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FISCAL IMPACT REPORT



SPONSOR: Leavell DATE TYPED: 02/06/02 HB _____

SHORT TITLE: Amend Gaming Control Act SB 199/aSPAC/aSJC

ANALYST: Gonzales

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in The General Appropriation Act _____

SOURCES OF INFORMATION

LFC Files

Responses Received from

Administrative Office of the Courts (AOC)

Gaming Control Board (GCB)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment changes back four definitions that were originally proposed to be changed to strengthen the definitions in the original bill for the following terms: gaming device, lottery, gaming machine, and gaming. These terms were changed back to the original definitions due to some confusion as to whether or not they would apply to vending machines.

Additionally, the Senate Judiciary Committee amendment removes the attempt proposed in the original bill to allow the Gaming Control Board executive director to impose fines. Therefore, these decisions would continue to be made by the entire Gaming Control Board.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment deletes the initial proposed amendment to the definition of “manufacturer”, leaving the definition unchanged. The amendment also deletes the proposed amendment relating to exceptions to the prohibition against possession of unlicensed gaming devices and inserts language that only licensed manufacturers or persons who have obtained a waiver pursuant to the Gaming Control Act may possess an unlicensed gaming device for testing and demonstration purposes. The amendment also includes an emergency declaration.

With this amendment, the original bill is corrected which inadvertently gave authority to persons who had no reason to possess unlicensed gaming devices.

Synopsis of Original Bill

SB199 makes the following substantive amendments to the Criminal Code and the Gaming Control Act as summarized by the Gaming Control Board’s analysis:

Section 1. Amends Section 30-19-1 of the Criminal Code. A specific date (1970) is established to determine whether a gaming device is considered an antique for purposes of determining the legality of the device. The bill also amends the definition of “gambling device” and “lottery” to include money, tokens or other consideration and to include any machine that is designed, constructed or readily adaptable for use in gambling.

Section 3. Amends the definition of “game” by (a) identifying various types of consideration that may activate a “game”; (b) providing that a game may, but does not necessarily, award a prize; and (3) specifying that playing cards in a private residence where no one makes money operating the activity is not a prohibited activity. Amendments also include a change in the definition of “gaming device” and “gaming machine” to clarify that the design of the machine, not its use, determines whether it is a legal device under the Act. The definition of “manufacturer” also is amended to clarify that a manufacture of gaming device components that affect the gaming device’s game outcome, security, record keeping, reporting functions, or communication with the central monitoring system need to be licensed by the board. The bill also defines “public post-secondary educational institution”.

Section 4. Allows the Gaming Control Board to delegate its authority to impose fines.

Section 5. Eliminates the requirement that rulemaking hearings be held in Santa Fe. The bill also adds a provision allowing the board to establish regulations governing the criteria and conditions for temporary possession of a gaming device by post-secondary educational institutions or trade shows.

Section 6. Expressly authorizes the executive director to issue administrative citations where there is reasonable belief that a violation has occurred.

Section 7. Amends background investigation procedures by providing that the Board’s law enforcement officers will conduct background investigations on applicants for employment with the Board. The bill also allows the Board’s law enforcement officers to receive an applicant’s criminal history information from other law enforcement agencies. The bill provides that the Board’s law

enforcement officers will maintain the confidentiality of information received from other agencies except that the Board's officers may provide criminal history information to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal casino.

Section 8. Allows the Board to waive the requirement for a manufacturer's license upon written request from a manufacturer of associated equipment. The bill allows public post secondary educational institutions to possess unlicensed or illegal gaming devices for the sole purpose of providing technical training. The bill changes "machine" to "device" and clarifies that unlicensed gaming devices are illegal and are subject to seizure and forfeiture.

Section 9. Adds a new section that permits public post-secondary educational institutions, trade shows and component manufactures to temporarily possess unlicensed gaming devices. Post-secondary educational institutions may possess unlicensed gaming devices for the limited purposed of providing educational instruction on the technical aspects of gaming devices. Trade shows may temporarily possess unlicensed gaming devices for the limited purpose of demonstration and marketing the device. Component manufacturers of equipment that does not affect a gaming device's game outcome, security, recording and reporting functions, or communication with a central monitoring system may possess an unlicensed gaming device for the limited purpose of testing or demonstration.

Section 10. Clarifies that the Board may obtain tax information on an applicant for licensure from the Taxation and Revenue Department.

Section 12. Conforms licensure requirements for distributors and manufacturers by providing that a license is necessary for anyone who distributes gaming machines from within New Mexico for use or play outside New Mexico.

Section 13. Deletes language concerning requests to the Board for remand of a matter to a hearing officer for additional evidence. The amendment clarifies that Board orders are effective on the date issued and remain in effect unless reversed by judicial review.

Section 14. Changes "slot machine" to "gaming machine." "Slot machine" is not a defined term and does not appear elsewhere in the Gaming Control Act.

Section 15. Increases the time frame in which a hearing officer must submit his recommendation to the Board from 10 to 30 days. The amendment also provides that administrative hearings will be conducted in Albuquerque or, at the licensee's request, in the place or area affected.

Section 16. Provides that persons adversely affected by an action of the Board have 30 days after the date the action is taken to file an appeal.

Section 17. Increases from \$600 to \$1,200 the amount of winnings that triggers Human Services Department notification requirements.

Section 18. New language specifies that it is illegal for a person to intentionally possess an unlicensed gaming device and makes it a fourth degree felony to do so.

Significant Issues

As indicated by the GCB, the amended definition of “manufacturer” may require the Board to monitor the completion, sale, and addition of components to gaming devices before the Board can determine whether the component manufacturer must obtain a license. The additional language allowing the possession of gaming devices for testing appears incorrect because it inadvertently gives that authority to persons who have no reason to need the devices.

FISCAL IMPLICATIONS

The fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

According to the Administrative Office of the Courts, there would be minimal administrative cost for statewide update, distribution and documentation of statutory changes.

OTHER SUBSTANTIVE ISSUES

According to GCB, by clarifying definitions relating to gaming devices, specifying crimes related to possession and manufacturing of gaming devices and associated equipment, allowing for delegation of authority, and conforming language internally and with the Criminal Code, the bill will enhance the Board’s ability to regulate licensed gambling and limit unlicensed gambling. Changes in definitions to “gaming device” will help ensure consistency among the Act, the Criminal Code and gaming technology.

The provision in the bill allowing the Board to delegate authority to impose fines also improves administration and enforcement of the Act by allowing those decisions to be made outside of monthly Board meetings. The amendment also allows the executive director to settle cases within parameters established by the Board, which could increase efficiency.

Changes in the location for rulemaking hearings will help ensure full hearings as a significant number of the Board’s licensee cannot, or do not, attend hearings in Santa Fe.

Administration of the Act would be enhanced by the proposed changes in background investigation procedures for applicants for employment with the Board. The amendment allows in-house investigation of applicants, streamlines the process, and reflects current procedures under cooperative agreement between the Board and the Department of Public Safety. The change also allows the Board to provide criminal history report information to requesting tribal casino fosters cooperation between the tribes and the State Gaming Representative and also expedites and streamlines the licensing process of the tribal casinos.

The amendment allows the Board to obtain information directly from Taxation and Revenue concerning an applicant’s tax history may expedite licensing activities.

The added language in Section 9 of the bill, identified as Section 60-2E-13.1(C), allows manufacturers of gaming device components that do not affect a gaming device's game outcome, security, recording and reporting functions, or communication with a central monitoring system, possess an unlicensed gaming device. If the components have no effect, there is no reason to authorize possession of unlicensed gaming devices by those manufacturers. As drafted, any person who manufactures items such as light bulbs, glass, bolts, control knobs, and cabinet locks may possess an unlicensed and illegal gaming device.

QUESTIONS

Section 60-2E-10 NMSA 9278 authorizes the Executive Director of the GCB to issue an administrative citation.

What would the citation contain? i.e. the penalty that might be associated with a citation?
What type of appeal process would there be from a person who believes the citation is unwarranted?

JMG/njw