

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
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;  
DEFINING "PROMOTIONAL CREDIT" IN THE GAMING CONTROL ACT;  
ALLOWING CERTAIN INCENTIVES FOR PATRONS TO GAME; AMENDING THE  
DEFINITION OF "NET TAKE"; ALLOWING CERTAIN AMOUNTS TO BE  
EXCLUDED FROM NET TAKE; ALLOWING A LICENSEE TO EXTEND CREDIT TO  
CERTAIN PATRONS FOR PLAYING A GAME; REPEALING SECTION 60-2E-38  
NMSA 1978 (BEING LAWS 1997, CHAPTER 190, SECTION 40); PROVIDING  
A PENALTY.

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

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1 indirectly through one or more intermediaries, controls, is  
2 controlled by or is under common control with a specified  
3 person;

4 B. "affiliated company" means a company that:

5 (1) controls, is controlled by or is under  
6 common control with a company licensee; and

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

10 C. "applicant" means a person who has applied for a  
11 license or for approval of an act or transaction for which  
12 approval is required or allowed pursuant to the provisions of  
13 the Gaming Control Act;

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

20 E. "associated equipment" means equipment or a  
21 mechanical, electromechanical or electronic contrivance,  
22 component or machine used in connection with gaming activity;

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

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

1           H. "cheat" or "cheating" means to alter the element  
 2 of chance, the method of selection or other criteria in a  
 3 manner that determines:

- 4                   (1) the result of the game;
- 5                   (2) the amount or frequency of payment in a  
 6 game, including taking advantage of a malfunctioning machine;
- 7                   (3) the value of a wagering instrument; or
- 8                   (4) the value of a wagering credit;

9           I. "company" means a corporation, partnership,  
 10 limited partnership, trust, association, joint stock company,  
 11 joint venture, limited liability company or other form of  
 12 business organization that is not a natural person; "company"  
 13 does not mean a nonprofit organization;

14           J. "distributor" means a person who supplies gaming  
 15 devices to a gaming operator but does not manufacture gaming  
 16 devices;

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

- 19                   (1) voting stock or similar security;
- 20                   (2) a security convertible into voting stock  
 21 or similar security, with or without consideration, or a  
 22 security carrying a warrant or right to subscribe to or  
 23 purchase voting stock or similar security;
- 24                   (3) a warrant or right to subscribe to or  
 25 purchase voting stock or similar security; or

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

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

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

10 N. "foreign institutional investor" means:

11 (1) a government-related pension plan of a  
12 foreign government; or

13 (2) a person that meets the requirement of a  
14 qualified institutional buyer as defined by the governing  
15 financial regulatory agency of the foreign country in which the  
16 company's primary operations are located and is registered or  
17 licensed in that country as a bank, an insurance company, an  
18 investment company, an investment advisor, a collective trust  
19 fund, an employee benefit plan or pension fund sponsored by a  
20 publicly traded corporation registered with the board or a  
21 group composed entirely of entities specified in this  
22 subsection;

23 O. "game" means an activity in which, upon payment  
24 of consideration, a player receives a prize or other thing of  
25 value, the award of which is determined by chance even though

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1 accompanied by some skill; "game" does not include an activity  
2 played in a private residence in which no person makes money  
3 for operating the activity except through winnings as a player;

4 P. "gaming" means offering a game for play;

5 Q. "gaming activity" means an endeavor associated  
6 with the manufacture or distribution of gaming devices or the  
7 conduct of gaming;

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

13 S. "gaming employee" means a person connected  
14 directly with a gaming activity; "gaming employee" does not  
15 include:

16 (1) bartenders, cocktail servers or other  
17 persons engaged solely in preparing or serving food or  
18 beverages;

19 (2) secretarial or janitorial personnel;

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

21 (4) other nongaming personnel;

22 T. "gaming establishment" means the premises on or  
23 in which gaming is conducted;

24 U. "gaming machine" means a mechanical,  
25 electromechanical or electronic contrivance or machine that,

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1 upon insertion of a coin, token or similar object, or upon  
2 payment of any consideration, is available to play or operate a  
3 game, whether the payoff is made automatically from the machine  
4 or in any other manner;

5 V. "gaming operator" means a person who conducts  
6 gaming;

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

13 X. "immediate family" means natural persons who are  
14 related to a specified natural person by affinity or  
15 consanguinity in the first through the third degree;

16 Y. "independent administrator" means a person who  
17 administers an annuity, who is not associated in any manner  
18 with the gaming operator licensee for which the annuity was  
19 purchased and is in no way associated with the person who will  
20 be receiving the annuity;

21 Z. "institutional investor" means:

- 22 (1) a foreign institutional investor;  
23 (2) a state or federal government pension  
24 plan; or  
25 (3) a person that meets the requirements of a

1 qualified institutional buyer as defined in Rule 144A of the  
2 federal Securities Act of 1933, and is:

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

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

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

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

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

14 (f) an employee benefit plan or pension  
15 fund 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 (g) a group comprised entirely of  
20 persons specified in Subparagraphs (a) through (f) of this  
21 paragraph;

22 AA. "intermediary company" means a company that:

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

25 (2) is a subsidiary with respect to any

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1 holding company;

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

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

9 DD. "licensee" means a person to whom a valid  
10 license has been issued;

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

16 FF. "net take" means:

17 (1) the total of the following: [~~less the~~  
18 ~~total of all cash paid out as losses to winning patrons and~~  
19 ~~those amounts paid to purchase annuities to fund losses paid to~~  
20 ~~winning patrons over several years by independent~~  
21 ~~administrators~~

22 (1)] (a) cash received from patrons for  
23 playing a game;

24 [(2)] (b) cash received in payment for  
25 credit extended by a licensee to a patron for playing a game;



1 and

2 [~~3~~] (c) compensation received for  
3 conducting a game in which the licensee is not a party to a  
4 wager; and

5 (2) less:

6 (a) the total of all cash paid out as  
7 losses to winning patrons from play, including play initiated  
8 by a promotional credit;

9 (b) amounts paid to purchase annuities  
10 to fund losses paid to winning patrons over several years by  
11 independent administrators;

12 (c) the actual cost to the licensee of  
13 any personal property distributed to a patron except for travel  
14 expenses and services; and

15 (d) one-twelfth of a fee paid by a  
16 licensee to the board pursuant to Paragraphs (3) through (5) of  
17 Subsection A of Section 60-2E-15 NMSA 1978;

18 GG. "nonprofit organization" means:

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

25 (2) a bona fide chartered or incorporated

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

7 HH. "person" means a legal entity;

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

11 JJ. "promotional credit" means a credit that has no  
12 cash value, and is not redeemable for cash, that is issued by a  
13 licensee that is a gaming operator, without monetary  
14 consideration, to a patron for the purpose of enabling the  
15 patron to play or operate a gaming machine;

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

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

24 [~~LL.~~] MM. "progressive system" means one or more  
25 gaming machines linked to one or more common progressive

1 jackpots;

2 ~~[MM.]~~ NN. "publicly traded corporation" means a  
3 corporation that:

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

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

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

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

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

23 ~~[PP.]~~ QQ. "technician" means a person approved by  
24 the board to repair and service gaming devices or associated  
25 equipment but who is prohibited from programming gaming

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1 devices; and

2 [QQ-] RR. "work permit" means a card, certificate  
3 or permit issued by the board, whether denominated as a work  
4 permit, registration card or otherwise, authorizing the  
5 employment of the holder as a gaming employee."

6 SECTION 2. Section 60-2E-26 NMSA 1978 (being Laws 1997,  
7 Chapter 190, Section 28, as amended) is amended to read:

8 "60-2E-26. GAMING OPERATOR LICENSEES--GENERAL  
9 PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

10 A. An applicant for a gaming operator's license  
11 shall submit with the application a plan for assisting in the  
12 prevention, education and treatment of compulsive gambling.  
13 The plan shall include regular educational training sessions  
14 for employees. Plan approval by the board is a condition of  
15 issuance of the license.

16 B. An applicant for a gaming operator's license  
17 shall submit with the application a proposed business plan.  
18 The plan shall include at least:

- 19 (1) a floor plan of the area to be used for  
20 gaming machine operations;
- 21 (2) an advertising and marketing plan;
- 22 (3) the proposed placement and number of  
23 gaming machines;
- 24 (4) current financial status and gaming  
25 protection plan;

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- 1 (5) a security plan;  
 2 (6) a staffing plan for gaming machine  
 3 operations;  
 4 (7) internal control systems in compliance  
 5 with Section 60-2E-35 NMSA 1978; and  
 6 (8) details of any proposed progressive  
 7 systems.

8 C. A gaming operator licensee shall be granted a  
 9 license to operate a number of machines, not to exceed the  
 10 statutory maximum, at a gaming establishment identified in the  
 11 license application and shall be granted a license for each  
 12 gaming machine.

13 D. A gaming operator licensee shall apply for and  
 14 pay the machine license fee for any increase in the number of  
 15 authorized gaming machines in operation at the licensed  
 16 premises and shall notify the board of any decrease in the  
 17 number of authorized gaming machines in operation at the  
 18 licensed premises.

19 E. Gaming machines may be available for play only  
 20 in an area restricted to persons twenty-one years of age or  
 21 older.

22 F. A gaming operator licensee shall erect a  
 23 permanent physical barrier to allow for multiple uses of the  
 24 premises by persons of all ages. For purposes of this  
 25 subsection, "permanent physical barrier" means a

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1 floor-to-ceiling wall separating the general areas from the  
2 restricted areas. The entrance to the area where gaming  
3 machines are located shall display a sign that the premises are  
4 restricted to persons twenty-one years of age or older.  
5 Persons under the age of twenty-one shall not enter the area  
6 where gaming machines are located.

7 G. A gaming operator licensee shall not have  
8 automated teller machines in the area restricted pursuant to  
9 Subsection F of this section.

10 H. A gaming operator licensee shall not provide,  
11 allow, contract or arrange to provide alcohol [~~or food~~] for no  
12 charge or at reduced prices as an incentive or enticement for  
13 patrons to game unless the patron is a member of the licensee's  
14 rewards program.

15 I. Only a racetrack licensed by the state racing  
16 commission or a nonprofit organization may apply for or be  
17 issued a gaming operator's license. No other persons are  
18 qualified to apply for or be issued a gaming operator's license  
19 pursuant to the Gaming Control Act."

20 SECTION 3. A new section of the Gaming Control Act is  
21 enacted to read:

22 "[NEW MATERIAL] AUTHORIZATION TO EXTEND CREDIT TO A  
23 QUALIFIED PATRON FOR GAMING PURPOSES.--

24 A. Credit may be extended by a licensee that is a  
25 gaming operator to a patron for playing a game; provided that:

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- 1 (1) the credit is repaid within thirty days;  
2 (2) the amount of credit extended shall be ten  
3 thousand dollars (\$10,000) or more; and  
4 (3) the patron has available cash balances  
5 that exceed the amount of credit extended or ten thousand  
6 dollars (\$10,000), whichever is greater.

7 B. Prior to extending credit to a patron,  
8 verification of the patron's available cash balances shall be  
9 satisfied by:

10 (1) the patron signing a statement, under  
11 penalty of perjury, confirming that the person has available  
12 cash balances that exceed the amount of the credit extended or  
13 ten thousand dollars (\$10,000), whichever is greater; and

14 (2) the licensee directly with the patron's  
15 bank or through a bank verification service, including that:

16 (a) the patron has an existing and  
17 active checking account;

18 (b) the checking account is in the  
19 patron's name; and

20 (c) the total amount in all of the  
21 patron's accounts with the bank is in excess of the amount  
22 requested or ten thousand dollars (\$10,000), whichever is  
23 greater.

24 C. A bank verification service used by a licensee  
25 pursuant to Paragraph (2) of Subsection B of this section may

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1 make use of another bank verification service to make direct  
2 communication with the patron's bank.

3 D. A licensee shall record the source of  
4 verification and the method by which each verification was  
5 performed in the patron's credit file created and maintained by  
6 the licensee. The verification may be performed telephonically  
7 prior to the credit approved; provided that the licensee or  
8 bank verification service requests written documentation of all  
9 information obtained as soon as possible and the documentation,  
10 when received, is included in the patron's credit file. All  
11 requests for written documentation shall be maintained in the  
12 patron's credit file until the documentation is received."

13 SECTION 4. REPEAL.--Section 60-2E-38 NMSA 1978 (being  
14 Laws 1997, Chapter 190, Section 40) is repealed.