  
8 or New Mexico;

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

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

16 MM. "registration" means a board action that  
17 authorizes a company to be a holding company with respect to a  
18 company that holds or applies for a license or that relates to  
19 other persons required to be registered pursuant to the Gaming  
20 Control Act;

21 NN. "subsidiary" means a company, all or a part of  
22 whose outstanding equity securities are owned, subject to a  
23 power or right of control or held, with power to vote, by a  
24 holding company or intermediary company; and

25 OO. "work permit" means a card, certificate or

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

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