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AN ACT

RELATING TO GAMING; DEFINING TECHNICIANS THAT REPAIR AND SERVICE GAMING DEVICES OR ASSOCIATED EQUIPMENT; TRANSFERRING RESPONSIBILITY FOR APPROVAL OF TECHNICIANS TO THE GAMING CONTROL BOARD FROM MANUFACTURER LICENSEES; DECLARING AN EMERGENCY.

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 common control with a company licensee; and

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

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of

1 the Gaming Control Act;

2 D. "application" means a request for the issuance
3 of a license or for approval of an act or transaction for
4 which approval is required or allowed pursuant to the
5 provisions of the Gaming Control Act, but "application" does
6 not include a supplemental form or information that may be
7 required with the application;

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

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

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

14 H. "company" means a corporation, partnership,
15 limited partnership, trust, association, joint stock company,
16 joint venture, limited liability company or other form of
17 business organization that is not a natural person; "company"
18 does not mean a nonprofit organization;

19 I. "distributor" means a person who supplies
20 gaming devices to a gaming operator but does not manufacture
21 gaming devices;

22 J. "equity security" means an interest in a
23 company that is evidenced by:

24 (1) voting stock or similar security;

25 (2) a security convertible into voting stock

1 or similar security, with or without consideration, or a
2 security carrying a warrant or right to subscribe to or
3 purchase voting stock or similar security;

4 (3) a warrant or right to subscribe to or
5 purchase voting stock or similar security; or

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

8 K. "executive director" means the chief
9 administrative officer appointed by the board pursuant to
10 Section 60-2E-7 NMSA 1978;

11 L. "finding of suitability" means a certification
12 of approval issued by the board permitting a person to be
13 involved directly or indirectly with a licensee, relating
14 only to the specified involvement for which it is made;

15 M. "game" means an activity in which, upon payment
16 of consideration, a player receives a prize or other thing of
17 value, the award of which is determined by chance even though
18 accompanied by some skill; "game" does not include an
19 activity played in a private residence in which no person
20 makes money for operating the activity except through
21 winnings as a player;

22 N. "gaming" means offering a game for play;

23 O. "gaming activity" means an endeavor associated
24 with the manufacture or distribution of gaming devices or the
25 conduct of gaming;

1 P. "gaming device" means associated equipment or a
2 gaming machine and includes a system for processing
3 information that can alter the normal criteria of random
4 selection that affects the operation of a game or determines
5 the outcome of a game;

6 Q. "gaming employee" means a person connected
7 directly with a gaming activity; "gaming employee" does not
8 include:

9 (1) bartenders, cocktail servers or other
10 persons engaged solely in preparing or serving food or
11 beverages;

12 (2) secretarial or janitorial personnel;

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

14 (4) other nongaming personnel;

15 R. "gaming establishment" means the premises on or
16 in which gaming is conducted;

17 S. "gaming machine" means a mechanical,
18 electromechanical or electronic contrivance or machine that,
19 upon insertion of a coin, token or similar object, or upon
20 payment of any consideration, is available to play or operate
21 a game, whether the payoff is made automatically from the
22 machine or in any other manner;

23 T. "gaming operator" means a person who conducts
24 gaming;

25 U. "holding company" means a company that directly SB 740
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1 or indirectly owns or has the power or right to control a
2 company that is an applicant or licensee, but a company that
3 does not have a beneficial ownership of more than ten percent
4 of the equity securities of a publicly traded corporation is
5 not a holding company;

6 V. "immediate family" means natural persons who
7 are related to a specified natural person by affinity or
8 consanguinity in the first through the third degree;

9 W. "independent administrator" means a person who
10 administers an annuity, who is not associated in any manner
11 with the gaming operator licensee for which the annuity was
12 purchased and is in no way associated with the person who
13 will be receiving the annuity;

14 X. "institutional investor" means a state or
15 federal government pension plan or a person that meets the
16 requirements of a qualified institutional buyer as defined in
17 Rule 144A of the federal Securities Act of 1933, and is:

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

20 (2) an insurance company as defined in
21 Section 2(a)(17) of the federal Investment Company Act of
22 1940;

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

25 (4) an investment adviser registered under

1 Section 203 of the federal Investment Advisers Act of 1940;

2 (5) collective trust funds as defined in
3 Section 3(c)(11) of the federal Investment Company Act of
4 1940;

5 (6) an employee benefit plan or pension fund
6 that is subject to the federal Employee Retirement Income
7 Security Act of 1974, excluding an employee benefit plan or
8 pension fund sponsored by a publicly traded corporation
9 registered with the board; or

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

12 Y. "intermediary company" means a company that:

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

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

17 Z. "key executive" means an executive of a
18 licensee or other person having the power to exercise
19 significant influence over decisions concerning any part of
20 the licensed operations of the licensee or whose compensation
21 exceeds an amount established by the board in a rule;

22 AA. "license" means an authorization required by
23 the board for engaging in gaming activities;

24 BB. "licensee" means a person to whom a valid
25 license has been issued;

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

6 DD. "net take" means the total of the following,
7 less the total of all cash paid out as losses to winning
8 patrons and those amounts paid to purchase annuities to fund
9 losses paid to winning patrons over several years by
10 independent administrators:

11 (1) cash received from patrons for playing a
12 game;

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

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

17 EE. "nonprofit organization" means:

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

24 (2) a bona fide chartered or incorporated
25 post, auxiliary unit or society of, or a trust or foundation

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

6 FF. "person" means a legal entity;

7 GG. "premises" means land, together with all
8 buildings, improvements and personal property located on the
9 land;

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

14 II. "public post-secondary educational
15 institution" means an institution designated in Article 12,
16 Section 11 of the constitution of New Mexico and an
17 institution designated in Chapter 21, Articles 13, 14 and 16
18 NMSA 1978;

19 JJ. "progressive system" means one or more gaming
20 machines linked to one or more common progressive jackpots;

21 KK. "publicly traded corporation" means a
22 corporation that:

23 (1) has one or more classes of securities
24 registered pursuant to the securities laws of the United
25 States or New Mexico;

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

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

9 LL. "registration" means a board action that
10 authorizes a company to be a holding company with respect to
11 a company that holds or applies for a license or that relates
12 to other persons required to be registered pursuant to the
13 Gaming Control Act;

14 MM. "subsidiary" means a company, all or a part of
15 whose outstanding equity securities are owned, subject to a
16 power or right of control or held, with power to vote, by a
17 holding company or intermediary company;

18 NN. "technician" means a person approved by the
19 board to repair and service gaming devices or associated
20 equipment but who is prohibited from programming gaming
21 devices; and

22 OO. "work permit" means a card, certificate or
23 permit issued by the board, whether denominated as a work
24 permit, registration card or otherwise, authorizing the
25 employment of the holder as a gaming employee."

1 Section 2. Section 60-2E-13 NMSA 1978 (being Laws 1997,
2 Chapter 190, Section 15, as amended) is amended to read:

3 "60-2E-13. ACTIVITIES REQUIRING LICENSING.--

4 A. A person shall not conduct gaming unless the
5 person is licensed as a gaming operator.

6 B. A person shall not sell, supply or distribute a
7 gaming device or associated equipment for use or play in this
8 state or for use or play outside of this state from a
9 location within this state unless the person is licensed as a
10 distributor or manufacturer, but a gaming operator licensee
11 may sell or trade in a gaming device or associated equipment
12 to a gaming operator licensee, distributor licensee or
13 manufacturer licensee.

14 C. Except as provided in Subsection D of this
15 section, a person shall not manufacture, fabricate, assemble,
16 program or make modifications to a gaming device or
17 associated equipment for use or play in this state or for use
18 or play outside of this state from any location within this
19 state unless the person is a manufacturer licensee. A
20 manufacturer licensee may sell, supply or distribute only the
21 gaming devices or associated equipment that the manufacturer
22 licensee manufactures, fabricates, assembles, programs or
23 modifies.

24 D. Upon receiving a written request from a person
25 who manufactures associated equipment, the board may waive

1 the requirement for a manufacturer's license on the terms and
2 conditions the board deems necessary as long as the waiver is
3 consistent with the purpose of the Gaming Control Act.

4 E. Except as provided in Section 60-2E-13.1 NMSA
5 1978, a gaming operator licensee or a person other than a
6 manufacturer licensee or distributor licensee shall not
7 possess an unlicensed or illegal gaming device or possess or
8 control a place where there is an unlicensed or illegal
9 gaming device. Any unlicensed or illegal gaming device,
10 except a gaming machine in the possession of a licensee while
11 awaiting transfer to a gaming operator licensee for licensure
12 of the machine, or as provided in Section 60-2E-13.1 NMSA
13 1978, is subject to seizure and forfeiture pursuant to
14 Section 30-19-10 NMSA 1978.

15 F. A person shall not service or repair a gaming
16 device or associated equipment unless the person is licensed
17 as a manufacturer, is employed by a manufacturer licensee or
18 is a technician approved by the board and employed by a
19 distributor licensee or a gaming operator licensee.

20 G. A person shall not engage in an activity for
21 which the board requires a license or permit without
22 obtaining the license or permit.

23 H. Except as provided in Subsections B and D of
24 this section, a person shall not purchase, lease or acquire
25 possession of a gaming device or associated equipment except

1 from a distributor licensee or manufacturer licensee.

2 I. A distributor licensee may receive a percentage
3 of the amount wagered, the net take or other measure related
4 to the operation of a gaming machine as a payment pursuant to
5 a lease or other arrangement for furnishing a gaming machine,
6 but the board shall adopt a regulation setting the maximum
7 allowable percentage."

8 Section 3. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect
10 immediately.

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