

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 706

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING HOW NET TAKE IS CALCULATED UNDER 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

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underscored material = new
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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. "cash" means United States currency and coins;

20 H. "cash equivalent" means an asset that is readily
21 convertible to cash, including:

22 (1) traveler's checks, foreign currency and
23 coins;

24 (2) certified checks, cashier's checks and
25 money orders;

- 1 (3) personal checks or drafts;
- 2 (4) a negotiable instrument applied against
- 3 credit extended by a certificate holder or a financial
- 4 institution;
- 5 (5) electronic credits that may be exchanged
- 6 for cash; or
- 7 (6) any other instrument or representation of
- 8 value that the board deems a cash equivalent;

9 ~~[G.]~~ I. "certification" means a notice of approval
 10 by the board of a person required to be certified by the board;

11 ~~[H.]~~ J. "cheat" or "cheating" means to alter the
 12 element of chance, the method of selection or other criteria in
 13 a manner that determines:

- 14 (1) the result of the game;
- 15 (2) the amount or frequency of payment in a
- 16 game, including taking advantage of a malfunctioning machine;
- 17 (3) the value of a wagering instrument; or
- 18 (4) the value of a wagering credit;

19 ~~[I.]~~ K. "company" means a corporation, partnership,
 20 limited partnership, trust, association, joint stock company,
 21 joint venture, limited liability company or other form of
 22 business organization that is not a natural person; "company"
 23 does not mean a nonprofit organization;

24 ~~[J.]~~ L. "distributor" means a person who supplies
 25 gaming devices to a gaming operator but does not manufacture

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1 gaming devices;

2 ~~[K.]~~ M. "equity security" means an interest in a
3 company that is evidenced by:

4 (1) voting stock or similar security;

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

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

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

13 ~~[L.]~~ N. "executive director" means the chief
14 administrative officer appointed by the board pursuant to
15 Section 60-2E-7 NMSA 1978;

16 ~~[M.]~~ O. "finding of suitability" means a
17 certification of approval issued by the board permitting a
18 person to be involved directly or indirectly with a licensee,
19 relating only to the specified involvement for which it is
20 made;

21 ~~[N.]~~ P. "foreign institutional investor" means:

22 (1) a government-related pension plan of a
23 foreign government; or

24 (2) a person that meets the requirement of a
25 qualified institutional buyer as defined by the governing

1 financial regulatory agency of the foreign country in which the
2 company's primary operations are located and is registered or
3 licensed in that country as a bank, an insurance company, an
4 investment company, an investment advisor, a collective trust
5 fund, an employee benefit plan or pension fund sponsored by a
6 publicly traded corporation registered with the board or a
7 group composed entirely of entities specified in this
8 subsection;

9 Q. "free play" means play on a gaming machine
10 initiated by points or credits provided to patrons without
11 monetary consideration and that have no cash redemption value;

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

19 [~~P.~~] S. "gaming" means offering a game for play;

20 [~~Q.~~] T. "gaming activity" means an endeavor
21 associated with the manufacture or distribution of gaming
22 devices or the conduct of gaming;

23 [~~R.~~] U. "gaming device" means associated equipment
24 or a gaming machine and includes a system for processing
25 information that can alter the normal criteria of random

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1 selection that affects the operation of a game or determines
2 the outcome of a game;

3 ~~[S.]~~ V. "gaming employee" means a person connected
4 directly with a gaming activity; "gaming employee" does not
5 include:

6 (1) bartenders, cocktail servers or other
7 persons engaged solely in preparing or serving food or
8 beverages;

9 (2) secretarial or janitorial personnel;

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

11 (4) other nongaming personnel;

12 ~~[T.]~~ W. "gaming establishment" means the premises
13 on or in which gaming is conducted;

14 ~~[U.]~~ X. "gaming machine" means a mechanical,
15 electromechanical or electronic contrivance or machine that,
16 upon insertion of a coin, bill, token or electronic credits
17 that may be exchanged for cash or similar object, or upon
18 payment of any consideration, including the use of any
19 electronic payment system except a credit card or debit card,
20 is available to play or operate a game, whether the payoff is
21 made automatically from the machine or in any other manner;

22 ~~[V.]~~ Y. "gaming operator" means a person who
23 conducts gaming;

24 ~~[W.]~~ Z. "holding company" means a company that
25 directly or indirectly owns or has the power or right to

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1 control a company that is an applicant or licensee, but a
2 company that does not have a beneficial ownership of more than
3 ten percent of the equity securities of a publicly traded
4 corporation is not a holding company;

5 ~~[X.]~~ AA. "immediate family" means natural persons
6 who are related to a specified natural person by affinity or
7 consanguinity in the first through the third degree;

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

13 ~~[Z.]~~ CC. "institutional investor" means:

- 14 (1) a foreign institutional investor;
15 (2) a state or federal government pension
16 plan; or
17 (3) a person that meets the requirements of a
18 qualified institutional buyer as defined in Rule 144A of the
19 federal Securities Act of 1933, and is:

20 (a) a bank as defined in Section 3(a)(6)
21 of the federal Securities Exchange Act of 1934;

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

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

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1 (d) an investment adviser registered
2 under Section 203 of the federal Investment Advisers Act of
3 1940;

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

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

11 (g) a group comprised entirely of
12 persons specified in Subparagraphs (a) through (f) of this
13 paragraph;

14 ~~[AA.]~~ DD. "intermediary company" means a company
15 that:

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

18 (2) is a subsidiary with respect to any
19 holding company;

20 ~~[BB.]~~ EE. "key executive" means an executive of a
21 licensee or other person having the power to exercise
22 significant influence over decisions concerning any part of the
23 licensed operations of the licensee or whose compensation
24 exceeds an amount established by the board in a rule;

25 ~~[CC.]~~ FF. "license" means an authorization required

1 by the board for engaging in gaming activities;

2 ~~[DD.]~~ GG. "licensee" means a person to whom a valid
3 license has been issued;

4 ~~[EE.]~~ HH. "manufacturer" means a person who
5 manufactures, fabricates, assembles, produces, programs or
6 makes modifications to any gaming device for use or play in New
7 Mexico or for sale, lease or distribution outside New Mexico
8 from any location within New Mexico;

9 ~~[FF.]~~ II. "net take" means the total of the
10 following, less the total of all cash or cash equivalent paid
11 out as losses to winning patrons and those amounts paid to
12 purchase annuities to fund losses paid to winning patrons over
13 several years by independent administrators:

14 (1) cash or cash equivalent received from
15 patrons for playing a game;

16 (2) cash or cash equivalent received in
17 payment for credit extended by a licensee to a patron for
18 playing a game; and

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

21 ~~[GG.]~~ JJ. "nonprofit organization" means:

22 (1) a bona fide chartered or incorporated
23 branch, lodge, order or association, in existence in New Mexico
24 prior to January 1, 1997, of a fraternal organization that is
25 described in Section 501(c)(8) or (10) of the federal Internal

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1 Revenue Code of 1986 and that is exempt from federal income
2 taxation pursuant to Section 501(a) of that code; or

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

10 [~~HH.~~] KK. "person" means a legal entity;

11 LL. "point play" means play on a gaming machine
12 initiated by points earned or accrued by a patron through
13 previous gaming machine play, player's club or any other
14 method, and that has no cash redemption value;

15 [~~HH.~~] MM. "premises" means land, together with all
16 buildings, improvements and personal property located on the
17 land;

18 [~~JJ.~~] NN. "progressive jackpot" means a prize that
19 increases over time or as gaming machines that are linked to a
20 progressive system are played and upon conditions established
21 by the board may be paid by an annuity;

22 [~~KK.~~] OO. "public post-secondary educational
23 institution" means an institution designated in Article 12,
24 Section 11 of the constitution of New Mexico or an institution
25 designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

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2 ~~[LL.]~~ PP. "progressive system" means one or more
3 gaming machines linked to one or more common progressive
4 jackpots;

5 ~~[MM.]~~ QQ. "publicly traded corporation" means a
6 corporation that:

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

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

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

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

22 ~~[OO.]~~ SS. "subsidiary" means a company, all or a
23 part of whose outstanding equity securities are owned, subject
24 to a power or right of control or held, with power to vote, by
25 a holding company or intermediary company;

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1 ~~[PP-]~~ TT. "technician" means a person approved by
2 the board to repair and service gaming devices or associated
3 equipment but who is prohibited from programming gaming
4 devices; and

5 ~~[QQ-]~~ UU. "work permit" means a card, certificate
6 or permit issued by the board, whether denominated as a work
7 permit, registration card or otherwise, authorizing the
8 employment of the holder as a gaming employee."

9 **SECTION 2.** Section 60-2E-38 NMSA 1978 (being Laws 1997,
10 Chapter 190, Section 40) is amended to read:

11 "60-2E-38. CALCULATION OF NET TAKE--CERTAIN EXPENSES NOT
12 DEDUCTIBLE.--

13 A. In calculating net take from gaming machines,
14 the actual cost to the licensee of any personal property
15 distributed to a patron as the result of a legitimate wager may
16 be deducted as a loss, except for travel expenses, food,
17 refreshments, lodging or services. A licensee may deduct
18 personal property in the form of food and lodging in an amount
19 limited to three percent of the licensee's net take for that
20 month. The cumulative market value of food and lodging shall
21 be calculated based on the average daily rate for lodging and
22 the menu pricing for food. For the purposes of this section,
23 "as the result of a legitimate wager" means that the patron
24 must make a wager prior to receiving the personal property,
25 regardless of whether the receipt of the personal property is

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1 dependent on the outcome of the wager.

2 B. Free play and point play shall not be included
 3 in, and do not increase, net take, and amounts paid as losses
 4 as a result of free play or point play shall be deductible from
 5 net take.

6 C. Rewards or awards provided to a patron under any
 7 form of player's club program or promotion, or as a result of
 8 patron-related activities, are not deductible from net take.
 9 The value of personal property awards or complimentaries
 10 provided to patrons in the absence of a legitimate wager are
 11 not deductible from net take."

12 SECTION 3. Section 60-2E-40 NMSA 1978 (being Laws 1997,
 13 Chapter 190, Section 42) is amended to read:

14 "60-2E-40. USE OF CHIPS, TOKENS OR LEGAL TENDER REQUIRED
 15 FOR ALL GAMING.--All gaming shall be conducted with chips,
 16 tokens or other similar objects approved by the board or
 17 electronic credits or with the legal currency of the United
 18 States."

19 SECTION 4. EFFECTIVE DATE.--The effective date of the
 20 provisions of this act is July 1, 2015.