

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
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;
AMENDING THE DEFINITION OF "NET TAKE" IN THE GAMING CONTROL
ACT; DEFINING "PROMOTIONAL CREDIT"; ALLOWING CERTAIN INCENTIVES
FOR PATRONS TO GAME; ALLOWING CERTAIN AMOUNTS TO BE DEDUCTED
FROM NET TAKE; PROVIDING A CONTINGENT EFFECTIVE DATE.

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;

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1 B. "affiliated company" means a company that:
2 (1) controls, is controlled by or is under
3 common control with a company licensee; and

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

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

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

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

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

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

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

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

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

11 J. "distributor" means a person who supplies gaming
 12 devices to a gaming operator but does not manufacture gaming
 13 devices;

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

- 16 (1) voting stock or similar security;
- 17 (2) a security convertible into voting stock
- 18 or similar security, with or without consideration, or a
- 19 security carrying a warrant or right to subscribe to or
- 20 purchase voting stock or similar security;
- 21 (3) a warrant or right to subscribe to or
- 22 purchase voting stock or similar security; or
- 23 (4) a security having a direct or indirect
- 24 participation in the profits of the issuer;

25 L. "executive director" means the chief

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1 administrative officer appointed by the board pursuant to
2 Section 60-2E-7 NMSA 1978;

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

7 N. "foreign institutional investor" means:

8 (1) a government-related pension plan of a
9 foreign government; or

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

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

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

2 Q. "gaming activity" means an endeavor associated
3 with the manufacture or distribution of gaming devices or the
4 conduct of gaming;

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

10 S. "gaming employee" means a person connected
11 directly with a gaming activity; "gaming employee" does not
12 include:

13 (1) bartenders, cocktail servers or other
14 persons engaged solely in preparing or serving food or
15 beverages;

16 (2) secretarial or janitorial personnel;

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

18 (4) other nongaming personnel;

19 T. "gaming establishment" means the premises on or
20 in which gaming is conducted;

21 U. "gaming machine" means a mechanical,
22 electromechanical or electronic contrivance or machine that,
23 upon insertion of a coin, token or similar object, or upon
24 payment of any consideration, is available to play or operate a
25 game, whether the payoff is made automatically from the machine

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1 or in any other manner;

2 V. "gaming operator" means a person who conducts
3 gaming;

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

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

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

18 Z. "institutional investor" means:

19 (1) a foreign institutional investor;

20 (2) a state or federal government pension
21 plan; or

22 (3) a person that meets the requirements of a
23 qualified institutional buyer as defined in Rule 144A of the
24 federal Securities Act of 1933, and is:

25 (a) a bank as defined in Section 3(a)(6)

1 of the federal Securities Exchange Act of 1934;

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

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

6 (d) an investment adviser registered
7 under Section 203 of the federal Investment Advisers Act of
8 1940;

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

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

16 (g) a group comprised entirely of
17 persons specified in Subparagraphs (a) through (f) of this
18 paragraph;

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

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

22 (2) is a subsidiary with respect to any
23 holding company;

24 BB. "key executive" means an executive of a
25 licensee or other person having the power to exercise

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1 significant influence over decisions concerning any part of the
2 licensed operations of the licensee or whose compensation
3 exceeds an amount established by the board in a rule;

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

6 DD. "licensee" means a person to whom a valid
7 license has been issued;

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

13 FF. "net take" means:

14 (1) the total of the following [~~less the total~~
15 ~~of all cash paid out as losses to winning patrons and those~~
16 ~~amounts paid to purchase annuities to fund losses paid to~~
17 ~~winning patrons over several years by independent~~
18 ~~administrators], excluding any amount attributable to a
19 promotional credit:~~

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

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

25 [(3)] (c) compensation received for

1 conducting a game in which the licensee is not a party to a
2 wager; less

3 (2) the following:

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

7 (b) the actual cost to the licensee of
8 non-cash prizes provided to winning patrons from play,
9 including play initiated by a promotional credit; and

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

13 GG. "nonprofit organization" means:

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

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

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1 taxation pursuant to Section 501(a) of that code;

2 HH. "person" means a legal entity;

3 II. "premises" means land, together with all
4 buildings, improvements and personal property located on the
5 land;

6 JJ. "promotional credit" means:

7 (1) points or credits that are provided to a
8 patron, without monetary consideration and that have no cash
9 redemption value, for the purpose of enabling the patron to
10 play a gaming machine; or

11 (2) points that are earned or accrued by a
12 patron through previous gaming machine play, players' clubs or
13 any other method and that have no cash redemption value;

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

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

22 [~~LL.~~] MM. "progressive system" means one or more
23 gaming machines linked to one or more common progressive
24 jackpots;

25 [~~MM.~~] NN. "publicly traded corporation" means a

1 corporation that:

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

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

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

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

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

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

25 [~~QQ.~~] RR. "work permit" means a card, certificate

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1 or 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."

4 SECTION 2. Section 60-2E-7 NMSA 1978 (being Laws 1997,
5 Chapter 190, Section 9, as amended) is amended to read:

6 "60-2E-7. BOARD'S POWERS AND DUTIES.--

7 A. The board shall implement the state's policy on
8 gaming consistent with the provisions of the Gaming Control Act
9 and the New Mexico Bingo and Raffle Act. It has the duty to
10 fulfill all responsibilities assigned to it pursuant to those
11 acts, and it has all authority necessary to carry out those
12 responsibilities. It may delegate authority to the executive
13 director, but it retains accountability. The board is an
14 adjunct agency.

15 B. The board shall:

16 (1) employ the executive director;

17 (2) make the final decision on issuance,
18 denial, suspension and revocation of all licenses pursuant to
19 and consistent with the provisions of the Gaming Control Act
20 and the New Mexico Bingo and Raffle Act;

21 (3) develop, adopt and promulgate all
22 regulations necessary to implement and administer the
23 provisions of the Gaming Control Act and the New Mexico Bingo
24 and Raffle Act, including the provisions of Subsection I of
25 Section 60-2E-26 NMSA 1978;

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

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

6 (6) prepare and submit an annual report in
7 December of each year to the governor and the legislature,
8 covering activities of the board in the most recently completed
9 fiscal year, a summary of gaming activities in the state and
10 any recommended changes in or additions to the laws relating to
11 gaming in the state.

12 C. The board may:

13 (1) impose civil fines not to exceed
14 twenty-five thousand dollars (\$25,000) for the first violation
15 of any prohibitory provision of the Gaming Control Act or any
16 prohibitory provision of a regulation adopted pursuant to that
17 act and fifty thousand dollars (\$50,000) for subsequent
18 violations;

19 (2) conduct investigations;

20 (3) subpoena persons and documents to compel
21 access to or the production of documents and records, including
22 books and memoranda, in the custody or control of a licensee;

23 (4) compel the appearance of employees of a
24 licensee or persons for the purpose of ascertaining compliance
25 with provisions of the Gaming Control Act or a regulation

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1 adopted pursuant to its provisions;

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

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

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

10 (8) conduct audits, relevant to their gaming
11 activities, of applicants, licensees and persons affiliated
12 with licensees;

13 (9) inspect, examine, photocopy and audit all
14 documents and records of an applicant or licensee relevant to
15 the applicant's or licensee's gaming activities in the presence
16 of the applicant or licensee or the applicant's or licensee's
17 agent;

18 (10) require verification of income and all
19 other matters pertinent to the gaming activities of an
20 applicant or licensee affecting the enforcement of any
21 provision of the Gaming Control Act;

22 (11) inspect all places where gaming
23 activities are conducted and inspect all property connected
24 with gaming in those places;

25 (12) summarily seize, remove and impound from

1 places inspected any gaming devices, property connected with
2 gaming, documents or records for the purpose of examination or
3 inspection;

4 (13) inspect, examine, photocopy and audit
5 documents and records, relevant to the affiliate's gaming
6 activities, of an affiliate of an applicant or licensee that
7 the board knows or reasonably suspects is involved in the
8 financing, operation or management of the applicant or
9 licensee. The inspection, examination, photocopying and audit
10 shall be in the presence of a representative of the affiliate
11 or its agent when practicable;

12 (14) conduct background investigations
13 pursuant to the Horse Racing Act; and

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

18 D. The board shall monitor all activity authorized
19 in an Indian gaming compact between the state and an Indian
20 nation, tribe or pueblo. The board shall appoint the state
21 gaming representative for the purposes of the compact."

22 SECTION 3. Section 60-2E-26 NMSA 1978 (being Laws 1997,
23 Chapter 190, Section 28, as amended) is amended to read:

24 "60-2E-26. GAMING OPERATOR LICENSEES--GENERAL
25 PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

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1 A. An applicant for a gaming operator's license
2 shall submit with the application a plan for assisting in the
3 prevention, education and treatment of compulsive gambling.
4 The plan shall include regular educational training sessions
5 for employees. Plan approval by the board is a condition of
6 issuance of the license.

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

10 (1) a floor plan of the area to be used for
11 gaming machine operations;

12 (2) an advertising and marketing plan;

13 (3) the proposed placement and number of
14 gaming machines;

15 (4) current financial status and gaming
16 protection plan;

17 (5) a security plan;

18 (6) a staffing plan for gaming machine
19 operations;

20 (7) internal control systems in compliance
21 with Section 60-2E-35 NMSA 1978; and

22 (8) details of any proposed progressive
23 systems.

24 C. A gaming operator licensee shall be granted a
25 license to operate a number of machines, not to exceed the

1 statutory maximum, at a gaming establishment identified in the
2 license application and shall be granted a license for each
3 gaming machine.

4 D. A gaming operator licensee shall apply for and
5 pay the machine license fee for any increase in the number of
6 authorized gaming machines in operation at the licensed
7 premises and shall notify the board of any decrease in the
8 number of authorized gaming machines in operation at the
9 licensed premises.

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

13 F. A gaming operator licensee shall erect a
14 permanent physical barrier to allow for multiple uses of the
15 premises by persons of all ages. For purposes of this
16 subsection, "permanent physical barrier" means a
17 floor-to-ceiling wall separating the general areas from the
18 restricted areas. The entrance to the area where gaming
19 machines are located shall display a sign that the premises are
20 restricted to persons twenty-one years of age or older.
21 Persons under the age of twenty-one shall not enter the area
22 where gaming machines are located.

23 G. A gaming operator licensee shall not have
24 automated teller machines in the area restricted pursuant to
25 Subsection F of this section.

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1 H. A gaming operator licensee shall not provide,
2 allow, contract or arrange to provide alcohol [~~or food~~] for no
3 charge or at reduced prices as an incentive or enticement for
4 patrons to game.

5 I. A gaming operator licensee may provide, allow,
6 contract or arrange to provide food for no charge or at reduced
7 prices to any patron as an incentive or enticement for the
8 patron to game; provided that the total actual cost to the
9 licensee of food provided for no charge or at reduced prices to
10 patrons who are not members of the licensee's rewards program
11 in a month shall not exceed three percent of the licensee's net
12 take in the prior month. The licensee shall submit to the
13 board the total monthly amount of food provided, allowed,
14 contracted or arranged to be provided pursuant to this
15 subsection.

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

21 SECTION 4. Section 60-2E-38 NMSA 1978 (being Laws 1997,
22 Chapter 190, Section 40) is amended to read:

23 "60-2E-38. CALCULATION OF NET TAKE--CERTAIN EXPENSES
24 [~~NOT~~] DEDUCTIBLE.--

25 A. In calculating net take from gaming machines, a

1 licensee may deduct:

2 (1) except as provided in Paragraph (2) of
3 this subsection, the actual cost to the licensee of any
4 personal property distributed to [a patron] patrons as the
5 result of [a legitimate wager may be deducted as a loss, except
6 for travel expenses, food, refreshments, lodging or services.
7 For the purposes of this section, "as the result of a
8 legitimate wager" means that the patron must make a wager prior
9 to receiving the personal property, regardless of whether the
10 receipt of the personal property is dependent on the outcome of
11 the wager] playing a game;

12 (2) the actual cost to the licensee of
13 personal property that is travel expenses, food, refreshments,
14 lodging or services distributed to patrons, up to a maximum of
15 two hundred fifty thousand dollars (\$250,000) per calendar
16 year; and

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

20 B. A licensee shall report to the board the amounts
21 deducted pursuant to Subsection A of this section."

22 **SECTION 5. CONTINGENT EFFECTIVE DATE.--**The effective
23 date of the provisions of this act is the date the state gaming
24 representative certifies to the secretary of finance and
25 administration, the legislative council service and the New

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1 Mexico compilation commission that publication of notice in the
2 federal register has occurred of the secretary of the
3 interior's approval of, or of the secretary's failure to act
4 on, a tribal-state class III gaming compact approved by the
5 first session of the fifty-second legislature.

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