

**New Mexico Legislature**  
**Tobacco Settlement Revenue Oversight Committee**  
**October 23, 2023**

**Fred Heinrich, General Counsel and Compliance Officer**  
**Sunland Park Racetrack & Casino**

1. Define the venue and provide context—Racetrack Casinos
  - a. Must be over 21 years old to enter Casino
  - b. There are only 5—Sunland Park, Albuquerque Downs, Ruidoso, SunRay (Farmington), and Zia Park (Hobbs)
  - c. Different than restaurants and other public venues since there are far fewer and they cater to a select audience
  
2. The racetrack casinos are saddled with extensive restrictions on how we can do business
  - a. Limit on the number of slot machines
  - b. Limit on the hours we can be open
  - c. No live table games
  - d. No sports wagering
  - e. No internet gaming
  - f. No alcohol on the casino floor
    - i. Only gaming state in the US where alcohol is not allowed

Horse racing is facing challenges. The horse racing business model that worked in the 1950's does not work anymore. Interest is in decline, causing revenues to decrease. Expenses are going up, e.g. the Federal Horseracing Integrity and Safety Act is increasing costs by the hundreds of thousands of dollars statewide. The racetrack casinos are keeping horse racing alive in New Mexico.

All these restrictions make it very difficult to come up with ways to increase revenues to offset the increased expenses. If a racetrack casino wants to expand into new business lines related to its core businesses, those doors are closed by state statute and the Tribal

Gaming Compacts. With the inability to increase revenues, the racetrack casinos do not want to risk a revenue decrease which might be caused by a smoking ban.

A smoking ban would add another layer of restriction to our business that will make it harder to be successful.

3. Banning smoking will result in a loss of revenues which will impact the racetrack and the state

a. Competing studies

- i. Federal Reserve Bank of St. Louis, “The Revenue Performance of Casinos after a Smoking Ban: The Case of Illinois” (March, 2010)

Smoking ban is associated with **20-22% casino revenue declines**.

Smoking ban is associated with statistically significant **decline in admissions of 12.3%**.

Smoking ban was associated with **tax loss of \$200 million** in 2008.

- ii. Spectrum Gaming Group, “Gaming Industry Analysis: Potential Impacts of an Atlantic City Casino Smoking Ban on Gross Gaming Revenue” Prepared for Casino Association of New Jersey (November 3, 2021)

Net change in casino gross gaming revenue from a smoking ban ranged from **losses of 4.2% to 10.9%**.

- iii. Union Gaming, “Smoking Ban Effects in the United States” (February, 2019)

In evaluating smoking ban effects on casino gross gaming revenue in 6 jurisdictions (Illinois, Colorado, Delaware, New Orleans, South Dakota, Baton Rouge) the net change was a **loss of 16.3%**.

- iv. C3 Gaming, “Evaluation of Post-Pandemic Non-Smoking Trends in U.S. Casinos” (June, 2022)

Although this study finds that smoking prohibitions do not cause a drop in revenues, it relies almost exclusively on the theory that COVID “changed everything” about consumer attitudes to smoking in casinos. Sunland Park’s customer attitudes have not changed, however.

Note the disclaimer on the back page: “*Users ... shall not use information in this report as the basis for any decision-making process.*” With that disclaimer, why would anyone rely on it?

- v. Which study should you believe? The weight of the authority is clearly on the side of **smoking bans causing significant revenue decreases**. The new C3 Gaming study has a contradictory conclusion but is premised on the idea that COVID changed everything. When Sunland Park looked at its own real-world experience post-COVID, it was clear that the smoking ban negatively impacted revenues.

b. Sunland Park’s real-world experience (post-COVID)

- i. 2021—when racetrack casinos were allowed to reopen, but mask mandate was still in place (no smoking), **28% reduction in win per unit (“WPU”)** on the smoking side of the Casino
- ii. When mask mandate was removed (smoking again allowed), Sunland Park saw a **49% increase in WPU** in the smoking area
- iii. When smoking ban removed, Sunland Park saw a **19% increase in WPU** floor wide (smoking and non-smoking)
- iv. Sunland Park has concluded, based on real data, that we will suffer a significant reduction of revenues if a smoking ban is imposed. COVID did not change anything for Sunland Park.

c. Impact of reduction of gaming revenues

- i. Potential loss of jobs as the racetrack casinos adjust
- ii. Reduction of tax revenues—24.8% of gross gaming revenue goes to the State
- iii. Reduction of purse monies for horse racing—20% of gross gaming revenue goes to the purse fund—decrease could lead to:
  - 1. Owners and trainers leaving New Mexico
  - 2. Loss of jobs in the horse racing industry
  - 3. Decline in the interest in New Mexico horse racing

4. Employees at Sunland Park

a. Assignments

- i. Employees are informed during interviews that this is a smoking venue

- ii. In the past 20+ years, Sunland Park has **never** had an employee simply request a no smoking assignment
  - iii. If an employee has medical condition preventing working in a smoking area, Sunland Park accommodates
    - 1. Offer shift reassignment (to a no smoking shift—when the Casino is closed)
    - 2. Assign to non-smoking areas of the building
  - iv. We offer all employees N95 masks if they want them at no cost
    - 1. Proven to remove harmful particles
    - 2. We train on how to properly fit them and wear them
  - b. Technology—Sunland Park uses an air handling system that is state of the art—Casino Air system. It does not mask the smell of the smoke but actually removes harmful particles.
5. Let the marketplace decide
- a. Look at what the most experienced gaming jurisdictions are doing
    - i. Nevada—smoking inside casinos is permitted
    - ii. New Jersey—smoking inside casinos is allowed
    - iii. We don't have to reinvent the wheel
  - b. Customer desires—if they don't want smoking, they will find entertainment elsewhere, revenues will decrease and the businesses will adjust.

Conclusion: with increasing costs of horse racing and a limited ability to expand revenue streams, the racetrack casinos have to protect those revenue streams. Sunland Park would welcome a big picture discussion regarding expanding gaming opportunities in New Mexico, not only for the racetrack casinos but also for the gaming tribes. There is a model that will be a win-win-win for the gaming tribes, the State of New Mexico, and the racetrack casinos. In the meantime, Sunland Park stands in opposition to a legislatively mandated smoking ban in the racetrack casinos.